

**THIS WRITTEN DECISION WAS CONFIRMED BY THE HIGH COURT
IN ACCORDANCE WITH SECTION 33AW OF THE CENTRAL BANK
ACT 1942 (AS AMENDED) ON 29 JULY 2025**

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

Written Decision

Marian Shanley
Geoffrey McEnery
Ciara McGoldrick

26 February 2025

TABLE OF CONTENTS

Section
Executive Summary
Part 1 – Findings Report
Part 2 – Sanctions Report

EXECUTIVE SUMMARY

INTRODUCTION

1. This Written Decision has been prepared by the Inquiry in accordance with section 33AQ(8) of the Central Bank Act 1942 (as amended), which provides as follows:

“At the conclusion of an inquiry relating to the conduct of a person concerned in the management of a regulated financial service provider, the Bank shall notify the person of its decision. The decision must set out –

- (a) its finding as to whether or not the person is participating or has participated in the commission of the prescribed contravention to which the inquiry relates, and*
- (b) the grounds on which the finding is based, and*
- (c) if the Bank finds that the person is participating or has participated in the contravention, the sanctions (if any) imposed under this section in respect of the participation”.*

2. This Written Decision comprises this Executive Summary, the Inquiry’s Findings Report, a copy of which is included at **Part 1** of this document, and the Inquiry’s Sanctions Report, which is included at **Part 2** of this document.
3. This Executive Summary sets out certain background information on the Inquiry as well as an overview of the Inquiry’s findings, the grounds on which the findings are based and the sanctions imposed by the Inquiry. Full details of the Inquiry’s findings and the reasons for same are included in the Findings Report at **Part 1**. Full details of the sanctions imposed by the Inquiry and the reasons for same are included in the Inquiry’s Sanctions Report at **Part 2**.
4. This Written Decision is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942 (as amended by the Central Bank (Individual Accountability Framework) Act 2023), meaning it may be appealed to the Irish Financial Services Appeals Tribunal (**IFSAT**) in accordance with section 33AW of the Central Bank Act 1942, as amended, within 28 days of a subject being notified of the decision.

BACKGROUND TO THE INQUIRY

5. In February 2010, the Central Bank commenced an investigation into Irish Nationwide Building Society (**INBS**) and five persons concerned in the management of INBS

(Persons Concerned)¹. The purpose of the investigation was to determine whether there were reasonable grounds for suspecting that INBS, through its lending and corporate governance practices, had committed one or more suspected prescribed contraventions (**SPCs**) and that the Persons Concerned had participated in the commission of those prescribed contraventions. The Central Bank concluded that reasonable grounds had been established and it decided to hold an inquiry under Part IIIC of the Central Bank Act 1942 (as amended) to determine the issue (the **Inquiry**).

6. On 4 February 2015, the Central Bank appointed three inquiry members, Marian Shanley, Ciara McGoldrick and Geoffrey McEnery (the **Inquiry Members**) to conduct the Inquiry.
7. The Central Bank entered into settlement agreements with INBS and three of the Persons Concerned² between 2015 and 2021 and the Inquiry was permanently stayed in respect of a further Person Concerned³ on medical grounds in 2019. As a result, the Inquiry ultimately only proceeded in respect of one Person Concerned, Mr John Stanley Purcell.

CASE SUMMARY

8. The SPCs the subject of the Inquiry related to suspected failures by INBS to comply with its own policies and procedures in respect of commercial lending and credit risk between 1 August 2004 and 30 September 2008 (**Review Period**). There were seven overarching SPCs each of which was underpinned by two legislative provisions⁴ and a condition imposed on INBS's authorisation⁵, which gave rise to a total of 21 individual SPCs. The SPCs were founded upon allegations of specific instances of non-compliance by INBS with its internal policies (**SPC Allegations**). There were 42 SPC Allegations.
9. The SPCs and SPC Allegations were advanced against INBS in the first instance and then against Mr Purcell by virtue of his alleged participation in the SPCs and the SPC Allegations.

CONDUCT OF THE INQUIRY

10. Notices of Inquiry were issued in July 2015. The Inquiry then held a number of Inquiry Management Meetings, between December 2015 and November 2019, to address procedural matters and to issue appropriate directions. The Inquiry decided that the

¹ Dr Michael Walsh, Mr Tom McMenamin, Mr Michael Fingleton, Mr Gary McCollum and Mr John Stanley Purcell.

² Dr Michael Walsh, Mr Tom McMenamin and Mr Gary McCollum.

³ Mr Michael Fingleton.

⁴ Regulation 16(1) of the European Communities (Licencing and Supervision of Credit Institutions) Regulations 1992 (SI 395/1992) and section 76(1) of the Building Societies Act, 1989 (as amended).

⁵ Part 1 of the Financial Regulator Credit Institutions Regulatory Document entitled "Impairment Provisions for Credit Exposures" dated 26 October 2005.

complexity and extent of the allegations contained in the Notices of Inquiry made it necessary for the Inquiry to proceed by way of oral hearings and that these hearings should be split into four separate modules. There was a total of 105 days of Inquiry hearings across the four modules, which were conducted between December 2017 and July 2021. All witness evidence was heard in public, however loan file evidence and certain procedural applications and submissions were heard in private.

11. The Inquiry was conducted on an electronic basis. The extensive documentation and evidence provided to the Inquiry at the outset of and during the course of the Inquiry was uploaded to Relativity, an online platform which was developed to facilitate a paperless inquiry environment.

ISSUES TO BE DETERMINED

12. The Inquiry was required to determine whether Mr Purcell had participated in the commission of the SPCs. In order to make a finding in respect of Mr Purcell's participation in the SPCs, the Inquiry first had to determine whether each SPC Allegation had been proven against INBS and, if so, whether this amounted to commission by INBS of the corresponding overarching SPC. If the Inquiry made findings against INBS in respect of an SPC Allegation and the overarching SPC, it then had to determine whether Mr Purcell had participated in the SPC Allegation and in the commission of the overarching SPC by INBS.
13. In making its findings the Inquiry considered the large volume of documentation and evidence provided to it, which amounted to approximately 115,000 documents and approximately 687,000 pages. This documentation and evidence included: loan files relating to a sample 98 loans across nine commercial lending customers of INBS; contextual documentation such as relevant INBS policies, contemporaneous reports, corporate governance documentation and relevant correspondence; witness statements and written submissions of the Inquiry participants; and transcripts of the oral hearings of the Inquiry.

INQUIRY FINDINGS

14. The Inquiry set out its findings and the reasons for these findings, as well as certain background information and supporting documentation, in its Findings Report. The Findings Report, which runs to approximately 1,300 pages, was delivered to Mr Purcell

and the Enforcement Directorate of the Central Bank (**Enforcement**) on 30 April 2024. A copy of the Findings Report is included at **Part 1** of this document.

Overview of Findings

15. The findings of the Inquiry are set out in full in the Findings Report. A table summarising all of the SPCs, the SPC Allegations and the findings made by the Inquiry is included at Appendix 5 of the Findings Report. The following is an overview of the findings made by the Inquiry:
 - (a) The Inquiry found that of the 42 SPC Allegations, 27 SPC Allegations were proven against INBS. Of these 27 SPC Allegations found to have been proven against INBS, the Inquiry found that INBS had committed the corresponding SPC in respect of 23 of these SPC Allegations and, ultimately, that INBS had committed six of the seven overarching SPCs.
 - (b) Of the 23 SPC Allegations which were proven against INBS and the six corresponding SPCs which INBS was found to have committed, the Inquiry found that Mr Purcell had participated in 13 of these SPC Allegations and in the commission by INBS of the corresponding six overarching SPCs.
 - (c) The Inquiry found that of the 42 SPC Allegations, 15 SPC Allegations were not proven against INBS or no finding was made by the Inquiry in respect of the SPC Allegation. It followed that no finding could be made against Mr Purcell in respect of these SPC Allegations.

Participation Findings and Reasoning

16. The 13 SPC Allegations and the corresponding six overarching SPCs which Mr Purcell was found to have participated in are summarised in the below table. The reasons for these findings are also summarised in the below table. These findings and reasoning are set out in full in the Findings Report.
17. In broad terms, the basis for the Inquiry's findings of participation against Mr Purcell centred on his role as a member of the Board of Directors (**Board**) of INBS and his attendance at Board meetings. The Inquiry also had regard in certain findings to other factors, such as Mr Purcell's attendance at Audit Committee meetings and his involvement in correspondence with the Financial Regulator.

No.	SPC Allegation Mr Purcell was found to have participated in	Corresponding overarching SPC Mr Purcell was found to have participated in	Summary of reasons for participation finding against Mr Purcell
1.	SPC 1 Allegation 3: Failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity.	SPC 1: Failure to ensure that commercial loan applications were processed in accordance with INBS's internal policies.	The Inquiry accepted that Mr Purcell was not directly involved with day to day commercial lending. However, the Inquiry found that Mr Purcell was involved as a member of the Board. Mr Purcell, together with the other Board members, was aware from contemporaneous documents and from Financial Regulator correspondence that commercial lenders were, in some cases, not obtaining the required information from borrowers in order to properly assess their capacity to repay the loan being provided.
2.	SPC 2 Allegation 1: Funds advanced without Credit Committee approval or recommendation and not in compliance with urgent credit decision approval procedures.	SPC 2: Failure to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that commercial mortgage offers complied with internal policies.	Contemporaneous reports and Financial Regulator correspondence identified a systemic issue of unauthorised payments, mainly in the Belfast branch of INBS. There was no evidence that the Board responded to the issue in any meaningful way.
3.	SPC 2 Allegation 2: Funds advanced without Credit Committee approval or recommendation and without Board approval and not in		

	compliance with urgent credit decision approval procedures.		Mr Purcell's attendance at Audit Committee meetings informed him of issues raised in contemporaneous reports and Financial Regulator correspondence and gave him full insight into management responses. He had a responsibility to ensure that the Board took appropriate action and, as a Board member, he shared in the Board's responsibility for failing to so act.
4.	SPC 2 Allegation 3: Funds advanced without Board approval and without compliance with INBS's urgent credit decision approval procedures.		
5.	SPC 2 Allegation 5: Loans advanced prior to Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with urgent credit decision approval procedures.		The Inquiry accepted that the primary responsibility for dealing with these issues rested with the senior executives and the executive director with responsibility for lending, and it did take into account Mr Purcell's role in INBS. Nevertheless, it found that the persistent identification of a serious credit risk issue over the entire Review Period and beyond brought the issue within Mr Purcell's ambit of responsibility as a Board member.
6.	SPC 2 Allegation 6: Funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures.		
7.	SPC 2 Allegation 8: Loan amount advanced per the Commercial Mortgage Offer was in excess of the amount outlined in the Commercial Loan Application and approved by		The issue of appropriate approval was raised in contemporaneous reports and repeatedly by the Financial Regulator.

	the Board and additional funds were not appropriately approved.		
8.	SPC 2 Allegation 9: Term of the loan extended without appropriate approval.		<p>Mr Purcell would have been aware or ought to have been aware of the extent to which the issue was raised, both as a Board member and as an attendee at the Audit Committee meetings at which these contemporaneous reports were discussed. Further, as the contact person for Financial Regulator correspondence within INBS, Mr Purcell would have had an enhanced awareness of the concerns of the Financial Regulator.</p> <p>Whilst the primary responsibility for ensuring that commercial lending was conducted in an appropriate manner rested with the executive director who had responsibility for that area within INBS, nevertheless the Inquiry found that the persistent findings in contemporaneous reports should have raised concerns with all Board members including Mr Purcell. It also found that in his repeated assurances to the Financial Regulator that remedial action had been taken (when that appears not to have been case), Mr Purcell as a Board member participated in the breaches.</p>

9.	SPC 3 Allegation 2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.	SPC 3: Failure to ensure that: <ul style="list-style-type: none"> (i) security (including personal guarantees) for commercial loans was obtained; (ii) valuation reports on assets used as security for commercial loans were received before all or part of the loan was advanced; (iii) maximum Loan to Value (LTV) limits were adhered to; and (iv) where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, these LTVs were approved as exceptions to policy in accordance with INBS's internal policies. 	As a Board member, Mr Purcell had a role in the approval of commercial loans. Prior to 17 December 2007, the Board was responsible for approving loans in excess of the specific authority levels delegated by the Board to the Credit Committee, as per the applicable Credit Committee terms of reference. The Inquiry found that Mr Purcell, by virtue of his attendance at the Board meetings and his role as a Board member in approving these loans, participated in the authorisation of loans without a personal guarantee from corporate borrowers.
10.	SPC 5 Allegation 1: INBS's Credit Committee did not review and consider commercial loans in large arrears and/or deemed non-performing.	SPC 5: Failure to ensure that the INBS Credit Committee performed particular functions in accordance with INBS's internal policies	Financial Regulator correspondence put Mr Purcell on notice that the Credit Committee was not functioning appropriately. The correspondence should have raised immediate concerns and the Board should have taken responsibility to ensure that the issues identified were appropriately dealt with.
11.	SPC 5 Allegation 2: INBS's Credit Committee did not review and consider loans submitted as part of the Credit Review process (as no such loans were submitted to it).		

			<p>Ultimately responsibility rests with the Board to ensure that the Financial Regulator is provided with full and accurate information. The Board's responsibility in such a regulatory environment was significant and required a more "hands-on" approach than that displayed by the Board. The Inquiry found that Mr Purcell's responsibility arises from his membership of the Board.</p>
12.	<p>SPC 6 Allegation 3: The Board did not receive a report on the results of annual credit risk stress tests, which were to have been completed annually.</p>	<p>SPC 6: Failure to ensure that certain reports relevant to commercial lending and credit risk management were provided to INBS's Board of Directors during the period 21 December 2005 (the effective date of the earliest relevant applicable policy) to 30 September 2008</p>	<p>Mr Purcell, on behalf of the Board, corresponded with the Financial Regulator. This correspondence contained a litany of broken commitments regarding the preparation of stress test reports.</p> <p>The Board of INBS had a responsibility to ensure that stress tests were completed and presented to the Board as part of its overall credit risk management responsibility.</p> <p>The Inquiry found that as a member of the Board, Mr Purcell did participate in the failure to ensure that the Board received a report on the results of annual credit risk stress tests that were to have been completed annually.</p>

13.	<p>SPC 7 Allegation: INBS failed to ensure that the establishment of profit share agreements was the subject of any formal credit risk policy.</p>	<p>SPC 7: Failure to ensure that the establishment of Profit Share Agreements were the subject of any formal credit risk policy</p>	<p>Concerns expressed by the Financial Regulator from 2004 onwards imposed an obligation on the Board to ensure that commercial lending in INBS was conducted in a prudent and responsible way. In particular, the Board had a responsibility to ensure that this kind of lending was appropriately monitored and controlled. Mr Purcell shared that responsibility.</p> <p>The Board members, including Mr Purcell, would have been or ought to have been aware of the risks associated with profit share lending and they were aware of contemporaneous reports recommending that a profit share policy be put in place.</p> <p>The Board is responsible for risk management and approving policies in connection therewith. In failing to approve a profit share loan policy the Board failed in its obligations in this regard. As a member of that Board, Mr Purcell fully shares in that responsibility.</p>
-----	---	--	--

18. As noted above, in respect of certain SPC Allegations the Inquiry made no findings against INBS and/or Mr Purcell. The basis for this included: (a) that there was no policy requirement underlying the allegation; (b) that the documentation and evidence did not support the allegation; and/or (c) that the allegation related to INBS only and was therefore excluded by the Inquiry from its analysis in respect of Mr Purcell's participation.

DECISION ON SANCTIONS

19. As adverse findings were made against Mr Purcell, the Inquiry convened a sanctions hearing to determine what, if any, sanctions should be imposed on Mr Purcell. The sanctions hearing was held in public on 21 October 2024. Enforcement, Mr Purcell and the Legal Practitioner Team (**LPT**) (who provided legal assistance and advice to the Inquiry) delivered written submissions on sanctions to the Inquiry in advance of the hearing and also made oral submissions during the sanctions hearing.
20. The Inquiry has considered the written and oral submissions made by Enforcement, Mr Purcell and the LPT, as well as the relevant statutory provisions and guidance documents provided by the Central Bank in respect of sanctions, and it has prepared a Sanctions Report setting out its decision on sanctions. The Inquiry's Sanctions Report is included at **Part 2** of this Written Decision. In its Sanctions Report, the Inquiry has determined it is appropriate to impose the following sanctions on Mr Purcell in respect of the contraventions he was found to have participated in:
- (a) A reprimand.
 - (b) Disqualification for a period of four years.
 - (c) A monetary penalty of €130,000.
 - (d) No order as to costs.

The reasons for the Inquiry's decision to impose the above sanctions are set out in the Sanctions Report at **Part 2**.

PART 1

FINDINGS REPORT

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

Findings Report

Marian Shanley
Geoffrey McEnery
Ciara McGoldrick

30 April 2024

TABLE OF CONTENTS

Chapters		Page
Chapter 1	Background Information on the Inquiry	1
	• Establishment of the Inquiry	1
	• Inquiry Framework	2
	• Documentation and Sources of Evidence	6
	• Rules of Evidence	8
	• Standard of Proof	9
	• Settlements and Stay	9
	• Case Summary	10
	• Legal and Regulatory Framework of the SPCs	12
	• Relevant Policies during Review Period	13
	• Findings Methodology	13
Chapter 2	Background Information on INBS and Mr Purcell	17
	• Organisational Chart	17
	• Key INBS Functions in Commercial Lending and Credit Risk Management	17
	• Proposed Sale of INBS	32
	• Mr Purcell's Role and Responsibilities in INBS	33
Chapter 3	Introduction to SPCs 1 to 4	49
	• Sources of Evidence	50
	• Inquiry Hearings	55
	• Inquiry's Approach to SPC 1 to 4 Findings	56
	• Submissions Received in Respect of SPCs 1 to 4	57
	• Points of General Application	69
Chapter 4	Loan File Analysis	71
	• Introduction	71

	• Customer 1: [REDACTED]	73
	• Customer 2: [REDACTED]	163
	• Customer 3: [REDACTED]	328
	• Customer 4: [REDACTED]	334
	• Customer 5: [REDACTED]	344
	• Customer 6: [REDACTED] [REDACTED]	352
	• Customer 7: [REDACTED]	357
	• Customer 8: [REDACTED]	392
Chapter 5	SPC 1	395
	• Introduction	395
	• SPC 1 Allegations	396
	• Relevant Information and Sources of Evidence	396
	• SPC 1.1	397
	• Inquiry Finding – SPC 1.1	402
	• SPC 1.2	404
	• Inquiry Finding – SPC 1.2	419
	• SPC 1.3	423
	• Inquiry Finding – SPC 1.3	444
	• SPC 1.4	446
	• Inquiry Finding – SPC 1.4	451
Chapter 6	SPC 2	454
	• Introduction	454
	• SPC Allegations	455
	• Relevant Information and Sources of Evidence	459
	• Inquiry Findings	562
	• SPC 2.1, SPC 2.2, SPC 2.3, SPC 2.5 and SPC 2.6	563

	• SPC 2.7, SPC 2.8, SPC 2.9 and SPC 2.10	574
	• SPC 2.12; SPC 2.13; SPC 2.14 and SPC 2.16	582
Chapter 7	SPC 3	590
	• Introduction	590
	• SPC 3 Allegations	591
	• Relevant Information and Sources of Evidence	592
	• SPC 3.1	593
	• Inquiry Finding – SPC 3.1	594
	• SPC 3.2	595
	• Inquiry Finding – SPC 3.2	621
	• SPC 3.3	624
	• Inquiry Finding – SPC 3.3	625
	• SPC 3.4	626
	• Inquiry Finding – SPC 3.4	630
	• SPC 3.5	631
	• Inquiry Finding – SPC 3.5	632
Chapter 8	SPC 4	633
	• Introduction	633
	• SPC 4 Allegations	634
	• Relevant Information and Sources of Evidence	636
	• SPC 4.2	637
	• Inquiry Finding – SPC 4.2	656
	• SPC 4.4	657
	• Inquiry Finding – SPC 4.4	675
Chapter 9	SPC 5	676
	• Introduction	676
	• SPC 5 Allegations	677

	• Background	677
	• Relevant Information and Sources of Evidence	679
	• Inquiry Finding – SPC 5	768
Chapter 10	SPC 6	777
	• Introduction	777
	• SPC 6 Allegations	778
	• Relevant Information and Sources of Evidence	780
	• SPC 6.1	781
	• Inquiry Finding – SPC 6.1	792
	• SPC 6.2	793
	• Inquiry Finding – SPC 6.2	810
	• SPC 6.3	812
	• Inquiry Finding – SPC 6.3	833
	• SPC 6.4	836
	• Inquiry Finding – SPC 6.4	847
Chapter 11	SPC 7	848
	• Introduction	848
	• Background	849
	• Relevant Information and Sources of Evidence	853
	• Inquiry Finding – SPC 7	953
Chapter 12	Financial Regulatory Correspondence and Evidence	966
	• Introduction	966
	• Financial Regulatory Correspondence and Documentation	966
	• Witness Evidence in relation to Financial Regulator	1066
	• Observations of the Inquiry	1073

Appendices

Appendix 1	Table of Modular Hearings
Appendix 2	Outline of SPCs Advanced Against INBS and Mr Purcell (Extract from Notice of Inquiry)
Appendix 3	Documents Identified in Investigation Report as INBS Policy Documents Which Form the Basis of the Allegations of Non-Compliance set out in SPCs 1 to 7
Appendix 4	Categories of Evidence
Appendix 5	Table of SPCs, SPC Allegations and Findings
Appendix 6	Legislative Provisions and Condition on INBS's Authorisation Underpinning the SPCs
Appendix 7	Table of SPC 1 to 4 Loan Specific Allegations and Findings
Appendix 8	Glossary
Appendix 9	Dramatis Personae
Appendix 10	Reasons for Inquiry's Decision regarding 9 November 2004 Commercial Lending Criteria
Appendix 11	SPC 1 Relevant Policy Provisions
Appendix 12	SPC 2 Relevant Policy Provisions
Appendix 13	SPC 3 Relevant Policy Provisions
Appendix 14	SPC 4 Relevant Policy Provisions
Appendix 15	SPC 5 Relevant Policy Provisions
Appendix 16	SPC 6 Relevant Policy Provisions
Appendix 17	SPC 7 Relevant Policy Provisions
Appendix 18	Summary Table of Sector Specific LTV Limits

CHAPTER 1

BACKGROUND INFORMATION ON THE INQUIRY

ESTABLISHMENT OF THE INQUIRY

Relevant legislation

- 1.1 Part IIIC of the Central Bank Act 1942 (as amended) (**1942 Act**) sets out the power of the Central Bank to hold inquiries if it suspects on reasonable grounds that a regulated financial service provider was committing or had committed a prescribed contravention or that a person concerned in the management of a regulated financial service provider was participating or had participated in the commission of a prescribed contravention by the regulated financial service provider. The holding of an inquiry by the Central Bank is the culmination of the Central Bank's Administrative Sanctions Procedure (**ASP**), and follows an investigation by the Enforcement Directorate of the Central Bank (**Enforcement**). The purpose of an inquiry is to decide if a prescribed contravention is being or has been committed and to determine the appropriate sanctions.

Investigation by Enforcement

- 1.2 In February 2010, the Financial Regulator¹ decided to commence an investigation to determine, *inter alia*, whether the Irish Nationwide Building Society (**INBS**), through its lending and corporate governance practices, had committed one or more suspected prescribed contraventions (**SPCs**), which could be pursued through the ASP provided for in Part IIIC of the 1942 Act (the **Investigation**).
- 1.3 The main focus of the Investigation was to consider INBS's compliance with its own policies and procedures concerning commercial lending and credit risk between 1 August 2004 and 30 September 2008 (**Review Period**). To this end, the Investigation sought to identify relevant policies and procedures that formed part of the corresponding systems of control in place at INBS at that time.
- 1.4 On completion of its Investigation, Enforcement prepared a 3,500 page Investigation Report. On consideration of the Investigation Report, the Central Bank² concluded that

¹ The Financial Regulator was established on 1 May 2003, and was empowered (pursuant to the Central Bank and Financial Services Authority of Ireland Act 2004) to hold inquiries into suspected prescribed contraventions. The Central Bank Reform Act 2010 merged the Central Bank and the Financial Regulator, and the powers of the Financial Regulator, including the holding of inquiries, were vested in the Central Bank from October 2010.

² A Central Bank decision maker was appointed to consider the Investigation Report and decide whether an inquiry should be held.

there were reasonable grounds for suspecting that prescribed contraventions had been committed by INBS and that five persons concerned in the management of INBS (**Persons Concerned**) had participated in the commission of those prescribed contraventions, and it decided to hold an inquiry under Part IIIC of the 1942 Act to determine the issue.

Referral to Regulatory Decisions Unit (RDU)

- 1.5 On 19 December 2014, Enforcement referred the Investigation to RDU for the purposes of convening an inquiry under Part IIIC of the 1942 Act. Enforcement provided the Investigation Report to RDU setting out the grounds for suspecting that prescribed contraventions had been committed by INBS and that the Persons Concerned had participated in this commission.

Appointment of Inquiry Members

- 1.6 Following the referral of the INBS case, RDU requested the Deputy Governor (Financial Regulation) of the Central Bank, to appoint inquiry members to carry out the INBS Inquiry. On 4 February 2015, the Deputy Governor appointed Marian Shanley (solicitor), Ciara McGoldrick (barrister) and Geoffrey McEnery (banker) as inquiry members (**Inquiry Members**). Marian Shanley was appointed as the Inquiry chairperson. The INBS Inquiry commenced once the Inquiry Members were appointed.
- 1.7 On 9 July 2015, the Inquiry Members wrote to the legal representatives of INBS and the Persons Concerned, informing them of the Central Bank's decision to hold an inquiry under Part IIIC of the 1942 Act. This letter enclosed a Notice of Inquiry, which outlined the SPCs against each respondent, as set out by Enforcement at referral.³

INQUIRY FRAMEWORK

- 1.8 The Inquiry Members were appointed to conduct an inquiry to determine whether or not INBS had committed the SPCs and whether the Persons Concerned had participated in the commission of the SPCs by INBS.

³ See one such letter from the Inquiry to Comyn Kelleher Tobin, dated 9 July 2015, enclosing Notice of Inquiry (Doc ID: 0.7.1612.171051).

Relevant legislation, guidelines and procedures

- 1.9 The Inquiry Members were required to conduct the Inquiry in accordance with Part IIIC of the 1942 Act, which prescribes certain rules regarding the conduct and determination of an inquiry.
- 1.10 The two relevant procedural documents, at the time, were:
- (a) the Inquiry Guidelines prescribed pursuant to section 33BD of the 1942 Act (**Inquiry Guidelines**)⁴, which set out the relevant procedures to be followed when conducting an inquiry; and
 - (b) the Outline of the Administrative Sanctions Procedure⁵, which indicated the procedure the Central Bank would generally follow for ASPs, including inquiries.
- 1.11 While these documents offered an important framework for the Inquiry Members in the conduct of the Inquiry, more detailed case specific procedures were required. In that regard, the Inquiry Members adopted an Outline Procedure for the conduct of the INBS Inquiry⁶, which was to be read in conjunction with the 1942 Act, the Inquiry Guidelines and the Outline of the Administrative Sanctions Procedure.

Inquiry participants

- 1.12 In addition to the Inquiry Members, the following were the key participants in the Inquiry and their respective roles:

RDU

- 1.13 RDU provided administrative support to the Inquiry, acted as registrar to the Inquiry and as the point of contact within the Central Bank in relation to all Inquiry matters. RDU did not provide legal advice to the Inquiry Members but provided assistance on procedural matters and arranged for the day to day running of the Inquiry, including the management of hearings when required. RDU issued all correspondence on behalf of the Inquiry Members in respect of the Inquiry.

⁴ 2014 Inquiry Guidelines prescribed pursuant to section 33BD of the Central Bank Act 1942 (Doc ID: RDU_REL-000000003). The Inquiry Guidelines recognise that it may be necessary to depart from them in certain instances where compliance is not appropriate in the circumstances of the individual case.

⁵ 2014 Outline of the Administrative Sanctions Procedure (Doc ID: RDU_REL-000000004). This document provides a general overview of the Central Bank's ASP, but does not purport to represent a definitive legal interpretation of Part IIIC of the 1942 Act.

⁶ Outline Procedure for the Inquiry, dated 20 October 2015 (Doc ID: RDU_REL-000000005).

Legal Practitioner Team

- 1.14 The Inquiry Members appointed a Legal Practitioner Team (**LPT**), as provided for by section 33AY(3) of the 1942 Act, to provide legal assistance and advice to them, as required, during the Inquiry process.

Enforcement

- 1.15 Enforcement did not act in a prosecutorial role before the Inquiry and did not present evidence to the Inquiry. The role of Enforcement was to provide any assistance, information or evidence requested by the Inquiry Members, pursuant to section 2.11 of the Inquiry Guidelines.

Inquiry subjects⁷

- 1.16 At the commencement of the INBS Inquiry, there were six Inquiry subjects: INBS and five Persons Concerned. As set out in more detail at paragraphs 1.39 and 1.40 below, the Central Bank entered into settlements with four of the Inquiry subjects and permanently stayed the Inquiry against another Inquiry subject. As a result, the only Person Concerned who is still subject to this Inquiry is Mr John Stanley Purcell.

Inquiry hearings

- 1.17 Following the issuance of the Notices of Inquiry, certain Persons Concerned raised a number of preliminary matters of a procedural nature, which were dealt with by the Inquiry Members at Inquiry Management Meetings (**IMMs**). A total of eleven IMMs were held by the Inquiry Members to address procedural matters and to issue appropriate directions. Decisions taken at IMMs are referred to as appropriate in the course of this Findings Report.
- 1.18 The Inquiry Members decided that the complexity and extent of the allegations contained in the Notice of Inquiry made it necessary for the Inquiry to proceed by way of oral hearings. The Inquiry Members decided that these hearings should be split into four separate modules. There was a total of 105 days of Inquiry hearings across the four modules, as follows:

⁷ An inquiry subject is entitled to attend inquiry hearings and to make written or oral submissions to the inquiry members. Pursuant to section 2.14 of the Inquiry Guidelines, the inquiry subject may choose to be represented at the inquiry by a legal practitioner or, with the leave of the inquiry members, by any other person.

- (a) Module 1 concerned SPC 5 and it was conducted between 11 December 2017 and 29 June 2018.
- (b) Module 2 concerned SPC 6 and it was conducted between 27 March 2019 and 12 April 2019.
- (c) Module 3 concerned SPC 7 and it was conducted between 3 July 2019 and 20 September 2019.
- (d) Module 4 concerned SPCs 1 to 4 and it was conducted between 30 October 2020 and 21 July 2021.

1.19 All witness evidence was heard in public, however loan file evidence and certain procedural applications and submissions were heard in private. Due to Covid 19 restrictions in operation at the time, all of the module 4 hearings were conducted remotely via WebEx video conference. Further details of the modular hearings, including the relevant dates, witnesses and type of hearing, are set out in the Table of Modular Hearings included at Appendix 1.

1.20 While not directly relevant to the Inquiry hearings, it is worth noting that following the issuing of the Notice of Inquiry, litigation was instigated by certain Persons Concerned against the Central Bank in respect of the Inquiry. This litigation included a constitutional challenge, an injunction application and judicial review proceedings, as well as a number of appeal proceedings. This ongoing litigation had a significant impact on the ability of the Inquiry to proceed in a timely manner. The Inquiry hearings were adjourned pending the outcome of the litigation, however the work of the Inquiry continued. Enforcement had carriage of the proceedings on behalf of the Central Bank and the Inquiry had no involvement in any of the litigation commenced by the Persons Concerned. However, in order to be of assistance to the courts, from time to time the Inquiry Members instructed a member of the LPT to attend court.⁸

⁸ Mr Purcell commenced two sets of legal proceedings in 2015. A constitutional challenge concerning the jurisdiction of the Central Bank (*Purcell v Central Bank of Ireland & Ors 2015/5823 P*) and judicial review proceedings concerning the decision of the Central Bank to hold an inquiry against him (*Purcell v Central Bank of Ireland & Ors 2015/510 JR*). These proceedings were heard together in the High Court and judgment was delivered by Hedigan J on 29 July 2016 (*Purcell v Central Bank of Ireland & Ors. [2016] IEHC 514*). Mr Fingleton also brought judicial review proceedings in 2015 against the decision of the Central Bank to hold an inquiry in relation to him (*Fingleton v Central Bank of Ireland 2015/508 JR*). These proceedings were heard by Noonan J in the High Court and judgment was delivered on 4 January 2016 (*Fingleton v. The Central Bank of Ireland [2016] IEHC 1*). Mr Fingleton appealed the decision to the Court of Appeal and judgment was delivered by the Court of Appeal on 24 April 2018 (*Fingleton v Central Bank of Ireland [2018] IECA 105*).

DOCUMENTATION AND SOURCES OF EVIDENCE

- 1.21 This Findings Report is the substantive response to the Investigation Report prepared by Enforcement, and the allegations set out therein.
- 1.22 In preparing this Findings Report the Inquiry Members considered the documentation and evidence provided to them at the outset of and during the course of the Inquiry. When considered relevant to an SPC, this evidence is dealt with in the chapter dealing with the specific SPC.
- 1.23 The documentation and evidence provided to the Inquiry was uploaded to Relativity, an on-line platform which was developed to facilitate a paperless inquiry environment and to provide the Inquiry participants with easy access to the documentation in electronic form.⁹
- 1.24 The key documents and sources of evidence are as follows:

The Investigation Report

- 1.25 Once appointed, the Inquiry Members were provided with all documentation that had been made available by Enforcement to RDU on referral, which included the Investigation Report and the approximately 110,000 supporting documents relied on by Enforcement in preparing the Investigation Report.
- 1.26 Enforcement provided a Supplemental Investigation Report and a Revised Supplemental Investigation Report to the Inquiry (on 30 April 2015 and 19 June 2015 respectively) containing additional information relevant to the Investigation, together with additional documentation. These supplemental reports were to be read in conjunction with the original Investigation Report. All further references in this text to the Investigation Report includes these supplemental reports.
- 1.27 The Investigation Report prepared by Enforcement set out 21 individual SPCs arising during the Review Period. These were grouped under seven overarching SPCs, referred to as SPC 1 to SPC 7 inclusive. An outline of the 21 SPCs as they appeared in the Notice of Inquiry is included at Appendix 2 hereto. The SPCs are summarised

⁹ The Relativity system was provided by Grant Thornton, who were retained by Arthur Cox on behalf of the Inquiry as the IT providers to the Inquiry.

below at paragraph 1.42 and are dealt with individually in the following chapters of this Findings Report.¹⁰

- 1.28 The Investigation Report also identified the INBS internal policies and procedures with respect to commercial lending and credit risk management that it was suspected INBS had not complied with during the Review Period. A table listing the documents identified in the Investigation Report as INBS policy documents which formed the basis of the allegations of non-compliance set out in respect of SPCs 1 to 7, is included at Appendix 3 of this Findings Report. These policy documents are referred to throughout this Findings Report and are dealt with as appropriate in the chapters dealing with the individual SPCs.
- 1.29 Accompanying the Investigation Report were a number of tables setting out the allegations that INBS had committed prescribed contraventions relevant to SPCs 1 to 4 in respect of specified commercial loans entered into by INBS during the Review Period (**Consolidated Tables**). These tables also set out allegations in relation to the suspected participation by the Persons Concerned in certain of the breaches. The allegations recorded in the Consolidated Tables concern 98 loan accounts across nine commercial lending customers of INBS.¹¹ These loans represented approximately 20% of the commercial loan book by value as at 28 February 2010 (**Loan Sample**). The Loan Sample is analysed in full in Chapter 4 of this Findings Report.

Supporting documentation

- 1.30 The Inquiry was provided with various categories of evidence that were relied upon in the Investigation Report, totalling approximately 110,000 documents. The Inquiry Members sought a full explanation from Enforcement as to how the tranche of 110,000 documents was compiled and this is outlined in full in the decision of the Inquiry Members following an IMM that occurred on 24 and 25 January 2017.¹² The Inquiry Members directed that certain limited additional categories of documents should be

¹⁰ Where the individual SPCs are set out by the Inquiry Members in subsequent chapters of this Findings Report the wording is as per the Notice of Inquiry, save that defined terms have been inserted and the individual Persons Concerned have not been separately identified, as they were in the Notice of Inquiry.

¹¹ The nine commercial lending customers are:

██████████ In the case of one of these customers, ██████████ only two allegations were advanced in respect of a single loan to this customer. In circumstances where both of these allegations were INBS Only Allegations, the sole loan to ██████████ was excluded in its entirety from the Loan Hearings. (See paragraph 3.29 for further detail on the Inquiry's approach to the INBS Only Allegations).

¹² Decision of Inquiry Members, dated 9 May 2017, page 41 et seq. (Doc ID: RDU_REL2-000000367).

produced. Insofar as these additional documents were available to Enforcement, they were produced to the Inquiry by November 2017.

- 1.31 The main categories of evidence provided to the Inquiry are set out in Appendix 4. When considered relevant to an SPC, this evidence is dealt with by the Inquiry Members in the chapter dealing with that SPC.

Information generated during the Inquiry

- 1.32 In the course of preparing for the oral hearings of the Inquiry, the following documents were generated for or on behalf of the Inquiry:
- (a) Additional documents sought by the Inquiry arising from specific requests to Enforcement during the Inquiry¹³.
 - (b) Witness statements and witness responses to schedules of issues furnished to witnesses indicating areas that the Inquiry Members wished them to address.
 - (c) Written submissions delivered by Inquiry participants during the oral hearings.
 - (d) Transcripts of the evidence given during the oral hearings of the Inquiry.
 - (e) Legal advice provided by the LPT at the request of the Inquiry.

RULES OF EVIDENCE

- 1.33 The Inquiry Members were required to conduct the Inquiry with as little formality and technicality, and with as much expedition, as a proper consideration of the matters before it will allow. The Inquiry Members were also required to observe the rules of procedural fairness, but were not bound by the rules of evidence.¹⁴
- 1.34 The Inquiry Members were empowered to summon witnesses to give evidence at and/or produce specified documents to the Inquiry.¹⁵
- 1.35 The Inquiry Members decided that the Investigation Report did not constitute evidence.¹⁶ They took the view that it would be inappropriate to use the content of the Investigation Report as evidence to establish whether any SPC had been committed.

¹³ Note that during the course of the Inquiry, the Inquiry directed Enforcement to provide various categories of documents to it, predominantly arising out of document access requests made by Persons Concerned.

¹⁴ Section 33AY of the 1942 Act.

¹⁵ Section 33BA of the 1942 Act.

¹⁶ Decision of Inquiry Members, dated 20 January 2017 (Doc ID: RDU_REL-000000086).

1.36 The Inquiry Members also decided to adopt an Evidence Protocol.¹⁷ The protocol provided *inter alia* that the documents contained in the bundles of relevant documentation to be provided to the Persons Concerned and Enforcement in advance of each modular hearing shall be admitted as *prima facie* evidence of the truth of their contents.¹⁸ The protocol also allowed further documents to be admitted by the Inquiry Members and allowed the Persons Concerned and Enforcement to challenge the contents of any document.

STANDARD OF PROOF

1.37 An inquiry is an administrative regulatory process. It is not a criminal prosecution and is decided on the civil standard of proof, i.e. 'the balance of probabilities', rather than the criminal standard of 'beyond reasonable doubt'.¹⁹

SETTLEMENTS AND STAY

1.38 Under section 33AV of the 1942 Act, the Central Bank has discretion to enter into a settlement agreement with a regulated entity or a person concerned at any time before the conclusion of an inquiry. Any decision to enter into a settlement agreement is a matter for Enforcement and is not a matter in respect of which inquiry members have any involvement.

1.39 There were a number of settlements during the course of the Inquiry, as follows:

- (a) On 15 July 2015 the Central Bank announced that INBS had entered into a settlement agreement with the Central Bank pursuant to section 33AV of the 1942 Act. INBS admitted to breaches of each of the seven overarching SPCs as outlined in the Notice of Inquiry and to breaching the two legislative provisions and the condition on INBS's authorisation (outlined below) giving rise to the 21 individual SPCs.²⁰

¹⁷ See Evidence Protocol, dated 20 February 2017 (Doc ID: RDU_REL5-000000003) and the Inquiry Members' underlying Decision on Proof of Documents, dated 20 February 2017 (Doc ID: RDU_REL-000000076).

¹⁸ To facilitate the organisation and presentation of documentation in the course of the Inquiry, documents responsive to each SPC were organised via a Core Documents Chronology (CDC) which was prepared in advance of each module, with each document accessible through a hyperlink. Each CDC constituted the hearing bundle for the relevant module. The Persons Concerned and Enforcement were given the opportunity to suggest additional documents to be included in the CDC.

¹⁹ Section 4.3 of the Inquiry Guidelines provides that the Inquiry Members shall make findings as to whether the prescribed contravention(s) to which the Inquiry relates has been committed on the balance of probabilities.

²⁰ https://www.centralbank.ie/docs/default-source/news-and-media/legal-notice/settlement-agreements/irish-nationwide-building-society.pdf?sfvrsn=62bdd51d_8.

The Inquiry Members made a finding²¹ that the settlement agreement entered into with INBS announced by the Central Bank on 15 July 2015 had no probative value to this Inquiry and was of no relevance to the conduct of the Inquiry, save that INBS would not be a participant before the Inquiry. The Inquiry Members indicated that the fact that INBS would not be participating in the Inquiry would not preclude the Inquiry from making findings as to whether INBS had committed some or any of the SPCs. Once an SPC had been proved against INBS, the Inquiry would then need to establish whether any of the Persons Concerned participated in the commission by INBS of the SPC.

- (b) Dr Michael Walsh entered into a settlement agreement with the Central Bank on 22 January 2018 and agreed to a three-year disqualification from being concerned in the management of a regulated financial service provider, a fine of €20,000 and a reprimand.
- (c) Mr Tom McMenamin entered into a settlement agreement with the Central Bank on 6 December 2018 and agreed to an 18-year disqualification from being concerned in the management of a regulated financial service provider, a fine of €23,000 and a reprimand.
- (d) Mr Gary McCollum entered into a settlement agreement with the Central Bank on 10 June 2021 and agreed to a 15-year disqualification from being concerned in the management of a regulated financial service provider, a fine of €200,000 and a reprimand.

1.40 On 20 December 2019, the Inquiry Members permanently stayed the Inquiry in its totality against Mr Michael Fingleton in circumstances where they were satisfied that Mr Fingleton was unable to effectively participate in the Inquiry due to ill-health.

1.41 As noted above, the only Person Concerned who is still subject to this Inquiry is Mr Purcell.

CASE SUMMARY

1.42 The following is a summary of the seven overarching SPCs:

²¹ Decision of the Inquiry Members, 20 January 2017 (Doc ID: RDU_REL2-000000119).

- (a) **SPC 1** relates to the suspected failure to ensure that Commercial Loan Applications (**CLAs**) were processed in accordance with INBS's internal policies.
- (b) **SPC 2** relates to the suspected failure to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that Commercial Mortgage Offers (**CMOs**) complied with internal policies.
- (c) **SPC 3** relates to the suspected failure to ensure that:
 - (i) security (including personal guarantees) for commercial loans was obtained;
 - (ii) valuation reports on assets used as security for commercial loans were received before all or part of the loan was advanced;
 - (iii) maximum Loan to Value (**LTV**) limits were adhered to; and
 - (iv) where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, these LTVs were approved as exceptions to policy in accordance with INBS's internal policies.
- (d) **SPC 4** relates to the suspected failure to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies.
- (e) **SPC 5** relates to the suspected failure to ensure that the INBS Credit Committee performed particular functions in accordance with INBS's internal policies.
- (f) **SPC 6** relates to the suspected failure to ensure that certain reports relevant to commercial lending and credit risk management were provided to INBS's Board of Directors (**Board**) during the period 21 December 2005 (the effective date of the earliest relevant applicable policy) to 30 September 2008.
- (g) **SPC 7** relates to the suspected failure to ensure that the establishment of Profit Share Agreements were the subject of any formal credit risk policy.

1.43 Each of the seven overarching SPCs is underpinned by two legislative provisions and a condition imposed on INBS's authorisation, as set out below at paragraph 1.45, which gives rise to a total of 21 individual SPCs. The SPCs are founded upon

allegations of specific instances of non-compliance by INBS with its internal policies (**SPC Allegations**).²² Full details of the SPCs and the SPC Allegations are set out in the following chapters dealing with the individual SPCs and they are summarised in the Table of SPCs, SPC Allegations and Findings included at Appendix 5.

- 1.44 The 21 individual SPCs and the SPC Allegations on which they are based are advanced against INBS in the first instance and then against Mr Purcell, by virtue of his alleged participation in the SPCs and the SPC Allegations. The Inquiry Members' approach to their findings in respect of the 21 Individual SPCs is outlined at paragraph 1.50 below.

LEGAL AND REGULATORY FRAMEWORK OF THE SPCs

- 1.45 As a building society, INBS was subject to the following legislative provisions, underpinning the individual SPCs:

- (a) Regulation 16(1) of the European Communities (Licencing and Supervision of Credit Institutions) Regulations 1992 (SI 395/1992) (**1992 Regulations**).
- (b) Section 76(1) of the Building Societies Act, 1989 (as amended) (**1989 Act**).
- (c) Section 17 of the 1989 Act, in circumstances where Enforcement alleged that it was a condition of INBS's authorisation under that provision that INBS was required to comply with Part 1 of the Financial Regulator Credit Institutions Regulatory Document entitled "*Impairment Provisions for Credit Exposures*" dated 26 October 2005 (**2005 Regulatory Document**).

- 1.46 Full details of the relevant legislative provisions and relevant condition on INBS's authorisation are set out in the document included at Appendix 6.

- 1.47 The legislative provisions are a "*designated enactment*" or a "*designated statutory instrument*" within the meaning of section 33AN of the 1942 Act under Schedule 2 of the 1942 Act. A prescribed contravention is defined by section 33AN of the 1942 Act as:

"...a contravention of —

²² Note that the allegation of non-compliance made in respect of SPC 7 concerns the absence of a formal internal policy (in relation to the establishment of profit share agreements).

- (a) *a provision of a designated enactment or designated statutory instrument, or*
- (b) *a code made, or a direction given, under such a provision, or*
- (c) *any condition or requirement imposed under a provision of a designated enactment, designated statutory instrument, code or direction, or*
- (d) *any obligation imposed on any person by this Part or imposed by the Regulatory Authority pursuant to a power exercised under this Part²³.*

RELEVANT POLICIES DURING REVIEW PERIOD

1.48 The Investigation Report identified what it considered to be the INBS internal policies and procedures with respect to commercial lending and credit risk management that Enforcement suspected INBS had not complied with during the Review Period. These policies formed the basis for the SPC Allegations. A table listing the documents identified in the Investigation Report as INBS policy documents which formed the basis of the SPC Allegations is included at Appendix 3 of this Findings Report.

FINDINGS METHODOLOGY

Approach to Findings

- 1.49 The issues to be determined by the Inquiry Members, in respect of the allegations of participation by Mr Purcell, were: (i) whether the SPCs were committed by INBS; and (ii) if proven against INBS, whether Mr Purcell participated in the commission of the SPCs.²³
- 1.50 In order to make a finding in respect of Mr Purcell's participation in the SPCs, the Inquiry Members first had to establish whether INBS had committed the 21 individual SPCs. In order to do this, the Inquiry Members had to consider the evidence before them in relation to the SPC Allegations of non-compliance advanced against INBS and make findings in respect of these. The Inquiry Members then had to consider, in light of the findings made regarding the SPC Allegations, whether the corresponding SPCs had been committed by INBS. If the Inquiry Members found that the SPC Allegations had been proven against INBS and that INBS had committed the corresponding SPCs,

²³ In respect of SPCs 1 to 4, the allegations of participation advanced against Mr Purcell comprise Loan Specific Allegations and general participation allegations. These two types of allegations are explained in full in Chapter 3 of this Findings Report.

they then had to determine whether Mr Purcell had participated in the SPC Allegations and ultimately in the commission of the SPCs by INBS.

- 1.51 This Findings Report comprises 12 chapters, as follows:

Chapter 1: Background information on the Inquiry

- 1.52 This chapter contains background information in relation to the commencement of the Inquiry; the issues to be determined by the Inquiry; and the methodology employed by the Inquiry in making their findings.

Chapter 2: Background information on INBS and Mr Purcell

- 1.53 This chapter contains background information on the key functions in INBS and Mr Purcell's role and responsibilities in INBS, which have general application to the issues addressed in the subsequent chapters.

Chapter 3: Introduction to SPCs 1 to 4

- 1.54 This chapter provides an introduction to SPCs 1 to 4. In particular, it provides an overview of the two distinct sources of evidence relevant to SPCs 1 to 4 and explains the different allegations advanced against INBS and Mr Purcell in respect of SPCs 1 to 4, which are referred to as the Loan Specific Allegations and the non-loan specific allegations. It also outlines the Inquiry's approach to their findings and sets out submissions and points of general application relevant to SPCs 1 to 4.

Chapter 4: Loan File Analysis

- 1.55 In order to make their findings in respect of SPCs 1 to 4, the Inquiry Members had to consider a number of different sources of evidence. One source of evidence was the Loan Sample documentation. The Loan Sample documentation was considered by the Inquiry during what were called the Loan Hearings. These hearings were conducted in private during module 4 of the Inquiry hearings between 3 November 2020 and 11 June 2021. The decision to conduct the Loan Hearings in private was based on the confidentiality of the loan information contained in the loan files in relation to borrowers of INBS.
- 1.56 In Chapter 4 of this Findings Report, the Inquiry Members analyse the Loan Sample documentation and the evidence from the Loan Hearings, and make findings in respect

of the Loan Specific Allegations against INBS and Mr Purcell.²⁴ A table setting out each of the Loan Specific Allegations advanced against INBS and Mr Purcell and the finding made by the Inquiry Members in relation to same, is included at Appendix 7.

Chapters 5 to 8: SPCs 1 to 4

- 1.57 The other sources of evidence relevant to SPCs 1 to 4²⁵ were considered by the Inquiry in what was called the 'Context Hearings'. These hearings were conducted in public during module 4 of the Inquiry hearings between 11 June 2021 and 21 July 2021.
- 1.58 In Chapters 5 to 8 of this Findings Report, the Inquiry Members consider: (i) the Loan File Analysis and findings made by the Inquiry Members in Chapter 4 in respect of the Loan Specific Allegations against INBS and Mr Purcell; and (ii) the other sources of evidence from the Context Hearings. They then make their findings in relation to SPCs 1 to 4.

Chapters 9 to 11: SPCs 5, 6 and 7

- 1.59 The sources of evidence relevant to SPCs 5, 6 and 7²⁶ were considered by the Inquiry during the hearing of modules 1, 2 and 3, respectively, which were conducted between 11 December 2017 and 20 September 2019 and were predominantly heard in public, with a small number of procedural applications and submissions heard in private.
- 1.60 In Chapters 9, 10 and 11 of this Findings Report the Inquiry Members consider the evidence from modules 1, 2 and 3 of the Inquiry hearings, and make findings in relation to INBS's alleged commission of SPCs 5, 6 and 7, and the alleged participation of Mr Purcell in these SPCs.

²⁴ SPCs 1 to 4 are based, in part, upon allegations of specific instances of non-compliance by INBS with its internal policies identified in the Loan Sample documentation. These Loan Specific Allegations are set out in the Consolidated Tables to the Investigation Report. These tables also set out a number of Loan Specific Allegations against Mr Purcell alleging participation in INBS's non-compliance. These Loan Specific Allegations are explained in full in Chapter 3 of this Findings Report.

²⁵ These other sources of evidence included: (i) relevant INBS policies; (ii) Contemporaneous Reports; (iii) corporate governance documentation; (iv) Financial Regulatory Correspondence; (v) other documentary evidence; (vi) interview evidence and responses to Section 41A Notices; (vii) witness evidence; (viii) Mr Purcell's replies to Examination and/or Investigation Letters; and (ix) Mr Purcell's evidence to the Inquiry.

²⁶ The sources of evidence relevant to SPCs 5, 6, and 7 included: (i) relevant INBS policies; (ii) Contemporaneous Reports; (iii) corporate governance documentation; (iv) Financial Regulatory Correspondence; (v) other documentary evidence; (vi) interview evidence and responses to Section 41A Notices; (vii) witness evidence; (viii) Mr Purcell's replies to Examination and/or Investigation Letters; and (ix) Mr Purcell's evidence to the Inquiry.

Chapter 12: Financial Regulator Correspondence

- 1.61 Chapter 12 of this Findings Report sets out relevant correspondence between the Central Bank/Financial Regulator and INBS, which the Inquiry Members had regard to when making their findings in respect of the various SPCs.

Summary of Findings

- 1.62 A summary of the findings made by the Inquiry Members in relation to the allegations of non-compliance and the individual SPCs against INBS, and Mr Purcell's participation in same, are set out in the Table of SPCs, SPC Allegations and Findings included at Appendix 5.

Appendices

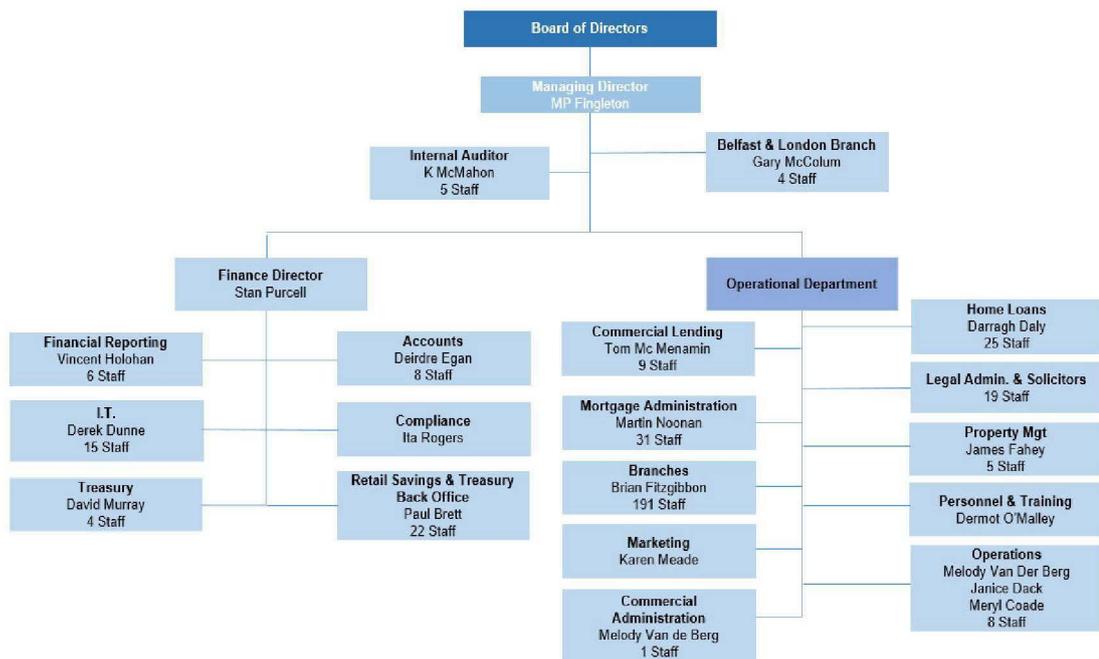
- 1.63 There are 18 appendices to this Findings Report. The documents included in these appendices provide additional information to the reader on certain aspects of the Findings Report, and they are referred to as appropriate throughout. There are two appendices in particular, the Glossary and the Dramatis Personae, which will assist with the reading of this Findings Report. The Glossary is included at Appendix 8 and it provides an explanation of terms and abbreviations used, and reports referred to, throughout the Findings Report. The Dramatis Personae is included at Appendix 9 and it provides a description of the key individuals referred to throughout the Findings Report.

CHAPTER 2

BACKGROUND INFORMATION ON INBS AND MR PURCELL

ORGANISATIONAL CHART

2.1 INBS's organisational structure as at 31 August 2005 is depicted in the following organisational chart.



2.2 As set out in more detail below, the above management structure of INBS was virtually unchanged in the subsequent organisation chart, which was included on page 116 of the Project Harmony Report, the KPMG vendor due diligence report dated 20 June 2007¹, and is reproduced below at paragraph 2.56.

KEY INBS FUNCTIONS IN COMMERCIAL LENDING AND CREDIT RISK MANAGEMENT

2.3 The following is an overview of the key INBS functions in commercial lending and credit risk management. This information is set out in this background chapter as it is of relevance to the SPCs alleged to have been committed by INBS, and has general application throughout the subsequent chapters of this Findings Report dealing with the individual SPCs.

¹ The KPMG due diligence report, known as the Project Harmony Report, was prepared by KPMG on the instructions of the directors of INBS. It was for the benefit and information of prospective purchasers of INBS, and covered the period up to 19 June 2007. See also paragraph 2.52 below.

Role of the Board

- 2.4 The Board comprised of five directors throughout the Review Period, three non-executive and two executive directors. Dr Walsh was chairman and a non-executive director throughout the Review Period. Mr Terence Cooney was a non-executive director throughout the Review Period. Mr Con Power was a non-executive director until February 2006 when he was replaced by Mr David Brophy who continued in that role until after the Review Period. Mr Purcell was an executive director and secretary to INBS throughout the Review Period.
- 2.5 From 11 January 2017 onwards, Mr Purcell did not have legal representation and he represented himself in the Inquiry. Mr Purcell attended the Inquiry hearings personally and he provided submissions, witness statements and oral evidence that are referred to as appropriate throughout this Findings Report.
- 2.6 Mr Purcell provided submissions to the Inquiry addressing his roles and responsibilities within INBS and these are set out at paragraphs 2.46 to 2.49 below. In addition, his specific roles and responsibilities are dealt with in this Findings Report in the context of the particular SPCs in which Mr Purcell's participation is alleged. As a Board member he shared all of the Board's roles and responsibilities outlined in this section with the other Board members of INBS.
- 2.7 A significant role of the Board of INBS was in approving or rejecting CLAs. This derived from the Credit Committee Terms of Reference from 2003 until 17 December 2007. During this period the Board was the decision-maker in terms of all commercial lending conducted by INBS above a certain minimum threshold.² From 17 December 2007, all decision-making power was vested in the Credit Committee, although the Board was notified of all loans approved.
- 2.8 Board responsibility for approving all commercial lending above a minimum threshold was a very significant factor in INBS's management and control of credit risk and commercial lending. It arises in all of the SPCs under consideration and is dealt with in the chapters dealing with each of the SPCs.

² From October 2003 until 19 July 2006 the threshold was €500,000. See the 16 October 2003 Commercial Credit Committee Terms of Reference (Doc ID: 0.7.120.5896). From 19 July 2006 to 17 December 2007, the threshold was €1million. See the 19 July 2006 Commercial Credit Committee Terms of Reference (Doc ID: 0.7.120.260548-000001) and the December 2007 Credit Committee Terms of Reference (Doc ID: 0.7.120.26675).

2.9 The role of the Board in general terms was outlined in the rules and regulations governing the Board, as set out below.

2.10 Rule 23 of INBS's Memorandum and Rules provided:

“(1) The Society shall be under the control and Management of the Board of Directors consisting of elected and such appointed Directors (if any) as shall for the time being be in office... (2) The Board may exercise all of those powers of the Society as are not by the Statutes or by these Rules required to be exercised by the Society in General Meeting”.³

2.11 The Board Procedures, which formed part of a September 2001 Statement of Systems and Controls required under section 76(5) of the 1989 Act, set out the role of the Board as follows:

“(1) Management

- ...
- *The Board may exercise all of the powers of the Society other than those required by Statute / rules to be exercised in General Meeting.*
- *The Board has power to from time to time:*
 - A. *To exercise the powers the Society has adopted pursuant to the Statutes and set out in its memorandum;*
 - B. *To determine the number of members who constitute the Board;*
 - C. *To make, vary or revoke regulations for the conduct of the business of the Society;*
 - D. *To delegate its own powers, duties and authorities relating to the business of the Society to a committee(s);*
 - E. *To authorise the use of all forms, instruments and other documents necessary for the proper conduct of the Society's business;*
 - F. *To provide for the management and transaction of the affairs of*

³ INBS Memorandum and Rules, page 22 (Doc ID: AD-0.7.120.138896).

the Society;

- G. *To remunerate out of the funds of the Society the reasonable expenses and any professional or other fees of members of the Board;*
- H. *To pay annual remuneration to members of the Board;*
- I. *Generally to all such acts and things as the Board may consider necessary or desirable for the good conduct of the affairs of the Society”.*⁴

Apart from this document, the Board did not have separate formal terms of reference. INBS’s internal policies set out specific roles and responsibilities for Board members in respect of commercial lending and credit risk lending.

2.12 Throughout the Review Period, the Board was responsible for approving commercial lending policies and also credit risk management policies, as provided for in the INBS Internal Capital Adequacy Assessment Process Submission, dated 29 June 2007 (**INBS ICAAP Submission 2007**).⁵

2.13 The 2005 Regulatory Document set out the requirements for credit risk management policies and procedures. It stated:

“3.1 Board of Directors and Senior Management

As part of managing the business, the board of Directors (“the board”) responsibilities include:

- *understanding and determining the nature and level of risk in the credit institution;*
- *setting the credit institution’s tolerance for risks;*
- *ensuring that there are appropriate processes, systems and reporting lines in place to monitor and manage these risks, this includes ensuring that there are processes and systems to capture credit risk for all aspects of the business conducted by an individual credit institution or*

⁴ Board Procedures (Doc ID: AD-0.7.120.14859) (Extracted from INBS’s Statement of Systems and Controls, September 2001).

⁵ INBS ICAAP Submission 2007 (Doc ID: 0.7.120.508368).

group;

- *appointing a credit committee;*
- *adequately resourcing the credit function with suitably qualified personnel;*
- *ensuring that the sophistication of the management processes is appropriate in light of the credit institution's risk profile and business plan, and*
- *reviewing the adequacy of provisions for impairment losses and amounts written off.*

It is the responsibility of the board to ensure that the requirements of the Financial Regulator with regard to impairment provisions are reflected in either the credit institution's credit policy or a separate impairment provisioning policy".⁶

2.14 The Board had a role in the management of credit risk and impairment provisioning, as provided for in the 2005, 2006, and 2007 Impairment Provisioning Policies each of which stated⁷:

"2. Credit risk management

The Society monitors and manages credit risk through:

- ...
- ...
- ...
- *Regular reports to the management and the Board on:*
 - *Arrears and non-performing loans.*
 - *Loans on moratoriums.*

⁶ The 2005 Regulatory Document, page 6 and 7 (Doc ID: RDU_REL2-000000398).

⁷ 2005 Impairment Provisioning Policy (Doc ID: 0.7.120.25083); 2006 Impairment Provisioning Policy (Doc ID: 0.7.120.449670); 2007 Impairment Provisioning Policy (Doc ID: 0.7.120.449577).

- *Exceptions to lending policies*".⁸

2.15 The 2006 Notes on the Implementation of Impairment Provisioning Policy set out the responsibilities of the Board. It stated:

"2.1 Board of Directors

The Board's responsibilities in respect of impairment provisioning are:

- *Ensuring that there are appropriate processes, systems and reporting lines in place to monitor and manage credit risks*
- *Appointing a credit committee*
- *Reviewing the adequacy of impairment loss provisions and amounts written off*
- *Ensuring that the requirements of the Financial Regulator with regard to impairment provisions are reflected in the Society's credit risk policy or impairment provisioning policy*

The Board reviews the impairment provisioning policy on an annual basis".⁹

2.16 The 2007 Notes on the Implementation of Impairment Provisioning Policy also set out the responsibility of the Board. It stated:

"2.5 Senior Management / Board of Directors

The Society's Board of Directors and Senior Management have responsibility for having an effective system of credit risk management and impairment provisioning. They implement the Society's policies through the appointment and supervision of suitable qualified and trained staff, as well as clear and focused decision making which serves to make all elements of those policies attainable".¹⁰

2.17 The documents referred to above indicate that throughout the Review Period, the Board was responsible for approving commercial lending policies and credit risk management policies.

⁸ 2005 Impairment Provisioning Policy (Doc ID: 0.7.120.25083); 2006 Impairment Provisioning Policy (Doc ID: 0.7.120.449670); 2007 Impairment Provisioning Policy (Doc ID: 0.7.120.449577).

⁹ 2006 Notes on the Implementation of Impairment Provisioning Policy, page 3 (Doc ID: 0.7.120.449946).

¹⁰ 2007 Notes on the Implementation of Impairment Provisioning Policy, page 6 (Doc ID: 0.7.120.449696).

2.18 In relation to the Board's role in risk management, the INBS ICAAP Submission 2007 stated:

"Policy decisions in the following areas are expressly reserved for the Board.... Risk Management Policies".¹¹

It also stated:

"The Board is responsible for ascertaining the Society's risk appetite, and approving risk policies and strategies for the management and monitoring of risk. Responsibility and accountability for the management of risk on a day-to-day basis, is delegated by the Board to senior management".¹²

It further stated that:

"The Board ensures that the Society's overall appetite for risk is clear and focused. The Board also ensures that current lending strategies and objectives are in line with the Society's risk profile".¹³

Other responsibilities of the Board

2.19 In addition to the statutory and policy responsibilities outlined above, there were also Board duties and responsibilities outlined in the following regulatory guidance:

- (a) The Central Bank of Ireland Licensing and Supervision Requirements, extracted from the Quarterly Bulletin, Winter 1995, published by the Central Bank (**1995 Licencing and Supervision Requirements**) stated:

"2 BOARD AND MANAGEMENT OF CREDIT INSTITUTIONS

2.1 ...it is necessary for all credit institutions to have in place such committees of directors and management and other management structures as are necessary to ensure that the business of the credit institution is being managed, conducted and controlled in a prudent manner and in accordance with sound administrative and accounting principles".

They further state:

¹¹ INBS ICAAP Submission 2007, page 6 (Doc ID: 0.7.120.508368).

¹² INBS ICAAP Submission 2007, page 33 (Doc ID: 0.7.120.508368).

¹³ INBS ICAAP Submission 2007, page 36 (Doc ID: 0.7.120.508368).

“3. INTERNAL CONTROLS

3.1 ...every credit institution shall manage its business in accordance with sound administrative and accounting principles and shall put in place and maintain internal control and reporting arrangements and procedures to ensure that the business is so managed.

The Bank must be satisfied that:

- a) *Directors and senior management exercise adequate control over the credit institutions;*
 - b) *Comprehensive risk management systems commensurate with the scope, size and complexity of all the credit institutions activities, including derivatives and associated risks, are in place, incorporating continuous measuring, monitoring and controlling of risk, accurate and reliable management information systems, timely management reporting and thorough audit and control procedures; and*
 - c) *Where the size or nature of the operations of the credit institution warrant it, a properly staffed internal audit function exists which has direct access to the board of directors or an appropriate sub-committee of the board”.¹⁴*
- (b) The Basel Committee on Banking Supervision guidance document entitled “*Framework for Internal Control Systems in Banking Organisations*”, dated September 1998 (**1998 Basel Guidance**) stated:

“Principles for the Assessment of Internal Control Systems

Management oversight and the control culture

Principle 1:

The board of directors should have responsibility for approving and periodically reviewing the overall business strategies and significant policies of the bank; understanding the major risks run by the bank, setting acceptable levels for these risks and ensuring that senior

¹⁴ The 1995 Licencing and Supervision Requirements, page 9 and 10 (Doc ID: 0.7.120.182664-000002).

*management take the steps necessary to identify, measure, monitor and control these risks; approving the organisational structure; and ensuring that senior management is monitoring the effectiveness of the internal control system. The board of directors is ultimately responsible for ensuring that an adequate and effective system of internal controls is established and maintained".*¹⁵

- (c) The Basel Committee on Banking Supervision guidance document entitled "*Principles for the Management of Credit Risk*", dated September 2000 (**2000 Basel Guidance**) set out principles for establishing an appropriate credit risk environment. The first principle stated:

*"The board of directors should have responsibility for approving and periodically (at least annually) reviewing the credit risk strategy and significant credit risk policies of the bank".*¹⁶

The 2000 Basel Guidance also stated:

*"Each bank should develop a credit risk strategy or plan that establishes the objectives guiding the bank's credit-granting activities and adopt the necessary policies and procedures for conducting such activities".*¹⁷

These policies and procedures should be approved and reviewed by the Board.

At paragraph 14, the document stated that the Board should ensure that senior management is fully capable of managing the credit activities conducted by the bank and that such activities are done within the risk strategy, policies and tolerances approved by the Board.

- (d) The Financial Reporting Council Combined Code on Corporate Governance, dated July 2003, published by the UK Financial Reporting Council (**2003 Combined Code**) stated:

"The board should include a balance of executive and non-executive directors (and in particular independent non-executive directors) such

¹⁵ The 1998 Basel Guidance, page 5 (Doc ID: RDU_REL2-000000395).

¹⁶ The 2000 Basel Guidance, page 3 (Doc ID: AD-0.7.120.765896).

¹⁷ The 2000 Basel Guidance, page 5 (Doc ID: AD-0.7.120.765896).

that no individual or small group of individuals can dominate the board's decision taking".¹⁸

The 2003 Code went on to outline the responsibilities of non-executive directors. These included a provision that they should "*Seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice. (Code principle A.5 and provision A.5.2)*".¹⁹ It also stated that where non-executive directors have concerns about the running of the company or a proposed action they should ensure that these are addressed by the board "*and, to the extent that they are not resolved, ensure that they are recorded in the board minutes (Code provision A.1.4)*".²⁰

- (e) The Basel Committee on Banking Supervision guidance document entitled "*Enhancing Corporate Governance for Banking Organisations*", dated February 2006 (**2006 Basel Guidance**) stated *inter alia*:

“...

Principle 2

The board of directors should approve and oversee the bank's strategic objectives and corporate values that are communicated throughout the banking organisation.

...

Principle 3

The board of directors should set and enforce clear lines of responsibility and accountability throughout the organisation.

...

Principle 4

The board should ensure that there is appropriate oversight by senior management consistent with board policy".²¹

¹⁸ The 2003 Combined Code, page 6 (Doc ID: 0.7.120.755526).

¹⁹ The 2003 Combined Code, page 22 (Doc ID: 0.7.120.755526).

²⁰ The 2003 Combined Code, page 22 (Doc ID: 0.7.120.755526).

²¹ The 2006 Basel Guidance, page 9 to 12 (Doc ID: RDU_REL2-000000394).

- (f) The Committee of European Banking Supervisors (**CEBS**) was an independent body established to coordinate and advise on banking regulation and supervision in the European Union. In 2006, CEBS issued "*Guidelines on the Application of the Supervisory Review Process under Pillar 2 (CP03 revised)*".

These guidelines stated that: "*reporting lines and the allocation of responsibilities and authority within an institution should be clear, precise, well defined, transparent, coherent, and enforced*" (IG2) and that the management body should:

- i. "*...set the risk strategy, the risk policy, and accordingly the risk bearing capacity of the institution*" (IG3);
- ii. "*...systematically and regularly review the strategies and policies for managing the risks of the institution*" (IG6);
- iii. "*...develop and maintain strong internal control systems*" (IG7);
- iv. "*...ensure that internal control systems provide for adequate segregation of duties, in order to prevent conflicts of interest*" (IG8); and
- v. "*...monitor and periodically assess the effectiveness of the institution's internal governance structure*" (IG10).²²

2.20 While the Investigation Report indicated that the SPCs were not tested against the various regulatory guidance documents outlined above²³, the Inquiry is of the view that the non-statutory responsibilities outlined in the regulatory guidance are an important context for the regulatory environment in which INBS was operating. In particular, the responsibilities of the Board in managing and controlling credit risk within INBS are of relevance in considering the allegations in the SPCs.

Role of 'senior management' in credit risk management

2.21 Senior management is not defined in any INBS internal policy or in the 2005 Regulatory Document. The INBS Corporate Governance Review, dated July 2005, stated:

²² CEBS Guidelines on the Application of the Supervisory Review Process under Pillar 2 (CP03 revised), dated 25 January 2006, page 11 to 15 (Doc ID: RDU_REL2-000000397).

²³ Investigation Report Chapter 4 paragraph 4.45 (Doc ID: RDU_REL-000000028).

“Senior Management consists of a core group of officers responsible for the credit institution. This group includes such individuals as the chief financial officer, division heads and the chief auditor.

*The Society defines senior management as the executive Directors. The individuals who are in charge of the various functions/departments are managers or administrators. However, for the purposes of the report executive Directors and managers will be regarded as Senior Management”.*²⁴

2.22 The April 2003 Credit Risk Policy²⁵ and the UK Version of the April 2003 Credit Risk Policy²⁶ set out the responsibility of senior commercial lenders to ensure compliance with credit policy or to make submissions to senior management with respect to non-compliance with credit policies. The Impairment Provisioning Policies stated throughout the Review Period that INBS monitored and managed credit risk through:

“Regular reports to the management and the Board on:

- *Arrears and non performing loans.*
- *Loans on moratoriums.*
- *Exceptions to lending policies.*
- *...*²⁷

2.23 The 27 June 2007 Credit Risk Management Policy identified the role of senior management in developing and establishing credit risk policies. It stated *inter alia*:

“2.2 Role of Senior Management and Credit Risk

The Society’s Senior Management have responsibility for developing and establishing credit risk policies and credit administration procedures as part of the Society’s overall system of credit risk management. They must prepare policies on the following areas and ensure that they are approved by the Board:

- *Credit origination, administration and loan documentation procedures;*

²⁴ INBS Corporate Governance Review July 2005, page 16 (Doc ID: 0.7.120.449079).

²⁵ April 2003 Credit Risk Policy (Doc ID: 0.7.120.478217).

²⁶ UK Version of the April 2003 Credit Risk Policy (Doc ID: 0.7.120.622022).

²⁷ 2005 Impairment Provisioning Policy (Doc ID: 0.7.120.25083); 2006 Impairment Provisioning Policy (Doc ID: 0.7.120.449670); 2007 Impairment Provisioning Policy (Doc ID: 0.7.120.449577).

- *Credit approval authority, hierarchy and limits;*
- *Risk identification, measurement, monitoring and control;*
- *Management of problem credits.*

It is the responsibility of Senior Management to ensure effective implementation of these policies. Senior management must also ensure that any deviations/exceptions to policies are communicated to the Board, who recommends corrective actions to be taken".²⁸

2.24 The 2005 Regulatory Document set out certain responsibilities of senior management in relation to: the management of credit risk; the establishment of appropriate policies; reviewing the processes and procedures in place; providing appropriate disclosures to the Financial Regulator; and providing the Board with regular reports on the adequacy of impairment provisions and amounts written off.

2.25 The 1995 Licensing and Supervision Requirements, the 1998 Basel Guidance; the 2006 Basel Guidance and the 2003 Combined Code issued by the UK Financial Reporting Council (and subsequent combined codes) all emphasised the importance of senior management in overseeing credit risk.²⁹

Credit Committee

2.26 The Credit Committee had a role as an internal control in the commercial lending process.

2.27 The purpose of the Credit Committee was defined by the 16 October 2003 and the 19 July 2006 versions of the Credit Committee Terms of Reference, as follows:

"The Society has established a Credit Committee to:

- Apply the Commercial Lending Credit Policy of the Society (as approved by the Board from time to time) to new commercial loan applications...*

²⁸ 27 June 2007 Credit Risk Management Policy, page 8 and 9 (Doc ID: 0.7.120.431329).

²⁹ The 1995 Licensing and Supervision Requirements, paragraphs 2.1 and 3.1, pages 8 to 10 (Doc ID: 0.7.120.131945); the 1998 Basel Guidance, Principle 2, page 3 (Doc ID: 0.7.120.755524); the 2006 Basel Guidance, Principle 4 and paragraph 38, page 12 (Doc ID: 0.7.120.755520); the 2003 Combined Code, section 1, A.5, page 9 and 10 (Doc ID: 0.7.120.755526), 2006 Combined Code, section 1, A.5, page 8 and 9 (Doc ID: 0.7.120.755528) and 2008 Combined Code, section 1, A.5, page 10 and 11 (Doc ID: 0.7.120.755521).

b) *Consider, approve and recommend (as appropriate) commercial loan applications submitted to the Society*".³⁰

2.28 The reference to "*(as appropriate)*" in the above paragraph related to the approval limit conferred on the Credit Committee. Until 19 July 2006, this approval limit was €500,000. From 19 July 2006 to 17 December 2007, the Credit Committee could approve loans under €1 million. Loans above these limits could be rejected or recommended to the Board for approval. Under the December 2007 Credit Committee Terms of Reference, the Credit Committee had power to approve all commercial loans.³¹

2.29 Mr Purcell was not a member of the Credit Committee but as secretary of INBS, a position he held throughout the Review Period, he had a communications role between the Board and the Credit Committee. All relevant Credit Committee Terms of Reference during the Review Period stated:

"Any issues raised by the Board of Directors that refer to the Credit Committee should be communicated to the members of the Credit Committee by the Secretary of the Society".³²

2.30 Compliance with the Credit Committee Terms of Reference is the subject of specific SPCs and is dealt with in the relevant SPC chapters.³³

Audit Committee

2.31 The November 2004 Audit Committee Terms of Reference and subsequent iterations in 2005 and 2006 stated that the committee "*consists of non-executive directors who are independent of management*".³⁴

³⁰ 16 October 2003 Commercial Credit Committee Terms of Reference, page 2 (Doc ID: 0.7.120.5896); 19 July 2006 Commercial Credit Committee Terms of Reference, page 2 (Doc ID: 0.7.120.260548-000001).

³¹ December 2007 Credit Committee Terms of Reference, page 2 (Doc ID: 0.7.120.26675).

³² 16 October 2003 Commercial Credit Committee Terms of Reference, page 4 (Doc ID: 0.7.120.5896); 19 July 2006 Commercial Credit Committee Terms of Reference, page 4 (Doc ID: 0.7.120.260548-000001); December 2007 Credit Committee Terms of Reference, page 5 (Doc ID: 0.7.120.26675).

³³ SPC 2 (see Chapter 6); SPC 3 (see Chapter 7); SPC 5 (see Chapter 9). The role of the Credit Committee is also discussed in Chapter 11, which deals with SPC 7.

³⁴ November 2004 Audit Committee Terms of Reference, page 2 (Doc ID: 0.7.120.432044); March 2005 Audit Committee Terms of Reference, page 1 (Doc ID: 0.7.120.510171); April 2006 Audit Committee Terms of Reference, page 1 (Doc ID: 0.7.120.28782); August 2006 Audit Committee Terms of Reference, page 1 (Doc ID: 0.7.120.32287).

- 2.32 The Audit Committee Terms of Reference also stated that Mr Purcell, as secretary of INBS and the internal auditor, Mr Killian McMahon, regularly attend the Audit Committee meeting.
- 2.33 The composition of the Audit Committee changed over the years but it is important to note that whilst Mr Purcell attended meetings of the Audit Committee, as secretary to INBS, he was never a member of it.
- 2.34 Each of the applicable Audit Committee Terms of Reference included the following duties of the committee that are relevant to commercial lending and credit risk management:

“Duties

6. The duties of the committee shall be:

- a) ...*
- b) To specify the Society’s business objectives, from which the internal audit plan can be prepared;*
- c) ...*
- d) ...*
- e) To discuss problems and reservations arising from the audit, any matters the auditor may wish to discuss (in the absence of management where necessary);*
- f) To review the external auditor’s management letter and management’s response;*
- g) To review the Society’s statement on internal control systems prior to endorsement by the board;*
- h) ...*
- i) To consider the major findings of internal investigations and management’s response;*
- j) To review the internal auditors [sic] work plan and quarterly reports including the follow-up of internal audit recommendations;*

- k) *To review the Society's risk management profile; and*
- l) *To consider other topics, as defined by the board".*³⁵

2.35 In 2004, the Audit Committee was to meet monthly but in March 2005 that was changed to quarterly. The chairperson of the Audit Committee during the Review Period was Mr Power who served from October 2003 until early 2006 when he was replaced by Mr Cooney.

Provisions Committee

2.36 The Provisions Committee Terms of Reference set out the role of the Provisions Committee, as follows:

*"The committee is to ensure that the Society has adequately made provisions against loans and advances, which are considered to be unrecoverable, and also against risks which, although not specifically identified are know [sic] from experience to be present in any portfolio of loans and advances".*³⁶

2.37 Mr Fingleton, Mr Purcell and Mr McMenamain were members of the Provisions Committee for the entire Review Period.

PROPOSED SALE OF INBS

2.38 INBS was registered and incorporated under the 1989 Act from 1 September 1989.³⁷

2.39 On 26 April 2004, INBS's members voted in favour of conversion from a building society to a company, in anticipation of a change in legislation. The INBS Annual Report and Accounts 2004 stated:

*"the Society continues to build up shareholder value for its members who will be the ultimate beneficiaries when the Society demutualises under the proposed legislation approved by the Government".*³⁸

³⁵ November 2004 Audit Committee Terms of Reference, page 2 (Doc ID: 0.7.120.432044); March 2005 Audit Committee Terms of Reference, page 2 (Doc ID: 0.7.120.510171); April 2006 Audit Committee Terms of Reference, page 2 (Doc ID: 0.7.120.28782); and August 2006 Audit Committee Terms of Reference, page 2 (Doc ID: 0.7.120.32287).

³⁶ June 2004 Provisions Committee Terms of Reference (Doc ID: 0.7.120.18830) and 26 October 2006 Provisions Committee Terms of Reference (Doc ID: 0.7.120.8883).

³⁷ INBS was originally incorporated on 29 April 1969 under the Building Societies Act, 1874 (as amended).

³⁸ INBS Annual Report & Accounts 2004, page 2 (Doc ID: 0.7.120.56890).

- 2.40 This legislation, the Building Societies (Amendment) Act 2006, came into operation on 1 August 2006.
- 2.41 At its annual general meeting on 30 April 2007, INBS informed its members that KPMG had been engaged to carry out a vendor's due diligence exercise on behalf of INBS and that this report would form the basis of selling the business.
- 2.42 The Project Harmony Report, arising from KPMG's vendor due diligence review, was presented to the Board of INBS on 27 June 2007. It was referred to by Mr Purcell in his submissions outlined at paragraphs 2.46 to 2.49 below.
- 2.43 The proposed sale of INBS did not take place and, following the financial market turmoil of 2008 and the Government Guarantee introduced on 30 September 2008, it was no longer seen as a strategic goal of INBS.
- 2.44 Former Board members of INBS referred to the delay in the enabling legislation being enacted as being a factor impacting on the operation of INBS. In particular, it was cited as a reason for a difficulty in recruiting staff. This is dealt with as it arises in the individual SPC chapters that follow.

MR PURCELL'S ROLE AND RESPONSIBILITIES IN INBS

- 2.45 Mr Purcell addressed the issue of his responsibilities within INBS in all of the submissions made by him in respect of SPCs 1 to 4, 5, 6 and 7. The following were the key submissions made by Mr Purcell. This information is set out in this background chapter as it is of relevance to the SPCs Mr Purcell is alleged to have participated in, and has general application throughout the subsequent chapters of this Findings Report dealing with the individual SPCs.

SPC 1 to 4 submissions on Mr Purcell's roles and responsibility

- 2.46 The Inquiry has examined the points addressed by Mr Purcell on this issue, which were summarised by him in his submissions at the conclusion of the SPC 1 to 4 Loan Hearings, as follows:

"As previously set out, I had responsibility for internal controls across a number of areas of INBS. However, I was not responsible for ensuring the entire business was managed in accordance with internal controls. I did not have responsibility for internal controls in the lending area.

The managing director and the lending area managers who reported to him were responsible for ensuring that the commercial lending business was managed in accordance with internal controls. The responsibility is evidenced in writing as follows:

1. *The organisation chart before and during the review period shows that all the lending area managers and departments reported to the managing director.³⁹*
2. *The 2003 Credit Risk Policy which states:*
 - A. *'Responsibility to ensure compliance with the credit policy lies with the underwriter and ultimately a senior commercial lender.' That's page 3.*
 - B. *'Commercial lending verified that all loan offers conditions are fully complied with.' That's on page 8.*
 - C. *'All drawdowns must be authorised in writing by a senior commercial lender.' That's at page 12.*
3. *The Terms of Reference of the Credit Committee state:*
 - A. *The Credit Committee will ensure that credit applications comply with the current credit policy of the Society.*
 - B. *The Credit Committee will review and consider any issues raised by internal audit and/or other advisors/regulators, FPMG and the Central Bank.*
4. *Responsibility for internal and external audit recommendations relating to the lending area rested with the lending area staff and managers, all of which reported to the managing director. This responsibility is evidenced in writing in many documents and reported such as:*
 - A. *The reports listed on pages 2 to 4, number 1 to 7, of my SPC 5 witness statement dated 19th November 2017.*

³⁹ This organisation chart was opened by Mr Purcell during the SPC 5 module and was opened by him at subsequent modules of the Inquiry.

- B. *My SPC 5 Submission dated 16th August 2018.*
- C. *My SPC 5 Supplemental submission dated 17th April 2020, and the documents referred to in appendix 1 of the submission.*
- D. *Paragraphs 3 and 4, pages 6 and 7, of my SPC 7 witness statement dated 17 May 2019.*
- E. *The section called 'senior management' of my opening statement for SPC 7.*
- F. *My SPC 7 submission dated 22 May 2020, on responsibility for lending and Credit Risk Policies, pages 4 to 6".⁴⁰*

SPC 5 submissions on Mr Purcell's roles and responsibility

2.47 The SPC 5 module, which is dealt with in full in Chapter 9, concerned the alleged failure of the Credit Committee to adhere to its terms of reference. In his opening statement for the SPC 5 module, which commenced on 11 December 2017, Mr Purcell addressed his roles and responsibilities as follows:

"My Roles and Responsibilities in the period 2004 to 2008 (The Review Period) included:

1. Financial Reporting and Control and the Annual Audit

I was responsible for:

- a. *The control of the accounting system. This involved ensuring that all transactions were promptly and correctly recorded, reconciled and balanced daily to secure the funds of the Society and to produce reliable figures for regular accounts and reports.*
- b. *The production of monthly accounts and reports. The monthly accounts were submitted to board meetings and along with related reports were the basis for the preparation of the regular returns to the Central Bank/Financial Regulator. I also administering and prepared accounts for the joint venture property subsidiaries.*

⁴⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 22 April 2021, page 84 et seq. (Doc ID: RDU_FT_SPC1-4_D18-000000001).

- c. Annual Budget. I prepared the annual budget which was based on expectation for funding, lending, margins and expenses.
- d. Annual Accounts and Audit. The annual audit and the production and printing of a full set of accounts to include a detailed directors' report had to be completed within three months of the year end in order to be sent or made available to members in advance of the annual general meeting which by law had to be held before the end of April each year. I spent considerable time together with the financial reporting staff on the annual accounts, annual audit and the annual report as well as dealing with KPMG's queries and requests for information and reports. KPMG sent me, in advance of the commencement of the audit, a list of information required to be made available to them at the start of the audit.

Other work associated with the audit involved:

- e. Meetings with the auditors. KPMG held a pre-audit meeting each year with the board. KPMG prepared a written audit plan for discussion at the meeting. At the conclusion of the audit in March KPMG met the board to discuss the outcome of the audit based on a written report produced by KPMG.
- f. KPMG's annual Management Letter following the audit. The management letter set out KPMG's observations and recommendations following their audit. The recommendations were categorised under headings such as lending or treasury.

I and the Compliance Manager who reported to me followed up the departments responsible for their responses and timeline to deal with the matters raised by KPMG.

2. Secretary of the Society and board meetings

- a. I attended and took part in board meetings. I recorded the minutes and circulated the agenda and board papers in advance and dealt with issues arising at meetings as required.
- b. I collated a "board pack" of information for board members for each monthly board meeting. The pack contained a detailed agenda with

backup explanatory and discussion papers on most agenda topics. The pack contained a detailed set of monthly management accounts containing numerous schedules giving information such as budgets and variances from budgets, a schedule setting out ratios, including regulatory ratios, and the Society's current position/compliance with various ratios. Information was also provided on expenses, deposits and funding. The board pack included reports on treasury, arrears, investments as well as other matters of relevance at a particular time. I would on an ongoing basis, separate from board meetings, have dealt with queries and matters raised by board members.

3. Funding and Liquidity Management

- a. *I was involved in the raising of wholesale funds, providing information for funding programmes and travelling abroad for funding meetings. I would have provided information for rating agencies and attended regular meetings with the rating agencies. I also participated in the policy and approach to retail funding.*
- b. *I was responsible, together with the treasury manager, for ensuring that treasury assets were low risk and that INBS maintained ample accessible liquid funds. I also monitored the capital position of INBS and we successfully raised extra capital in December 2005.*

4. AGM and Shareholder Issues

- a. *AGM's and Shareholder Issues. The annual general meetings involved considerable work and time as members and the board put forward motions and resolutions for voting on at the AGM. I obtained legal advice on the resolutions put forward as well as procedures at the AGM and issues about the status of accounts as regards benefitting from a sale and voting at the AGM. I was responsible for addressing questions raised by individual account holders on an ongoing basis about membership and demutualisation. The AGM held in 2006 involved more work than other AGM's as a result of issues that arose following the resignation of Con Power as a director in February 2006.*
- b. *Notice of the AGM and planning the AGM. I was responsible for producing, having printed and posting out to all members the notice of*

the AGM. I would have had to obtain legal advice about issues arising from the election of directors and the conduct of the AGM. I would have arranged the venue for the AGM and been in charge of the voting by proxy on resolutions put to the meeting and voting on the election of directors. I would have prepared information for the chairman to help answer questions raised by members. I was responsible for planning the organisation of the AGM as well as being in overall charge on the day of the AGM.

5. Demutualisation and the Sale of INBS

- a. *Amendments to the Building Societies Acts. I dealt with legal advisors and the Department of the Environment in relation to issues and information surrounding the Bill which became the BSA 2006.*
- b. *I and people who reported to me dealt with queries from members about their membership, members entitlements in the event of conversion, de-duplication of accounts and the obtaining of legal advice about these issues.*
- c. *I was involved with meeting potential advisors for the sale and the appointment of Goldman Sachs as advisors.*
- d. *I dealt with potential purchasers and provided information requested by them and provided information sought by Goldman Sachs.*
- e. *I organised the production by KPMG of a Vendors Due Diligence Report which was issued by KPMG to potential purchasers.*

6. Main point of contact with the Financial Regulator

I was the main point of contact with the Financial Regulator and dealt with their people in relation to:

Monthly, quarterly and annual returns.

Monthly reports on property subsidiaries and maintaining Registers required by the Building Societies Acts.

Ad hoc reports, queries and requests for information.

Preparing information for regulatory reviews and dealing with matters raised by the Regulators staff when they working on reviews.

Agreeing the content of the Notices of the AGM's and resolutions put to the AGM.

Notifying the FR of matters requiring notification under the Act or other regulations.

Providing information on the annual accounts and meeting the FR to discuss the annual accounts.

Being generally the first point of contact and dealing with letters/emails addressed to me or people who reported to me.

Working with other directors and staff on the preparation of responses to letters from the Financial Regulator.

7. Membership of committees and boards

- a. *My membership of the Assets and Liabilities Committee involved, attending monthly meetings, preparing information and papers for meetings, drafting and updating policies, preparing agendas, minutes and dealing with liquidity and treasury policies.*
- b. *I was secretary of the audit committee. This involved attending meetings and taking and issuing the minutes of the meetings.*
- c. *I was a member of the Provisions Committee.*
- d. *I was a member of the board of Irish Nationwide (Isle of Man) and attended its quarterly board meetings as a non-executive director.*
- e. *I represented INBS at meetings of the Irish Bankers Federation.*
- f. *I attended meetings of the Irish Credit Bureau representing INBS as a shareholder.*
- g. *I was Chairman of INBS's ICAAP committee.*

8. Administration and special projects

- (a) *I operated ongoing controls and approvals such as salary payments, salary and performance reviews, interviewing and recruiting people, approval of IT purchases and other expenses, signing cheques and dealing with cheque signatories and bank accounts.*
- (b) *In 2005 in light of the KPMG Commercial Lending Review, letter(s) from the Regulator (December 2004) and KPMG Management letters I started seeking to establish a Credit Risk Department reporting to the Managing Director under a manager separate from the Head of Commercial Lending. In late 2005 I had one person assigned to the Credit Risk function. I set out a list of items to be addressed by the Credit Risk function. In 2006 after discussion and agreement with the MD (Michael Fingleton) and Darragh Daly I got agreement that Darragh Daly would be Credit Risk Manager. I had two staff members re-assigned to his department and HR recruited two qualified accountants for Credit Risk. In 2005 I had a Basel 2 gap analysis report prepared by KPMG UK. In 2007 I researched, assessed, and purchased with Board approval software developed by SAS Analytics for credit grading and Basel 2.*
- (c) *I was responsible for all taxation issues and the administration and payment of salaries.*
- (d) *Managing the general insurance function and administering the pension funds.*
- (e) *The sale of IFSC property which involved dealing with legal advisors and the Financial Regulator.*
- (f) *Regulatory and other work in relation to opening a retail deposit taking branch in the UK.*

The Compliance manager and the financial reporting, financial control, I.T., retail savings and the treasury departments reported to me.

KPMG management letter recommendations and the requirements of the Financial Regulator

As stated above I, with and through the Compliance Manager, followed up and reported on progress made in dealing with KPMG management letter recommendations and also followed up on the requirements set out in the Financial Regulators letters. Each department of INBS was responsible for dealing with the recommendations and requirements that related to it.

The lending departments were responsible for their responses to the recommendations and requirements that related to them as well as for the implementation of their responses. The lending departments were also responsible for the designation of issues as implemented or closed. The executive director responsible for the lending departments in this regard was the Managing Director.

The responsibilities and reporting line of the lending departments are substantiated by a number of detailed documents with appropriate signatures of approval and circulation...

I say the veracity of these documents can be relied upon, unlike the recollections of individuals which can be subject to bias and inaccuracy.

Credit Committee

I was not a member of the Credit Committee and I did not attend meetings of the Credit Committee during the review period or at any other time. I did not receive copies of the minutes of the Credit Committee before or during the review period. I had no executive role in commercial lending or any of the lending departments.

The Managing Director was a member of the Credit Committee during the review period prior to December 2007. This is supported by the Vendors Due Diligence Report (page 274) ref 0.7.120.55785, Credit Committee Terms of Reference which lists Michael Fingleton as a member of the Credit Committee. The directors of INBS furnished a factual accuracy letter to KPMG in relation to the Vendors Due Diligence Report which stated "we are not aware of any factual inaccuracies within the report". Michael Fingleton's membership of the Credit Committee is also stated on page 110 of the KPMG Commercial Credit

Review, October 2004. In a letter dated 11 October 2004, ref 0.7.120.812737, page 2017, from KPMG to the Financial Regulator and the Directors of INBS it is stated by KPMG that "The contents of our report have been reviewed in detail by the executive directors and management of the Society who have confirmed the factual accuracy of the report"

The Managing Director as a member of the Credit Committee and as a member of the Board was the communications link between the Credit Committee and the Board.

As Secretary I communicated any issues raised by the Board of Directors that referred to the Credit Committee to the Credit Committee through the Head of Function for the Commercial Lending area, Tom McMenemy. Immediately after board meetings I gave Tom McMenemy the Commercial Loan Applications ("CLA's") that were signed by me when considered by the Board. Any board issues, comments, requests or requirements were written on the CLA's in the space reserved for Board Comments. I also wrote to Tom McMenemy about certain matters decided by the Board which required action by the Credit Committee...

I say the veracity of these documents can be relied upon, unlike the recollections of individuals which can be subject to bias and inaccuracy.

Audit Committee

I was not a member of the Audit Committee. I had no input into or control of, audit committee meeting agendas, the Internal Audit Workplan, extra work that Internal Audit was asked to carry out or the priority accorded to auditing different areas of the business. My role as Secretary of the Audit Committee was to attend the meetings, record and issue the minutes of meetings and on occasion follow up on an internal audit matter when asked to do so by the Committee".⁴¹

SPC 6 submissions on Mr Purcell's roles and responsibilities

- 2.48 The SPC 6 module, which is dealt with in full in Chapter 10, concerned the alleged failure to submit identified reports to the Board. Mr Purcell again addressed his role

⁴¹ Opening Statement of John S Purcell for Hearing of SPC 5 which commenced on the 11th December 2017, Appendix 2 page 14 of 26 (Doc ID: RDU_REL457-000000002).

and responsibilities within INBS in his opening statement for the SPC 6 module which commenced on 3 April 2019. In this statement Mr Purcell reiterated much of what he had stated on this point in his SPC 5 submissions:

"My opening statement will address three areas:

First my roles and responsibilities during the review period.

Second, the instances of alleged non-compliance.

Third, the Internal auditors reporting arrangements.

I will commence with a brief description of my roles and responsibilities during the review period.

<p><i>My Roles and Responsibilities in the period 2004 to 2008 (The Review Period) included:</i></p>
--

1. Financial Reporting, Financial Control and the Annual Audit.

This involved responsibility for:

Control of the accounting system.

The production of monthly accounts and reports.

Annual budgets and the annual accounts and audit which included meetings with the external auditors (KPMG) and co-ordinating responses to KPMG's management letters.

2. Secretary of the Society and Board meetings.

I attended and took part in board meetings and as secretary I recorded the minutes, circulated an agenda and board papers in advance.

3. Funding and Liquidity Management.

I was involved in raising wholesale funds and ensuring that treasury assets were low risk and that INBS maintained ample accessible liquid funds.

4. AGM and Shareholder Issues.

I had primary responsibility for the Society's AGM and also for addressing questions raised by individual account holders on an ongoing basis about membership and demutualisation.

5. Demutualisation and the Sale of INBS.

I dealt with legal advisors and the Department of the Environment in relation to issues and information surrounding the bill which became the Building Societies Act 2006. I was involved with meeting potential advisors for the sale and I dealt with potential purchasers and provided information requested by them. I organised the production by KPMG of the Vendors Due Diligence report in 2006 to 2007. The report was issued by KPMG to potential purchasers.

6. Main point of contact with the Financial Regulator.

I was the main point of contact with the Financial Regulator and dealt with their people in relation to regulatory reports, queries and providing information as requested. I worked with the other directors and staff on the preparation of responses to letters from the Financial Regulator.

7. Membership of committees and boards.

I was a member of the assets and liabilities committee. I was secretary of the audit committee and a member of the provisions committee. I chaired the ICAAP committee. I was a member of the board of Irish Nationwide (IOM) Ltd.

8. Administration and special projects.

I operated ongoing controls and approvals such as salary payments, approval of IT purchases and other expenses. I sought the establishment of a credit risk department reporting to the managing director. In 2005 I had a Basel 2 gap analysis report prepared by KPMG UK.

Lastly, I was not a member of the credit committee or the audit committee. I had no executive role in commercial lending or any of the lending departments⁴².

⁴² Opening Statement of John S Purcell for Hearing of SPC 6 which commenced on 3 April 2019, Appendix 2 page 13 of 27 (Doc ID: RDU_REL467-000000002).

SPC 7 submissions on Mr Purcell's roles and responsibility

2.49 The SPC 7 module, which is dealt with in full in Chapter 11, concerned the alleged failure to establish a credit risk policy to regulate fee sharing arrangements. In his opening statement at the commencement of the SPC 7 module Mr Purcell referred to his previous two submissions in which he addressed his roles and responsibilities within INBS, which have been set out above. On the specific point of responsibility that arose in this module, as outlined in the Investigation Report, in his SPC 7 witness statement, dated 17 May 2019, he referenced the relevant Investigation Report paragraphs and stated:

“Par.12.98 and 12.99

I deny I was senior management for the lending area departments. I deny the allegations that I was responsible for the matters mentioned in this paragraph.

Par.12.101

I did not have responsibility for following up on the implementation of recommendations made in contemporaneous reports issued by the Internal Audit Department. The Internal Auditor followed up on the internal audit recommendations and presented a paper to audit committee meetings in this regard.

Par. 12.104

As Secretary and an executive director, I did not have a responsibility in respect of INBS's credit risk and lending policies.

Par.12.105

I was not senior management as regards the lending area departments. I did not have responsibility with respect to the implementation of the recommendations in the Belfast internal audit reports 2004 and 2006 and the KPMG management letter 2003 as regards lending. The expression “Board Level” in the context of internal audit lending recommendations relating to the lending area was a synonym for Michael Fingleton.

12.106

I deny the allegation in this paragraph as I was not senior management in relation to the Credit Risk and lending departments. I was not responsible for developing and establishing credit risk policies and ensuring these policies were approved by the board”.⁴³

Organisation charts

- 2.50 Mr Purcell addressed executive responsibility in some detail in his submission dated 16 August 2018 in respect of the SPC 5 module.⁴⁴ In that submission he stated that:

“Regulation 16(3) of the 1992 Regulations and Article 22 of the CRD state: (reference pages 41 and 53 of the Investigation Report) “Every credit institution shall have robust governance arrangements including a clear organisation structure with well defined, transparent and consistent lines of responsibility”.

The 2006 CEBS Guidelines state that: “Reporting lines and allocation of responsibility and authority within an institution shall be clear, precise, well defined, transparent, coherent and enforced”.

- 2.51 Mr Purcell submitted that INBS’s organisation chart⁴⁵ conformed to the requirements of these regulations and guidelines. That chart, which is dated 31 August 2005 and was signed by Mr Purcell on 23 September 2005, is reproduced above at paragraph 2.1.

Mr Purcell’s responsibilities as outlined in the Project Harmony Report

- 2.52 The Project Harmony Report was prepared by KPMG on the instructions of the directors of INBS. It was for the benefit and information of prospective purchasers of INBS, and covered the period up to 19 June 2007.⁴⁶

- 2.53 This comprehensive review “...captures all key findings of the Group, provides an over view of the financial performance on a consolidated basis, controls, Group IT and tax

⁴³ SPC 7 Witness Statement of John S Purcell, dated 17 May 2019 (Doc ID: RDU_REL341-000000026).

⁴⁴ Submission dated 16 August 2018 by John S Purcell Re: SPCs 5(a), 5(b) and 5(c) (Doc ID: RDU_ENF_AUTH-000000022).

⁴⁵ Examples at Doc ID: 0.7.120.423499 and on page 116 of the Project Harmony Report (Doc ID: 0.7.120.55785).

⁴⁶ Project Harmony Report, KPMG Vendor due diligence report, dated 20 June 2007 (Doc ID: 0.7.120.55785).

due diligence results".⁴⁷ It listed "*Sources of Information*"⁴⁸, which included meetings with senior management (including Mr Fingleton and Mr Purcell, as well as department heads and the two heads of commercial lending, Mr McMenemy for the Republic of Ireland and Mr McCollum for Belfast and London).

2.54 The authors relied on the information provided by INBS management, and on page 2 of the report stated: "*The contents of our report have been reviewed in detail by the directors of the Society who have confirmed in writing the factual accuracy of this report*".

2.55 This confirmation was in a factual accuracy letter, dated 20 June 2007, signed by Mr Purcell, which stated:

"...

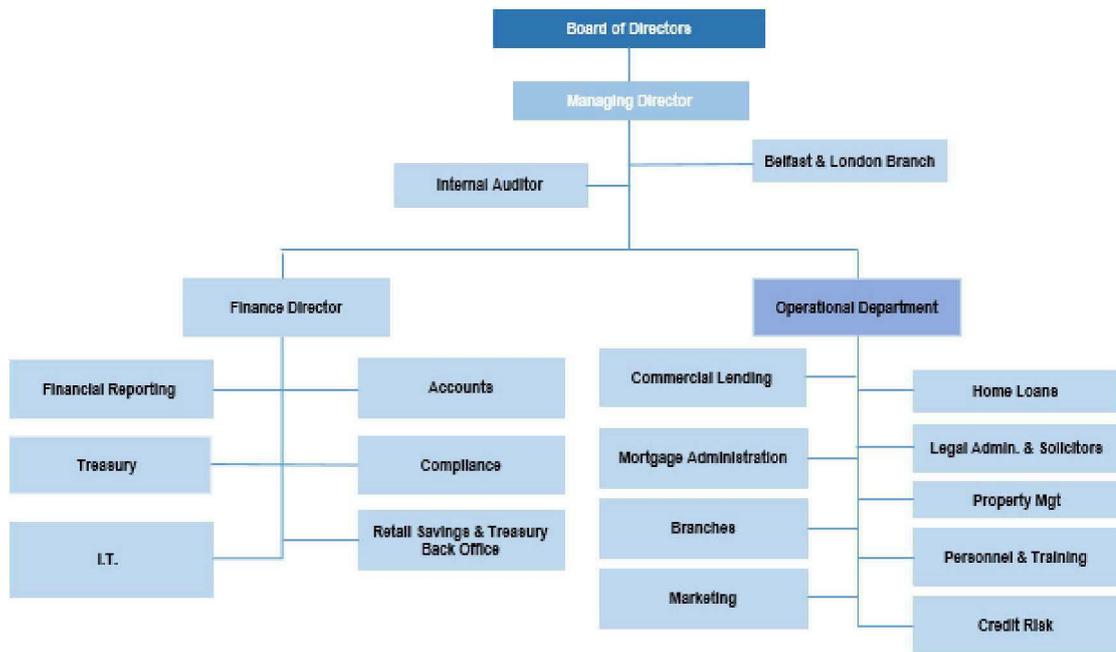
- *we are not aware of any factual inaccuracies within the report;*
- *opinions and representations which have been attributed to persons referred to in the report are properly attributed to those persons;*
- *we are not aware of any material facts or information which have been omitted from the report which may cause the view it gives of the Group to be misleading*".⁴⁹

2.56 The organisation chart at page 116 of the Project Harmony Report shows the respective responsibilities of the Board, the Managing Director, the finance director (Mr Purcell) and senior management within INBS. The management structure is virtually unchanged from the 2005 chart, set out above. This chart is reproduced below:

⁴⁷ Project Harmony Report, KPMG Vendor due diligence report, dated 20 June 2007, page 4 (Doc ID: 0.7.120.55785).

⁴⁸ Project Harmony Report, KPMG Vendor due diligence report, dated 20 June 2007, page 3 (Doc ID: 0.7.120.55785).

⁴⁹ Letter from INBS to KPMG, dated 20 June 2007, page 132 of 292 (Doc ID: AD-0.7.120.1140385).



2.57 Project Harmony is referred to at intervals in this Findings Report, and the aspect that is being highlighted here is its assessment of the roles and responsibilities of Mr Purcell within the organisation.

CHAPTER 3

INTRODUCTION TO SPCS 1 TO 4

- 3.1 The suspected prescribed contraventions outlined in SPC 1 to SPC 4 all relate to the life of a loan from inception, approval, security, LTV, and monitoring, to, in some cases, extensions of the term of the loan. All commercial loans in INBS were required to comply with internal policies in how they were processed.
- 3.2 In particular, SPCs 1 to 4 identified failures in the commercial lending processes of INBS as follows:
- (a) failure to ensure that CLAs were processed in accordance with internal policies (**SPC 1**);
 - (b) failure in respect of the approval process, namely the failure to ensure that commercial loans and variations to loans were approved in accordance with INBS internal policies and that CMOs complied with internal policies (**SPC 2**);
 - (c) the failure to secure commercial loans in accordance with policy, to ensure valuations on assets were obtained, and to adhere to maximum LTV limits (**SPC 3**); and
 - (d) the failure to ensure that commercial lending was monitored in accordance with INBS's internal policies (**SPC 4**).
- 3.3 As outlined in Chapter 1 of this Findings Report, the SPCs are founded upon SPC Allegations. These are allegations of specific instances of breach of policy by INBS and participation in these breaches by Persons Concerned.¹
- 3.4 The SPC Allegations advanced in respect of SPCs 1 to 4 arose from two distinct sources of evidence: (i) Loan Sample documentation; and (ii) contextual documentation, both of which are explained in more detail below. As a result, the SPC 1 to 4 Allegations were advanced in two ways, as follows:
- (a) The Investigation Report identified alleged breaches of policy in respect of specified commercial loans in the Loan Sample. These are referred to as the Loan Specific Allegations. The Loan Specific Allegations were advanced against INBS in the first instance and certain Loan Specific Allegations were

¹ See Chapter 1, paragraph 1.43, for further explanation of the distinction between the SPCs and the SPC Allegations.

also advanced directly against Mr Purcell. The Loan Specific Allegations advanced against INBS and directly against Mr Purcell are dealt with in Chapter 4 of this Findings Report (the Loan File Analysis).

- (b) The Investigation Report also identified alleged breaches of policy by reference to certain contextual or non-loan specific documentation. These non-loan specific allegations were advanced against INBS in the first instance and were also advanced generally against Mr Purcell, by virtue of his role and responsibilities in INBS. These allegations are dealt with in the four individual SPC 1 to 4 chapters.²

3.5 In making its findings in respect of SPCs 1 to 4, the Inquiry considered the evidence underpinning the Loan Specific Allegations and the non-loan specific allegations as a whole.

SOURCES OF EVIDENCE³

3.6 SPCs 1 to 4 were based on the following two sources of evidence:

- (a) Loan Sample documentation.
- (b) Contextual documentation.

Loan Sample documentation

3.7 The Loan Sample comprised 98 loans across nine commercial lending customers of INBS and represented approximately 20% of the commercial loan book as of 28 February 2010.

3.8 The process by which the 98 loans were selected by Enforcement for inclusion in the Loan Sample was outlined in Appendix B of the Investigation Report. This process was also reviewed by the Inquiry in the course of an IMM held on 27 February 2017 and 6 March 2017, which dealt with 'Production of Documents'. The Inquiry is satisfied that the Loan Sample represents a representative selection of loans of approximately 20% of INBS's commercial loan book by value as of 28 February 2010.

² Chapters 5, 6, 7 and 8 of this Findings Report.

³ As outlined in Chapter 1, paragraph 1.36, the Inquiry Members adopted an Evidence Protocol, whereby documents contained in the hearing bundles (the CDC) for each module of the Inquiry hearings were admitted as prima facie evidence of the truth of their contents, unless otherwise challenged by the Persons Concerned or Enforcement.

- 3.9 The Loan Sample documentation consisted of the loan files and other relevant documents for each loan in the Loan Sample.
- 3.10 The following are the key loan documents and other relevant documents that applied to each loan and which were of assistance in helping the Inquiry to assess the Loan Specific Allegations arising in each loan. Where these documents have been relied upon by the Inquiry, they will have been opened to the Persons Concerned either in the course of the oral hearings or in subsequent correspondence.

Internal memorandum

- 3.11 Internal memoranda were only a requirement for loans emanating from the UK. The requirement for such a document was set out in the UK Version of the April 2003 Credit Risk Policy⁴ which stated at paragraph 6:

“Commercial loan applications in excess of £500,000 are referred to the Society’s Managing Director for initial approval prior to being approved by the Credit Committee and the Board of Directors”.

- 3.12 The internal memorandum was a document prepared by Mr Gary McCollum, Belfast Branch manager, following contact by a customer seeking a loan facility. It was addressed to the Managing Director, Mr Michael Fingleton, and typically would set out the commercial proposal in writing and provide supporting documentation. Once satisfied with the proposal, Mr Fingleton would write at the top of the document: *“Tom, please process and liaise with Gary”*. This signified Mr Fingleton’s approval of the proposal and Mr Tom McMenemy, head of commercial lending for the Republic of Ireland, would have a CLA drawn up. Loans emanating from the Republic of Ireland did not have an internal memorandum.

Commercial Loan Application (CLA)

- 3.13 The CLA was the control document completed in respect of an application for a commercial loan that was submitted for approval to the Credit Committee and/or the Board. The 2004 Belfast Internal Audit Report described the CLA as *“the document used by the Society to ensure appropriate authorisation is received prior to any monies being advanced”* and represented *“an integral part of the credit risk policy, containing*

⁴ UK Version of the April 2003 Credit Risk Policy (Doc ID: 0.7.120.622022).

essential credit information including credit grading, LTV ratio, customer history, and appropriate authorisation".⁵

Credit Committee recommendation or sanction and Board approval

- 3.14 Once the CLA had been prepared by the commercial lender, the next step in the process was to present it to the Credit Committee for recommendation to the Board or for approval by the Credit Committee. The Credit Committee approval process is dealt with at Chapters 2 and 9 of this Findings Report, which analyse the role of this committee in INBS.
- 3.15 From the commencement of the Review Period, 1 August 2004, until 17 December 2007, the Credit Committee Terms of Reference⁶ provided for a process that involved either a straightforward sanction for the loan or a recommendation for approval by the Board. The latter process arose if the loan was above a specified threshold. From 2003 until July 2006, that threshold was €500,000. In July 2006 that threshold figure increased to €1 million. Therefore, for any loan in excess of that figure, the Credit Committee was required to consider the loan request and either reject it or recommend it for approval to the Board.
- 3.16 On 17 December 2007, the Board amended the Credit Committee Terms of Reference⁷ to extend its power to enable the Committee to sanction all commercial loans without requiring additional Board approval.
- 3.17 Evidence that the Credit Committee had considered and recommended or sanctioned a loan was in the minutes of the Credit Committee meeting at which the loan was considered. Therefore, the minutes of the Credit Committee meeting considering the loan was another key document in the loan process. If the loan was below the threshold for Credit Committee approval, the Credit Committee meeting was the end of the required approval process. If the Credit Committee did not recommend a loan it did not proceed any further and was not presented to the Board for further review. Credit Committee approval was also noted on the CLA with the date of approval recorded.
- 3.18 There was a process for urgent credit decision approval in circumstances where a Credit Committee meeting could not be convened in time and a loan required urgent approval. Such urgent approval always required the particular loan to be brought to

⁵ 2004 Belfast Internal Audit Report, page 9 (Doc ID: 0.7.120.432168).

⁶ 16 October 2003 Commercial Credit Committee Terms of Reference (Doc ID: 0.7.120.5896); and 19 July 2006 Commercial Credit Committee Terms of Reference (Doc ID: 0.7.120.260548-000001).

⁷ December 2007 Credit Committee Terms of Reference (Doc ID: 0.7.120.26675).

the Credit Committee at the next available opportunity. In those cases, the recommendation or sanction would be noted as having had the urgent credit decision approval procedure applied.

- 3.19 Once the Credit Committee had recommended a particular loan for approval, it was then presented to the Board of INBS for sanction. The sanction by the Board was, up until 17 December 2007, the final step in the approval process. The minutes of the Board meeting sanctioning the loan is therefore another key document in the loan process. The April 2003 Credit Risk Policy states, under the section headed 'Commercial Lending Guidelines'.⁸

"Control

1. *Board submissions must be completed and approved by the Board prior to the preparation of commercial offer letters".*

- 3.20 Following the Board decision of 17 December 2007 that transferred all loan approvals to the Credit Committee, all loans sanctioned by the Credit Committee were notified to the Board and recorded in the Board meeting minutes.

Commercial Mortgage Offer (CMO)

- 3.21 Once a CLA had been appropriately approved by the Credit Committee and/or the Board, the next step in the process was to prepare the CMO, which was sent to the proposed borrower. The CMO was the contractual agreement between INBS and the borrower and it set out the structure, terms and conditions of the loan. The CMO included details such as the borrower, facility amount, loan term, repayment term, and security. The CMO was required to be signed by the borrower before any money could be advanced by INBS.

Fee agreements

- 3.22 Fee agreements or Profit Share Agreements were a feature of commercial lending in INBS. They consisted of an agreement between INBS and the borrower whereby INBS would be entitled to a percentage of the net profit upon completion of the transaction. Fee agreement contracts were separate from the CMO and were a significant feature of loans emanating from the Belfast Branch of INBS. Profit share lending is the subject matter of SPC 7 and is dealt with at Chapter 11 of this Findings Report.

⁸ April 2003 Credit Risk Policy, page 27 (Doc ID: 0.7.120.478217).

Drawdown documents

- 3.23 Once the CMO had been duly signed by INBS and the borrower, the next documents that were produced by the lending process were the drawdown documents. These were:
- (a) The Society Advance Detail sheet (**SAD**), which showed the date of the initial drawdown and the payee. It also showed the amount of the facility remaining to be drawn.
 - (b) The cash advances sheet and the account activation documents, which also showed the first drawdown on the account and identified when the mortgage became active.

Summit account

- 3.24 Summit was the electronic loan system used by INBS. It managed customer and account information for all savings, investments and loan products, and managed the links between customer and account details and stored historical data. By examining the Summit data it is possible to track the life of a loan from inception to redemption or closure.

Other relevant documents

- 3.25 These included:
- (a) valuations;
 - (b) Development Appraisals;
 - (c) correspondence with clients;
 - (d) Credit Reviews; and
 - (e) internal memoranda and emails.

Contextual documentation

- 3.26 The contextual documentation consisted of: Contemporaneous Reports, corporate governance documents; Financial Regulator Correspondence; and internal INBS correspondence, before and during the Review Period, as well as interview evidence

and responses to Section 41A Notices from former employees and contractors engaged with INBS during the relevant time.

INQUIRY HEARINGS

3.27 Module 4 of the Inquiry hearings concerned SPCs 1 to 4 and it was conducted between 30 October 2020 and 21 July 2021. This module was divided into two parts. The first part was the Loan Hearings (at which the Loan Sample documentation and the Loan Specific Allegations were considered) and the second part was the Context Hearings (at which the contextual documentation and the non-loan specific allegations were considered, and oral and written testimony was provided by relevant witnesses).

Loan Hearings

3.28 The Inquiry decided that module 4 would comprise five Loan Hearings dealing with the Loan Specific Allegations. The Loan Hearings were conducted in private between 3 November 2020 and 11 June 2021.

3.29 Certain of the SPC 1 to 4 Loan Specific Allegations were confined to INBS and Persons Concerned who were no longer subject to the Inquiry. These were known as the INBS Only Allegations. The Inquiry decided, in the interests of timeliness and expedition, that it was not necessary to make findings in respect of these INBS Only Allegations, and that the Loan Hearings should be confined to the Loan Specific Allegations against INBS and the remaining Persons Concerned, Mr Purcell and Mr McCollum.⁹ This resulted in a total of seven loans being excluded in their entirety from the Loan Hearings, and various other Loan Specific Allegations across the remainder of the Loan Sample being excluded from the Loan Hearings. The Inquiry was of the view that excluding this small number of INBS Only Allegations did not impact on their ability to assess participation by either Mr McCollum or Mr Purcell. The Inquiry's approach to the INBS Only Allegations was outlined in an email to Mr Purcell, dated 31 July 2020.¹⁰

3.30 A settlement was entered into between Mr McCollum (one of the remaining Persons Concerned) and the Central Bank on 21 June 2021, following the conclusion of the Loan Hearings and at the commencement of the Context Hearings.

⁹ At the commencement of the SPC 1 to 4 module (on 30 October 2020), the only Persons Concerned who were still subject to the Inquiry were Mr Purcell and Mr McCollum.

¹⁰ Email from the Inquiry to Stan Purcell dated 31 July 2020 in response to email sent by Stan Purcell dated 18 July 2020 (Doc ID: RDU_REL489-000000001).

Context Hearings

- 3.31 The Loan Hearings considered the loan specific evidence whereas the Context Hearings considered the non-loan specific or contextual evidence. The Context Hearings were conducted in public between 11 June 2021 and 21 July 2021.

INQUIRY'S APPROACH TO SPC 1 TO 4 FINDINGS

- 3.32 Mr Purcell's alleged participation in SPCs 1 to 4 is twofold. Firstly, he is alleged to have directly participated in certain of the alleged breaches of policy identified in the Loan Specific Allegations. Secondly, Mr Purcell is alleged to have participated more generally in SPCs 1 to 4 by virtue of his role and responsibilities in INBS.
- 3.33 As outlined in Chapter 1, in order to make their findings in respect of Mr Purcell's alleged participation in SPCs 1 to 4, the Inquiry first had to determine whether INBS had committed the SPCs.
- 3.34 In making its findings in relation to (i) whether INBS committed SPCs 1 to 4 and, if so, (ii) whether Mr Purcell participated in the commission, the Inquiry considered the evidence, as follows:

Loan File Analysis

- 3.35 The Inquiry firstly considered the Loan Sample documentation and the evidence from the Loan Hearings and carried out a loan by loan analysis to determine the Loan Specific Allegations against INBS and Mr Purcell. The Loan File Analysis carried out by the Inquiry is set out in Chapter 4 of this Findings Report. A table summarising the findings made by the Inquiry in respect of the Loan Specific Allegations is included at Appendix 7.

Analysis of the contextual evidence

- 3.36 Secondly, the Inquiry analysed the contextual documentation and the evidence provided in the Context Hearings. The Inquiry's analysis of the contextual evidence is set out in the individual SPC 1 to 4 chapters.¹¹

Findings

- 3.37 The Inquiry considered its Loan File Analysis and its analysis of the contextual evidence as a whole, and made findings in relation to: (i) INBS's commission of SPCs

¹¹ Chapters 5, 6, 7 and 8 of this Findings Report.

1, 2, 3 and 4; and (ii) Mr Purcell's participation in these SPCs. These findings are set out in the individual SPC 1 to 4 chapters, and a table summarising the findings made in respect of the individual SPCs is included at Appendix 5.

SUBMISSIONS RECEIVED IN RESPECT OF SPCS 1 TO 4

- 3.38 Inquiry participants provided submissions during the course of the module 4 Inquiry hearing, and these are referred to as appropriate by the Inquiry in the following chapters when examining the individual SPCs.
- 3.39 With respect to the Loan Hearings, Mr Purcell made an opening statement on 30 October 2020¹², provided a witness statement dated 5 March 2021¹³, and provided a response statement dated 22 April 2021 in relation to certain matters raised during the Loan Hearings.¹⁴ The LPT and Mr McCollum also provided opening submissions at the commencement of the module 4 Inquiry hearing on 30 October 2020.
- 3.40 With respect to the Context Hearings, Mr Purcell made an opening statement on 11 June 2021.¹⁵ The LPT also made an opening statement at the commencement of the Context Hearing on 11 June 2021.¹⁶
- 3.41 By letter dated 11 August 2021, following the conclusion of the Context Hearings, the Inquiry requested closing submissions from Enforcement¹⁷ on the following four specific questions:
- (a) What constituted a policy within INBS?
 - (b) What were the duties and responsibilities of executive directors?
 - (c) Were exceptions to policy required to be brought before the Board in commercial lending?
 - (d) The effect of the requirement for Board approval for loans above a certain threshold in the context of compliance with internal policy.

¹² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 30 October 2020, page 74 to 86 (Doc ID: RDU_FT_SPC1-4_D1-00000001).

¹³ Witness Statement of John S Purcell, dated 5 March 2021 (Doc ID: RDU_REL562-000000003).

¹⁴ Response (Specific Loans), dated 22 April 2021 (Doc ID: RDU_REL571-000000002) and Transcript SPCs 1-4 Remote Inquiry Hearing, dated 22 April 2021, page 83 et seq. (Doc ID: RDU_FT_SPC1-4_D18-000000001).

¹⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 29 to 63 (Doc ID: RDU_FT_SPC1-4_D19-000000004).

¹⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, page 12 to 29 (Doc ID: RDU_FT_SPC1-4_D19-000000004).

¹⁷ Letter from RDU to Enforcement Directorate, dated 11 August 2021 (Doc ID: RDU_REL616-000000001).

- 3.42 Closing submissions were also sought from Mr Purcell¹⁸ and the LPT.
- 3.43 Enforcement provided its submissions on 23 September 2021.¹⁹ Mr Purcell provided his closing submissions on 22 October 2021²⁰ and the LPT provided outline submissions on the four queries raised by the Inquiry on 23 November 2021.²¹
- 3.44 Certain of these submissions are set out below as they are of general application to SPCs 1 to 4 and to the issues considered and approach taken by the Inquiry in the subsequent chapters.

The LPT's submissions

- 3.45 The LPT commenced its opening submissions for the Context Hearings by addressing what the LPT considered to be the relevant issues for consideration by the Inquiry.
- 3.46 The LPT stated that SPCs 1 to 4 related to INBS's internal policies and whether it complied with those policies in respect of commercial loans. If INBS did not comply with its internal policies, as alleged, the Inquiry had to consider whether there was participation by Mr Purcell in this non-compliance.
- 3.47 In each of SPCs 1 to 4, it was alleged that INBS was involved in a breach of the same two statutory requirements and condition on authorisation: Regulation 16(1) of the 1992 Regulations; Section 76(1) of the 1989 Act; and Part 1 of the 2005 Regulatory Document.
- 3.48 In the course of their opening submissions, the LPT referred to a number of areas of evidence that would be examined during the Context Hearings and which the LPT suggested the Inquiry would need to consider before making any findings in relation to SPCs 1 to 4. These areas were:
- (a) Contemporaneous Reports prepared by the internal audit function of INBS, by Deloitte on behalf of internal audit, and by KPMG who were INBS's external auditors. The evidence includes correspondence from the Financial Regulator in relation to these reports, and the responses from INBS to the reports and the correspondence arising from them.

¹⁸ Letter from RDU to John Stanley Purcell, dated 1 October 2021 (Doc ID: RDU_REL620-000000003).

¹⁹ Submissions on behalf of the Enforcement Directorate, dated 23 September 2021 (Doc ID: RDU_REL620-000000005).

²⁰ Closing Submissions of John S Purcell, dated 22 October 2021 (Doc ID: RDU_REL623-000000016).

²¹ Outline Submissions on behalf of the Legal Practitioner Team, dated 23 November 2021 (Doc ID: RDU_REL623-000000015).

- (b) Minutes of the various meetings at which these Contemporaneous Reports were considered. The Inquiry was provided with all available minutes of these meetings and heard from witnesses who participated in or attended those meetings. These were meetings of the Board, the Audit Committee, the Credit Committee and the Provisions Committee of INBS.
- (c) General evidence from senior employees of INBS in commercial lending, credit risk, loan administration, office administration, finance and internal audit.
- (d) Questions about the policies themselves and their proper interpretation.
- (e) Issues as to the respective roles that various bodies and persons played in INBS, including that of Mr Purcell.
- (f) The relative importance of the breaches found to have been committed.
- (g) If there were breaches and there was participation, why did that occur? Was it because of a culture of non-compliance or because of individual default, or just because some policies were not seen as being important.
- (h) Finally, having examined issues specific to SPC 1, SPC 2, SPC 3 and SPC 4 and having established breaches and participation, what is the significance of each breach in practical terms of compliance? What impact did these alleged breaches have on risk management?

3.49 The Inquiry considered this a useful framework for considering the various strands of evidence that are relevant to a consideration of whether Mr Purcell participated in SPCs 1 to 4.

Mr Purcell's submissions

3.50 In his opening submissions at the commencement of the Loan Hearings²², Mr Purcell submitted that:

- (a) the April 2003 Credit Risk Policy was only a guideline;
- (b) the 9 November 2004 Commercial Lending Criteria was never considered by the Board of INBS and therefore was not a policy that was tested against for the purposes of the findings of any internal audit report; and

²² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 30 October 2020, page 74 et seq. (Doc ID: RDU_FT_SPC1-4_D1-00000001).

(c) the 28 February 2007 Commercial Mortgage Lending Policy, which replaced the April 2003 Credit Risk Policy, was only a guideline.

3.51 He submitted that guidelines were not rigid or inflexible, but were something to be aimed for and that items were dealt with on a case by case basis.

3.52 Mr Purcell addressed various allegations against him arising from the loan file documentation and his submissions in this regard will be considered in the course of the examination of the individual SPCs.

3.53 Mr Purcell made submissions at the conclusion of the Loan Hearings in relation to certain matters raised during the Loan Hearings. He dealt with the following eight areas:

- (a) executive management responsibility;
- (b) the processing of CLAs;
- (c) LTV breaches;
- (d) case by case approval of loans;
- (e) three specific loans approved by the Board in 2007;
- (f) personal guarantees;
- (g) credit grades; and
- (h) [REDACTED].

3.54 The first item listed above, executive management responsibility, is dealt with in Chapter 2 of this Findings Report, which addresses Mr Purcell's roles and responsibilities as Finance Director and as a Board member. Throughout this Findings Report, but particularly in Chapter 11 which deals with SPC 7 and profit share lending, the role of the Board of INBS in approving all large commercial loans is considered. The extent to which non-compliance with policy was a significant feature in loans emanating from the Belfast Branch of INBS is also considered.

3.55 Items (b) to (h) above are dealt with, as appropriate, in the relevant SPC chapters of this Findings Report.

- 3.56 In his opening statement at the commencement of the Context Hearings, Mr Purcell dealt firstly with the Impairment Provisioning Policy and the Notes on the Implementation of Impairment Provisioning Policy.²³ The second area he addressed was loan policies and the assessment, recommendation and approval of commercial loans. He stated: “*There was compliance with policy in relation to the assessment, recommendation and approval of commercial loans*”.²⁴
- 3.57 Mr Purcell addressed the relevant policies that applied in INBS during the Review Period, which he listed as being: the April 2003 Credit Risk Policy; the 28 February 2007 Commercial Mortgage Lending Policy; and the 27 June 2007 Credit Risk Management Policy. He referred to the case by case guide and guidance approach which he stated were important features of the lending policies. He quoted the 27 June 2007 Credit Risk Management Policy which stated at page 12: “*Commercial Loan Applications are assessed on a case by case basis*”.²⁵
- 3.58 Under this second area concerning loan policies addressed by Mr Purcell, he dealt with Board approval.²⁶ He stated: “*The key features of the CLA, such as LTVs and security, that were recommended to and approved by the Board, were not exceptions to credit policy*”.²⁷
- 3.59 The third area addressed by Mr Purcell was in relation to the Debit Agreed Advance (DAA) and this will be dealt with in the SPC 2 chapter.
- 3.60 The fourth area that Mr Purcell addressed in his opening statement was the Loan Specific Allegations against him.²⁸ These included an allegation in relation to credit grading, the signing of a CMO, guarantees, LTVs and credit policies. These Loan Specific Allegations are dealt with in Chapter 4 (the Loan File Analysis) and under the relevant SPC in the following chapters concerning SPCs 1 to 4.
- 3.61 The fifth area addressed by Mr Purcell was the allegation that the output of INBS’s credit review function was not considered as part of the provisioning process, meaning

²³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 30 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

²⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 32 and 33 (Doc ID: RDU_FT_SPC1-4_D19-00000004).

²⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 34 line 11 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

²⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 35 line 20 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

²⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 36 line 11 to 13 (Doc ID: RDU_FT_SPC1-4_D19-00000004).

²⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 37 line 29 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

that INBS was not compliant with the 2006 and 2007 Notes on the Implementation of Impairment Provisioning Policy.²⁹ This is dealt with under the relevant SPC in the following chapters concerning SPCs 1 to 4.

3.62 The sixth and final area dealt with by Mr Purcell in his opening statement was Contemporaneous Reports.³⁰ He addressed the extent to which these reports had raised issues in relation to LTV, guarantees, and credit grades.

3.63 In his closing submissions, dated 22 October 2021³¹, Mr Purcell addressed three specific points. Point 1 was divided into three sections as follows:

- (a) Mr Purcell firstly submitted that evidence from Mr McMenamin provided to the Inquiry in his witness statement dated 6 July 2021, that he was unable to implement audit recommendations because of staff shortages, which he had discussed with Mr Killian McMahon, had not been communicated to the Audit Committee. Mr Purcell submitted that if Mr McMahon had raised the issue of staff shortages with the Audit Committee, the issue could have been resolved by 2008 or earlier.
- (b) Mr Purcell also referred to Mr McMahon's evidence to the Inquiry on 2 July 2021 that "*the culture was, we'll say we'll do it and we may do it*".³² He submitted that this contrasts with Mr McMahon's witness statement where he said "*[management] responses often indicated agreement with the recommendation and a willingness to implement the recommendation. However, for a number of recommendations, the recommendations may not have been implemented in a timely manner and/or the risk may not have been sufficiently mitigated by new processes introduced*".³³ Mr Purcell submitted that "*The audit committee should have been informed of this diluted commitment to implementing recommendations and Killian McMahon's opinion as to its effect*".
- (c) Mr Purcell's final submission in this first section was in relation to evidence from Mr McMenamin (incorrectly described as Tom McMahon). In his witness statement, Mr McMenamin referred to "*directives*" and "*interventions*" by Mr

²⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 42 line 10 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

³⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 50 line 12 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

³¹ Closing Submissions of John S Purcell, dated 22 October 2021 (Doc ID: RDU_REL623-000000016).

³² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 121 line 15 (Doc ID: RDU_FT_SPC1-4_D30-000000001).

³³ Composite Witness Statement of Killian McMahon, dated 28 January 2021 (Doc ID: RDU_REL525-000000009).

Fingleton which caused the non-adherence to the Credit Committee terms of reference and the non-implementation of recommendations in Contemporaneous Reports. Mr Purcell submitted: *"This meant the audit and implementation of recommendations was undermined by Michael Fingleton who had the authority and responsibility for oversight in this area. The audit committee should have been informed of these "directives" and "interventions"*.

3.64 Mr Purcell concluded this section of his submissions by outlining what he entitled "Responsibility and outcome". He submitted as follows:

"5. Michael Fingleton and the lending area managers had the responsibility and authority for the oversight of the commercial lending processes and the implementation of audit recommendations relating to commercial lending.

Killian McMahon had "Sight" over the entire process.

6. Board members had sought and got commitments from Michael Fingleton that instances such as loans being issued before a commercial mortgage offer was signed would not occur again (Note 1) as well as overall promises that Michael Fingleton would attend to audit and other recommendations. (Note 2)

7. Killian McMahon dealt with Michael Fingleton on larger matters and matters concerning commercial lending.

8. It is clear that oversight was not carried out by those responsible. The audit committee should have been informed if "Sight" by the internal auditor was to have been carried out properly. All of this resulted in the audit committee and the board being prevented from carrying out their roles.

9. The lack of implementation of recommendations, oversight and reporting to the audit committee chairman affected both the loan-specific and the non-loan specific allegations. It meant that contemporaneous report recommendations were not dealt with properly by those responsible and information and underlying documentation needed to assess and process loans by commercial lenders and the audit committee was not on file.

Note 1 C.Power, Interview 15/3/13, pages 116/117 (0.7.120.68375)

Note 2 C.Power, WS- 2/11/2020, page 23. RDU_REL519-000000002".³⁴

3.65 In support of these submissions, Mr Purcell provided the Inquiry with detailed references from Mr McMEnamin, Mr McMahon, Mr Terence Cooney and the Audit Committee meeting minutes, as follows:

"Appendix 1.

Background detail and references.

1. Tom McMEnamin's Witness Statement dated 6 July 2021.

(Reference RDU REL609-000000007).

a. Page 1 – "Staff shortages and inexperienced staff contributed to a fall in standards in filing, i. e. CLA's completed but mis-filed." (Par.1(b)).

b. Page 1 – "Applications (without adequate repayment capacity) would not have progressed unless there was direct intervention from the managing director which did happen on numerous occasions." (Par.2(a)).

c. Page 2 – "I accept that the concerns in relation to preparation of CLA's continued due principally to directives from the managing director." (Par.4 (a)).

d. Page 2 - Staff shortages and misfiling. (Par.4(b)).

e. Page 2- "chronic staff shortages - exceptions being agreed by the managing director". (Par.4(e)).

f. Page 4 - "Site visits were not permitted by MD". (Par.11(b)).

g. Page 4 - "Staff shortages – Many and varied representations to Michael Fingleton in this regard being dismissed out of hand". (Par.14).

h. Page 1 – "On the instructions of the managing director loans were, on occasions, advanced prior to CLA being completed. (Par. 1(b)).

2. Killian McMahon's evidence to the Inquiry Hearing on 2 July 2021.

(Reference RDU FT SPC 1-4 D30-000000001)

³⁴ Closing Submissions of John S Purcell, dated 22 October 2021, page 4 (Doc ID: RDU_REL623-000000016).

a. Page 12/13- Killian McMahon said “I would have dealt with Michael Fingleton on, I suppose, larger matters and matters concerning commercial lending.”

b. Page 77 – Lines 26 and 27 – Question – Per Michael Walsh- Issues not difficult to do.? Answer - Line 29 – Killian McMahon said “Yes, if we had adequate staffing”. Page 78 – Lines 17 and 18-“staffing would have been dealt with at a department level mostly”.

c. Page 121, line 15- Re recommendations and staff shortages. Killian McMahon said “So, the culture was, we’ll say we’ll do it and may do it”.

d. Pages 122/123, “Sat down with Tom McMenamin on numerous occasions”. (Re Staffing issues).

e. Page 125, Line 19 – Killian McMahon said “It wasn’t all to do with resourcing you know, there were recommendations that could be implemented that just weren’t. It wasn’t the focus. Lending was the focus.”

f. Page 153, Line 24. Re Staff shortages, Killian McMahon said “So I could go to Mr Cooney, but you know, -- you know, ultimately would he have swayed Michael Fingleton? I don’t know.”

3. Terry Cooney’s witness statement for SPC 5 dated 29 September 2017, page 8 paragraph 25. – Eamonn Daly , page 179 of the Investigation Report – Killian McMahon, page 183 of the Investigation Report.

a. Terry Cooney was chairman of the audit committee from March 2006 to the end of the Review Period and beyond.

b. Mr Cooney said in paragraph 25 of this statement: “I don’t recall any instance where anyone in Internal Audit or on the audit committee had any complaints about the level of cooperation from operating departments, management or the Board of INBS and, if, that occurred and had been reported to me I would certainly remember it”. (Reference RDU_WS_000000019)

c. The statement in b. above was quoted in Michael Collins S.C. (for M. Walsh) opening statement for SPC 5 on 13 December 2018 page 182. (Reference RDU_FT_D3-00000002).

d. In paragraph 4.97, page 179 of the Investigation Report, Eamon Daly’s, (Internal Auditor) Section 41 response says the following. “The Managing

Director would have had a general oversight role in his capacity as chief executive and also more specifically a role in relation to over-seeing and/or driving forward implementation of internal audit recommendations in commercial lending.”

e. In paragraph 4.111 of the Investigation Report, Killian McMahon further stated. “The Managing Director, Michael Fingleton, and the UK General Manager, Gary McCollum, were tasked with the responsibility of implementing audit findings relating to the Belfast and London offices.”

Appendix 2- Audit committee seeking implementation of recommendations. – The Internal Auditor’s statements to the audit committee about the implementation of recommendations.

From 2004 the minutes of audit committee meetings record that the committee had been continually seeking improvements and the implementation of recommendations in contemporaneous reports in relation to commercial lending.

The minutes state that on:

1. 23 Nov.2004 (0.7.120.56226, page 3(D).)

“The Chairman mentioned, in relation to the Commercial Lending Review carried out by KPMG that the items highlighted in red on the KPMG report must be addressed promptly to ensure that they do not re-appear as concerns. The Internal Auditor would follow up on the completion of these items.”

2. 18 Oct.2005. (0.7.120.56773, page 3).

“The committee emphasised that all the recommendations should be completed without delay”.

3. 14 June 2006. (0.7.120.56364 page 1.)

“The committee emphasised that all items on the audit of the commercial administration department which have yet to be implemented should continue to be followed up as a matter of urgency”.

4. 25 October 2006. (0.7.120.56874 page 1.)

“The important recommendations of KPMG and the Financial Regulator

especially those concerning the U.K. business must be implemented.”

5. 6 September 2007. (0.7.120.56361 page 3(B))

“ The committee agreed that the following was a major weakness in the Belfast control environment. The documentation used to support lending decisions is inconsistent and is largely based on the Society’s knowledge of and history with the customer. This previously gathered information is not always apparent from the mortgage files. The projections/assumptions supplied by customers are often not sufficient to form a complete understanding/view of the projects profitability. The completeness and consistency of documentation must be enhanced to ensure the Society is making informed lending decisions. Minimum documentation (such as projections) which form the basis of decision making must be specified and obtained.”

6. 26 May 2008. (0.7.120.57529 page 2 (5)).

In relation to the Deloitte May 2008 audit.

“The Committee’s view was that the recommendations must be implemented now. In addition a process will be introduced to ensure that the findings have been properly implemented and remain in force on a continuing basis. The audit committee sought a report from the Internal Auditor by the end of July 2008 and again at the end of January 2009 on the implementation of the recommendations as well as a review of the operations of the credit committee.”

7. 4 November 2008. (0.7.120.56063 page 1).

“ The audit committee noted that nine of the recommendations made in the Deloitte May 2008 review were reported in the September review as “not addressed” . The committee was disappointed at the progress in implementing recommendations from the May 2008 Review.”

The Internal Auditors statements in audit committee meeting minutes (and in an email) about the implementation of recommendations.

1. 25 October 2006. (0.7.120.56874 page1 (2)).

“ The Internal Auditor said that the recommendations arising from the commercial lending administration audit were 80% complete with 2 items to be

completed by the end of October 2006.”

Page 2 (8) Commercial lending audit.

“Most of the recommendations arising from Deloitte's audit (2006) of commercial lending had been implemented.”

2. 19 December 2006 (0.7.120.57335 page 3).

“The Internal Auditor said that the recommendations relating to commercial lending are being implemented. The Internal Auditor said the outstanding items on the Belfast audit will be dealt with in January 2007. The committee asked that all these recommendations should be dealt with before the audit is complete.”

3. 26 May 2008. (0.7.120.57529).

Re Deloitte audit May 2008:

“The committee noted that the report indicated the recommendations arising from the seven priority one findings have been implemented.

The committee sought a report to obtain assurances that recommendations were implemented and continued in place”

In an email to Directors dated 31 July 2008 (copied to S.Purcell) (0.7.120.293425 + attachments) the Internal Auditor confirmed that of the 14 recommendations made by Deloitte in May 2008, 11 were implemented.

4. 12 September 2008. (0.7.120.56436)

Page 2, (3).” The Internal auditor mentioned that the loan stress testing had been delayed due to staff illness.”

Page 3, (8). Belfast audit. “The Internal Auditor said that the recommendations were being worked on and a number were already in place”.³⁵

³⁵ Closing Submissions of John S Purcell, dated 22 October 2021, pages 5 to 11 (Doc ID: RDU_REL623-00000016).

- 3.66 The second area addressed in Mr Purcell's closing submissions related to the contraventions alleged in SPCs 1 to 4 and these are dealt with in the appropriate chapters of this Findings Report.
- 3.67 Mr Purcell's final submission related to the 9 November 2004 Commercial Lending Criteria and the Inquiry has agreed with Mr Purcell's submission in this regard – see paragraph 3.70 below.

POINTS OF GENERAL APPLICATION

- 3.68 The following points considered by the Inquiry are set out in this introductory chapter as they are of general application to the subsequent chapters relating to SPCs 1 to 4.

Inquiry's decision on the 9 November 2004 Commercial Lending Criteria

- 3.69 As indicated above, the Inquiry requested submissions from Enforcement, the LPT and Mr Purcell on four specific queries. The first query sought guidance on what constituted a policy within INBS. This arose due to the submission by Mr Purcell (as outlined above) that the 9 November 2004 Commercial Lending Criteria was not an internal policy in INBS as there was no evidence in the Board meeting minutes that it was ever formally presented to the Board for approval.
- 3.70 Having considered the submissions received from the LPT, Enforcement and Mr Purcell on this point, the Inquiry decided that the 9 November 2004 Commercial Lending Criteria did not constitute an INBS internal policy and therefore could not be the basis for any allegation of failure to adhere to policy either on the part of INBS or Mr Purcell. The reasons for this decision of the Inquiry are set out in full in Appendix 10 of this Findings Report.
- 3.71 The other queries raised by the Inquiry, including Mr Purcell's roles and responsibilities in INBS, are dealt with as they arise in this Findings Report.

Mr Purcell's receipt of Contemporaneous Reports

- 3.72 INBS's suspected non-compliance with internal policies in respect of the issues identified in SPCs 1 to 4, was referred to in Contemporaneous Reports, and these are referred to as appropriate throughout this Findings Report. These reports were prepared by KPMG, Deloitte and Mr Killian McMahon, who was the internal auditor of INBS from December 2004 until after the Review Period. Mr McMahon confirmed to the Inquiry that Mr Purcell received all audit reports and reviews that were considered

by the Audit Committee, prior to the relevant Audit Committee meeting. This was confirmed by Mr Purcell in the course of his oral evidence to the Inquiry.³⁶

Mr Purcell's attendance at Audit Committee and Board meetings

- 3.73 In the following chapters, reference is made to Audit Committee and Board meetings. The Inquiry has established by reference to the minutes of such meetings that Mr Purcell was in attendance at all meetings referred to unless they have otherwise stated. He attended the Audit Committee meetings as secretary to the Audit Committee and he attended the Board meetings as a Board member.

³⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 39 line 18 to 20 (Doc ID: RDU_FT_SPC1-4_D31-000000001).

CHAPTER 4

LOAN FILE ANALYSIS

INTRODUCTION

- 4.1 As outlined in the previous chapter, in order to make their findings in respect of INBS's alleged commission of SPCs 1 to 4 and subsequently Mr Purcell's participation in same, the Inquiry first had to consider the Loan Sample documentation and the evidence from the Loan Hearings, and carry out a loan by loan analysis to determine the Loan Specific Allegations against INBS and Mr Purcell.
- 4.2 Each of the loans set out below form part of the Loan Sample and are grouped under the relevant customer.
- 4.3 In conducting the below loan by loan analysis, the Inquiry utilised the Consolidated Tables which accompanied the Investigation Report. These tables set out the details of the particular loan, the details of the Loan Specific Allegation and the policies in respect of which a breach was alleged. These tables form the basis of the Inquiry's consideration of the Loan Specific Allegations.
- 4.4 Included at Appendices 11 to 17 are a number of tables setting out the relevant internal policies alleged to have been breached in the case of each SPC, and the applicable policy provisions. In the following Loan File Analysis, the relevant policy for each Loan Specific Allegation is referenced.
- 4.5 In the following Loan File Analysis, reference is made to certain Loan Sample documentation, such as CLAs, CMOs, Credit Committee and Board meeting minutes, Summit account details etc. In accordance with the Evidence Protocol, these documents have been accepted by the Inquiry as evidence of the information contained therein unless otherwise disputed by the Persons Concerned.¹ The Inquiry's approach to the evidence is set out in detail in Chapter 1 paragraphs 1.33 to 1.36, and an overview of the Loan Sample documentation is included in Chapter 3, paragraphs 3.7 to 3.25.

¹ Evidence Protocol, dated 20 February 2017 (Doc ID: RDU_REL5-000000003).

- 4.6 Of the 98 loans in the Loan Sample, a total of 54 were transferred to the National Asset Management Agency (**NAMA**).² Where a particular loan analysed below was transferred to NAMA this is noted in the following Loan File Analysis.
- 4.7 All of the loans in this analysis emanated from the Belfast Branch of INBS unless otherwise stated, and all but one represented repeat business from the customers in question.
- 4.8 The Inquiry sets out its findings below in respect of the Loan Specific Allegations. As explained above, the loans were grouped by customer and the evidence was presented to the Inquiry during the Loan Hearings on a loan by loan basis. Not every Loan Specific Allegation was advanced in respect of each loan, and accordingly each of the loans analysed below will vary in the number of Loan Specific Allegations relating to it. For ease of reference, a table setting out each of the SPC 1 to 4 Loan Specific Allegations advanced and the finding made by the Inquiry is included at Appendix 7.
- 4.9 The loan files summarised in the following chapter do not purport to be a detailed description of the loan files in question. The Inquiry has included only such information and context as is necessary to identify whether a particular SPC Allegation has occurred in a specific loan file.

² The National Asset Management Agency Act 2009 came into effect on 21 December 2009 as part of an effort to stabilise the Irish financial system. The act introduced an asset relief scheme for financial institutions in Ireland, whereby participating institutions could transfer eligible loans to the newly formed agency, in exchange for government bonds. INBS was designated as a participating institution following application to the Minister for Finance, and commenced transferring property related loans to NAMA from 27 March 2010.

CUSTOMER 1 - [REDACTED]

4.10 During the Review Period the [REDACTED] was a large UK property development company, and the borrowers the subject of this tranche of loans were all companies that were part or wholly owned by [REDACTED] or by the directors of [REDACTED]. There were a total of 23 loans under this customer provided to a total of 12 different borrower companies. Some of the loans involved one, two or three sub-loans made to the same borrower in relation to the same transaction.

Borrower: [REDACTED]

Loan Account [REDACTED]

Loan 1 and Loan 3 - background to loans

- 4.11 These were two loans made available by INBS in 2007 and 2008 as part funding to purchase 869 public houses in the UK (the [REDACTED] portfolio). The total funding requirement was £336 million. HBOS bank had agreed to fund £277 million and INBS was being asked to fund the balance of £59 million. The loans were referred to as Loan 1 and Loan 3 but it was not clear from the documentation available to the Inquiry whether there was a Loan 2. If Loan 2 existed, no allegations have been made in respect of it.
- 4.12 This proposal was introduced by Mr Gary McCollum in an internal memorandum to Mr Michael Fingleton, dated 3 April 2007.³ Mr McCollum stated that the borrower was in the process of refinancing their existing portfolio and it was intended that INBS's existing facilities be repaid substantially from this refinancing. INBS was to retain its entitlement to a 25% profit share upon resale.
- 4.13 An initial project assessment undertaken by CBRE and dated 10 April 2007⁴ indicated a value of £328 million for the portfolio. This was followed up by a more detailed assessment and valuation dated 11 May 2007 confirming that value.⁵
- 4.14 The CLA was dated 10 April 2007⁶ and it provided for a loan of £59 million for a one year term with interest only payments for the duration of the term, to be serviced through rental income. The LTV was 100% based on the purchase price and the security was a mortgage over the assets of the borrower to include a second legal

³ Internal memorandum from Gary McCollum to Michael Fingleton, dated 3 April 2007 (Doc ID: 0.7.120.5759).

⁴ CBRE Project [REDACTED] – Preliminary Assessment, dated 10 April 2007 (Doc ID: 0.7.120.20144).

⁵ CBRE Project [REDACTED] Valuation Report, dated 11 May 2007 (Doc ID: 0.7.120.15833).

⁶ Commercial Loan Application, dated 10 April 2007 (Doc ID: 0.7.120.9424).

charge over the properties the subject matter of the loan. The facility was recommended for approval at the Credit Committee meeting dated 12 April 2007⁷, and was duly approved at the Board meeting dated 24 April 2007.⁸ The CMO dated 12 April 2007 was signed by the borrowers on 14 April 2007.⁹ The loan was drawn down to the account of Howard Kennedy, INBS's solicitors, who were acting for both sides in this transaction.

- 4.15 On 22 February 2008 the borrower wrote to Mr McCollum summarising the disposal programme in the [REDACTED] portfolio but also requesting a further facility of £3.5 million to cover capital expenditure outlays on the project.¹⁰ A disposal schedule dated 29 February 2008 was also forwarded.¹¹ An additional CMO for £3.5 million (Loan 3) was issued on 15 April 2008.¹² On 22 December 2009 the Summit accounts for these loans showed write offs of approximately £61 million and £3.275 million respectively.¹³
- 4.16 Twelve of the Loan Specific Allegations were advanced in respect of the two loans to this borrower. Full details of these Loan Specific Allegations are set out below under each loan, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Loan 1

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Business plan/proposals.**
- (b) **Forecast cash flow analysis.**

- 4.17 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).
- 4.18 That policy listed a "*Business Plan/Proposal*" as one of the required basic criteria for a commercial loan.¹⁴ There was no formal definition of what a "*Business Plan*" should

⁷ Minutes of Credit Committee meeting, dated 12 April 2007 (Doc ID: 0.7.120.9661).

⁸ Minutes of Board meeting, dated 24 April 2007 (Doc ID: 0.7.120.7630).

⁹ Commercial Mortgage Offer, dated 12 April 2007 (Doc ID: 0.7.120.43088).

¹⁰ Letter from [REDACTED] to Gary McCollum, INBS, dated 22 February 2008 (Doc ID: 0.7.120.895572).

¹¹ [REDACTED] disposal pipeline at 29 February 2008 (Doc ID: 0.7.120.896016-000001).

¹² Additional Commercial Mortgage Offer, dated 15 April 2008 (Doc ID: 0.7.120.894095).

¹³ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760719) and Summit Account No [REDACTED] (Doc ID: 0.7.120.760664).

¹⁴ See Chapter 5, paragraph 5.109 for details of the "Basic Criteria" or information that was required by INBS internal policy to assess a borrower's capacity to repay a loan.

comprise, either in any internal policy or in any generally available guidelines or recommendations. The policy stated: “*All commercial Loan Applications (CLA) must be prepared and supporting documentation in place prior to all loans being presented to the Credit Committee*”. It also stated: “*All the Society’s terms and conditions must be complied with in full before any drawdown or stage payment is made*”.

4.19 The Inquiry examined a number of documents of relevance to this SPC Allegation. The first, dated 3 April 2007, was an internal memorandum written by Mr McCollum to Mr Fingleton setting out the proposal.¹⁵

4.20 This internal memorandum was based on a letter dated 27 March 2007¹⁶ received by Mr McCollum from the borrower which outlined the bones of the proposed acquisition and stated that they had made an offer “*based on information supplied to us by the vendor*” together with site visits. Under the heading “*Further information available in electronic format*” the letter stated:

“A full pub database prepared by PC Hanson & Co., which we have made available to you in addition to the various property reports”.

4.21 The letter also indicated that the borrowers had engaged CBRE to undertake a full valuation and “*a desktop valuation will be complete prior to exchange*”. This desktop valuation was dated 10 April 2007¹⁷ and was described by CBRE as an interim preliminary assessment for the [REDACTED] portfolio. It valued the portfolio at £328 million.

4.22 The borrowers had engaged the law firm Addleshaw Goddard to undertake due diligence on the properties and produce a detailed report which analysed the pub portfolio by category, provided a title report, provided a rental income report and identified material issues. This report became available on 17 April 2007.¹⁸

4.23 The internal memorandum and the subsequent CLA¹⁹ recorded that interest on this loan would be fully serviced from rental income from the portfolio.

4.24 A formal valuation was produced by CBRE dated 11 May 2007.²⁰ This confirmed the desktop valuation of £328 million. The desktop valuation was dated the same date as

¹⁵ Internal memorandum from Gary McCollum to Michael Fingleton, dated 3 April 2007 (Doc ID: 0.7.120.5759).

¹⁶ Letter from [REDACTED] to Gary McCollum, INBS, dated 27 March 2007 (Doc ID: 0.7.120.919276).

¹⁷ CBRE Project [REDACTED] – Preliminary Assessment, dated 10 April 2007 (Doc ID: 0.7.120.20144).

¹⁸ Addleshaw Goddard, Draft Project [REDACTED] Property Report (Doc ID: 0.7.120.921086).

¹⁹ Internal memorandum, dated 3 April 2007 (Doc ID: 0.7.120.895907) and Commercial Loan Application, dated 10 April 2007 (Doc ID: 0.7.120.895588).

²⁰ CBRE Project [REDACTED] Valuation Report, dated 11 May 2007 (Doc ID: 0.7.120.15833).

the CLA, 10 April 2007, which proposed a loan of £59 million for 12 months with a LTV of 100%.

- 4.25 The CMO issued on 12 April 2007²¹ and was signed by the borrower on 14 April 2007. This was followed by a letter to Howard Kennedy²², which said that monies would be transferred into their account and stated: “*Obviously these funds should be held to your order until you are entirely satisfied that all matters and documentation is [sic] in order for exchange*”. The Society Advance Detail (**SAD**) dated 16 April 2007²³ shows a drawdown of £33,012,500 to the account of Howard Kennedy.

Howard Kennedy replied by letter dated 17 April 2007²⁴ with a licensing report and a copy of the Scottish property report, together with an executive summary of the Addleshaw Goddard due diligence report prepared in relation to the English properties. It appears that contracts were to be exchanged on 17 April 2007 with completion expected two weeks later.²⁵

- 4.26 The Inquiry is of the view that the various documents analysing the proposal and the income being generated by the portfolio together with a valuation (albeit desktop) did, when taken together, constitute a business plan as they illustrated the capacity of the borrower to repay the loan.

The Inquiry finds that a business plan was acquired in respect of the first of these loans and that, accordingly, SPC 1.3 is not proven against INBS.

- 4.27 Interest was to be paid from the rental income of the properties. A schedule of rental income was provided as part of the Addleshaw Goddard report.²⁶ In the Inquiry's view, this satisfied the requirement for a cash flow analysis.

The Inquiry finds that a forecast cash flow analysis was acquired in respect of this loan and, accordingly, that part of SPC 1.3 is not proven against INBS.

²¹ Commercial Mortgage Offer, dated 12 April 2007 (Doc ID: 0.7.120.37171).

²² Letter from Gary McCollum, INBS, to Martin Philips, Howard Kennedy, dated 13 April 2007 (Doc ID: 0.7.120.926304).

²³ Society Advance Detail, dated 16 April 2007 (Doc ID: 0.7.120.11035).

²⁴ Letter from Martin Philips, Howard Kennedy, to Gary McCollum, INBS, dated 17 April 2007 (Doc ID: 0.7.120.920730).

²⁵ Letter from [REDACTED] to Gary McCollum, INBS, dated 30 March 2007 (Doc ID: 0.7.120.918104).

²⁶ The schedule of rental income is included at schedule 8 of the report, page 194 of 265 (Doc ID: 0.7.120.921086).

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

- 4.28 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The applicable urgent credit decision approval procedures were in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).
- 4.29 The facility was recommended for approval at the Credit Committee meeting on 12 April 2007²⁷ and was duly approved at the Board meeting on 24 April 2007.²⁸ The CMO dated 12 April 2007 was signed by the borrowers on 14 April 2007.²⁹ On 16 April 2007, funds were advanced to Howard Kennedy, with a caveat that they "*should be held to your order until you are entirely satisfied that all matters and documentation is in order for exchange*".³⁰

The 28 February 2007 Commercial Mortgage Lending Policy under "*Drawdown*" stated: "*All the INBS's terms and conditions must be complied with before any drawdown or stage payment*".

- 4.30 The 28 February 2007 Commercial Mortgage Lending Policy required urgent credit decisions to be approved by two members of the Credit Committee and by the Managing Director. Any loans so approved should have been signed off by the Credit Committee and the Board as soon as practicable.
- 4.31 The SAD dated 16 April 2007 is evidence of the initial drawdown.³¹ In a memorandum dated 13 April 2007, Mr McCollum instructed Mr David Murray, head of treasury to make a payment on 16 April 2007 in favour of Howard Kennedy.³² The drawdown predated the Board meeting held on 24 April 2007.
- 4.32 There is no evidence from the file or the Credit Committee or Board meeting minutes that the urgent credit decision approval procedures were complied with before funds were advanced in this loan.

²⁷ Minutes of Credit Committee meeting, dated 12 April 2007 (Doc ID: 0.7.120.9661).

²⁸ Minutes of Board meeting, dated 24 April 2007 (Doc ID: 0.7.120.7630).

²⁹ Commercial Mortgage Offer, dated 12 April 2017 (Doc ID: 0.7.120.43088).

³⁰ Letter from Gary McCollum, INBS, to Martin Philips, Howard Kennedy, dated 13 April 2007 (Doc ID: 0.7.120.926304).

³¹ Society Advance Detail, dated 16 April 2007 (Doc ID: 0.7.120.11035).

³² Internal memorandum from Gary McCollum to David Murray, dated 13 April 2007 (Doc ID: 0.7.120.929472).

- 4.33 **The Inquiry finds that funds were drawn down prior to Board approval and that, accordingly, SPC 2.6 is proven as against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

- 4.34 The relevant policies here were the December 2007 Commercial Mortgage Lending Policy and the Moratoria Policy December 2007. (See Table included at Appendix 12).

- 4.35 The December 2007 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation had to be considered, approved and minuted by the Credit Committee. The Moratoria Policy December 2007 stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

- 4.36 The term of the loan in the CLA³³ and the CMO³⁴ was stated as 12 months with an original expiry date of 15 April 2007. However, it is clear from an examination of the Summit account that the loan was extended beyond the Review Period.³⁵ In December 2009, the Summit account showed that the balance of £61 million was written off in respect of this loan. There is no evidence on the loan file or from Credit Committee and Board meeting minutes and packs that this loan was extended in accordance with internal policy.

- 4.37 **The Inquiry finds that the term of this loan was extended with no approval process being applied and that, accordingly, SPC 2.9 is proven against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

- 4.38 The relevant policy here was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 12).

- 4.39 The loan was recommended for approval by the Credit Committee on 12 April 2007.³⁶ The CMO also issued on 12 April 2007. Whilst the CMO was issued on the same date as the Credit Committee meeting, it was issued prior to the Board meeting. Board

³³ Commercial Loan Application, dated 10 April 2007 (Doc ID: 0.7.120.25734).

³⁴ Commercial Mortgage Offer, dated 12 April 2007 (Doc ID: 0.7.120.43088).

³⁵ Summit Account spreadsheet (Doc ID: 0.7.120.802320).

³⁶ Minutes of Credit Committee meeting, dated 12 April 2007 (Doc ID: 0.7.120.9661).

approval was required for this loan as it was above the discretionary limit for the Credit Committee, which was €1 million at that time. The Board meeting approving the loan was held on 24 April 2007.³⁷

4.40 From an examination of the loan file and Credit Committee and Board meeting minutes, there is no evidence that the urgent credit decision approval procedures were followed in respect of this loan.

4.41 **The Inquiry finds that the CMO was issued prior to Board approval and that the urgent credit decision approval procedures were not complied with and, accordingly, that SPC 2.13 is proven against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.42 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

That policy stated that personal guarantees should be acquired where the borrower was a private company.

4.43 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO³⁸ nor the CLA³⁹ made any reference to a personal guarantee from any of the identified directors of [REDACTED]. [REDACTED] The Credit Committee recommendation⁴⁰ made no reference to security and the Board decision⁴¹ made no reference to guarantees from directors or controllers.

4.44 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, that SPC 3.2 is proven against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore

³⁷ Minutes of Board meeting, dated 24 April 2007 (Doc ID: 0.7.120.7630).

³⁸ Commercial Mortgage Offer, dated 12 April 2007 (Doc ID: 0.7.120.43088).

³⁹ Commercial Loan Application, dated 10 April 2007 (Doc ID: 0.7.120.25734).

⁴⁰ Minutes of Credit Committee meeting, dated 12 April 2007 (Doc ID: 0.7.120.9661).

⁴¹ Minutes of Board meeting, dated 24 April 2007 (Doc ID: 0.7.120.7630).

knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

- 4.45 The relevant policy here was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).
- 4.46 As outlined in that policy, the maximum LTV for "*Pub Lending*" was 70%. In circumstances where most of the public houses in this case were being acquired for resale, rather than with a view to running them as a business, it is arguable that these loans could be categorised as "*Development Finance*". That category of loan was not assigned a LTV in the 28 February 2007 Commercial Mortgage Lending Policy, but was to be assessed on a case by case basis. The Inquiry does not believe that, on the balance of probabilities, an adverse finding can be made in the circumstances.
- 4.47 **The Inquiry finds that the internal policy provisions relating to LTV limits were not breached in this loan and that, accordingly, SPC 3.4 is not proven against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. In light of the Inquiry's finding in respect of INBS, this loan specific participation allegation against Mr Purcell now falls away.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

- 4.48 In light of the above finding in respect of SPC 3.4, this allegation against INBS now falls away.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

Loan 3

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Business plan/proposals.

(b) Forecast cash flow analysis.

- 4.49 The relevant policy was the December 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11). The requirement of "*General Basic Criteria*" was the same in that policy as in the 28 February 2007 Commercial Mortgage Lending Policy.
- 4.50 When this loan first came before the Credit Committee⁴² on 13 March 2008, it was marked "*Put on Hold by Credit Committee because Additional information required with regard to INBS total debt to [REDACTED]*". This wording suggests that what was required was an update with regard to the total of this borrower's debt to INBS. This was provided at the Credit Committee meeting on 10 April 2008⁴³ and the facility was duly sanctioned. The additional information does not appear to refer to the loan itself but rather to the borrower.
- 4.51 The facility, referred to as Loan 3, was requested by the borrower by letter dated 22 February 2008.⁴⁴ This letter enclosed a breakdown of the capital expenditure to date and it stated that it was the borrower's belief that capital expenditure for the estate would be £3.5 million. This additional facility was requested in order to carry out a programme of capital expenditure, which would be paid for by an increase in rent in pubs where the expenditure had taken place.
- 4.52 In the internal memorandum requesting this additional loan⁴⁵, Mr McCollum informed Mr Fingleton that by October "*total debt is forecast of £243million with income of £23million and a value of £365million*". It also stated that 123 of the 249 pubs identified for sale had been sold which had realised a profit of £21,565,790. Taking this additional information into account, the Inquiry believes that there was an adequate business plan and cash flow analysis in respect of this additional loan.

⁴² Minutes of Credit Committee meeting, dated 13 March 2008 (Doc ID: 0.7.120.27827).

⁴³ Minutes of Credit Committee meeting, dated 10 April 2008 (Doc ID: 0.7.120.40596).

⁴⁴ Letter from [REDACTED] to Gary McCollum, INBS, dated 22 February 2008 (Doc ID: 0.7.120.895572).

⁴⁵ Internal memorandum, dated 4 March 2008 (Doc ID: 0.7.120.20591).

4.53 **The Inquiry finds that a business plan and cash flow analysis was acquired in respect of this additional loan and that, accordingly, SPC 1.3 is not proven as against INBS.**

SPC 2.12: Terms outlined in the CLA and approved by the Board differed to the terms outlined in the CMO.

4.54 The relevant policy was the December 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 12).

4.55 In the CLA⁴⁶ the term of the loan was stated to be eight months. In the CMO⁴⁷ the term of the loan was stated to be six months.

4.56 During the course of the Loan Hearings, the LPT made two observations in relation to this allegation. Firstly, there was a delay in processing this loan, which could explain why the term ended up being reduced. Second, although it is contrary to policy to alter the term of a loan, it may be that a reduction in the term of the loan, as opposed to an extension of the term of the loan, could be considered a less serious contravention of the policy. The Inquiry does not believe that this breach was of sufficient seriousness as to merit an adverse finding against INBS.

4.57 **The Inquiry finds that the allegation with respect to SPC 2.12 has not been proven against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.58 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

4.59 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO⁴⁸ nor the CLA⁴⁹ made any reference to a personal guarantee from any of the identified directors of [REDACTED]. [REDACTED] The Credit Committee sanction⁵⁰ made no reference to

⁴⁶ Commercial Loan Application, dated 6 March 2008 (Doc ID: 0.7.120.24987).

⁴⁷ Additional Commercial Mortgage Offer, dated 15 April 2008 (Doc ID: 0.7.120.40463).

⁴⁸ Additional Commercial Mortgage Offer, dated 15 April 2008 (Doc ID: 0.7.120.40463).

⁴⁹ Commercial Loan Application, dated 6 March 2008 (Doc ID: 0.7.120.24987).

⁵⁰ Minutes of Credit Committee meeting, dated 10 April 2008 (Doc ID: 0.7.120.40596).

security and the Board meeting minutes⁵¹ made no reference to guarantees from directors or controllers.

- 4.60 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and that, accordingly, SPC 3.2 is proven against INBS.**

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

- 4.61 The relevant policy here was the December 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

- 4.62 According to the CLA⁵², the purpose of this loan to [REDACTED] was to carry out capital expenditure on the [REDACTED] portfolio. If this loan was categorised as "*Pub Lending*" the same maximum LTV applied as under the 28 February 2007 Commercial Mortgage Lending Policy. If it was categorised as "*Development Finance*", then the LTV could be determined on a case by case basis. As found in the case of Loan 1 above, the Inquiry does not believe that, on the balance of probabilities, an adverse finding can be made in the circumstances.

- 4.63 **The Inquiry finds that the internal policy provisions relating to LTV limits were not breached in this loan and, accordingly, that SPC 3.4 is not proven against INBS.**

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

- 4.64 This allegation was advanced against INBS only and so (for the reasons set out in Chapter 3 paragraph 3.29) it was not opened during the SPC 1 to 4 Loan Hearings. Accordingly, this allegation was not considered by the Inquiry.

⁵¹ Minutes of Board meeting, dated 21 April 2008 (Doc ID: 0.7.120.7090).

⁵² Commercial Loan Application, dated 6 March 2008 (Doc ID: 0.7.120.24987).

Borrower: [REDACTED]

Loan Account: [REDACTED]

Loan 1 and Loan 2 - background to loans

- 4.65 In an internal memorandum dated 4 July 2007⁵³, Mr McCollum outlined the proposal that would form the basis of the [REDACTED] loan. The loan required was £155 million to purchase a 7.8 acre site in [REDACTED] in London. The site was granted planning permission for residential (613 private and 335 affordable flats), commercial, retail, and restaurant development, in February 2006. The term of the loan was for 12 months with an interest and capital moratorium. The internal memorandum indicated that INBS would be entitled to 25% of the £58 million estimated profit, subject to a minimum of £6.75 million. It further indicated that it was intended to refinance the INBS loan facility for the construction phase of the project, but INBS would remain entitled to its 25% share of profit. This loan facility was granted by INBS in July 2007.
- 4.66 Following a successful sales launch of phase 1 of the project, the client requested a further loan facility of £26.25 million in February 2008 to finance the construction of basement car parks and other additional works on the site. The Summit account for the first of these loans shows an outstanding balance as at 10 January 2010 of £157,435,118.63.⁵⁴ The outstanding balance for the second loan, as at 12 January 2010, was £27,075,735.21. Both loans were transferred to NAMA.⁵⁵
- 4.67 There were eight Loan Specific Allegations advanced in respect of the two loans to this borrower. Full details of these Loan Specific Allegations are set out below under each loan, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Loan 1

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Three years' audited accounts.**

⁵³ Internal memorandum, dated 4 July 2007 (Doc ID: 0.7.120.30107).

⁵⁴ Extract from Summit Account No [REDACTED] dated 11 January 2010 (Doc ID: 0.7.120.760628).

⁵⁵ A description of NAMA is contained in footnote 2 of this chapter.

4.68 The relevant policy here was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.69 As can be seen from that policy, three years' audited accounts was listed as one of the basic criteria for commercial lending. [REDACTED] was incorporated on 29 July 1997⁵⁶, and therefore three years' audited accounts would have been available. There is no evidence on the file that these accounts were sought or acquired by INBS in respect of this loan.

4.70 The Inquiry finds that there is no evidence that three years' audited accounts was sought or acquired in respect of this loan and it finds that, accordingly, SPC 1.3 is proven as against INBS.

SPC 2.5: Loans advanced prior to quorate Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with INBS's urgent credit decision approval procedures.

4.71 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The applicable urgent credit decision approval procedures were in the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.72 The CMO for this loan was dated 9 July 2007.⁵⁷ The first drawdown of £137 million to Howard Kennedy was on 10 July 2007.⁵⁸ The loan facility was recommended for approval at the Credit Committee meeting on 17 August 2007.⁵⁹

4.73 From an examination of the loan file and Credit Committee and Board meeting minutes and packs, there is no evidence that the urgent credit decision approval procedures as set out in policy were complied with.

4.74 The Inquiry finds that this loan was advanced prior to the Credit Committee meeting and not in compliance with urgent credit decision approval procedures and that, accordingly, SPC 2.5 is proven against INBS.

⁵⁶ Equifax Report (Doc ID: 0.7.120.927837).

⁵⁷ Commercial Mortgage Offer, dated 9 July 2007 (Doc ID: 0.7.120.25676).

⁵⁸ Society Advance Detail, dated 10 July 2007 (Doc ID: 0.7.120.6816).

⁵⁹ Minutes of Credit Committee meeting, dated 17 August 2007 (Doc ID: 0.7.120.20598).

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

- 4.75 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The applicable policies for urgent credit decision approval procedures were the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).
- 4.76 The CMO for this loan was dated 9 July 2007.⁶⁰ The first drawdown of over £137 million to Howard Kennedy was on 10 July 2007.⁶¹ The loan facility was approved at a Board meeting held on 30 August 2007.⁶² From an examination of the loan file and the Credit Committee and Board meeting minutes and packs, there is no evidence that the urgent credit decision approval procedures as set out in policy were complied with.
- 4.77 **The Inquiry finds that funds were drawn down prior to Board approval and without compliance with required urgent credit decision approval procedures and that, accordingly, SPC 2.6 is proven as against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

- 4.78 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).
- 4.79 The 21 April 2008 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation must have been considered, approved and minuted by the Credit Committee.
- 4.80 As this loan had an interest and capital moratorium, the Moratoria Policy 21 April 2008 applied, and it stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

⁶⁰ Commercial Mortgage Offer, dated 9 July 2007 (Doc ID: 0.7.120.25676).

⁶¹ Society Advance Detail, dated 10 July 2007 (Doc ID: 0.7.120.6816).

⁶² Minutes of Board meeting, dated 30 August 2007 (Doc ID: 0.7.120.14027).

- 4.81 Under the terms of the CMO⁶³ and CLA⁶⁴, this loan facility was for a term of 12 months. The Summit account for this loan⁶⁵ shows that it was extended beyond the Review Period. From an examination of the loan file and Credit Committee and Board meeting minutes, there is no evidence that the term extension approval process as set out in that policy was complied with.
- 4.82 **The Inquiry finds that this loan was extended without the appropriate approval policy being followed and that, accordingly, SPC 2.9 is proven against INBS.**
- SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.**
- 4.83 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The urgent credit decision approval procedures were in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).
- 4.84 The CMO for this loan was dated 9 July 2007.⁶⁶ The first drawdown of over £137 million to Howard Kennedy was on 10 July 2007.⁶⁷ The loan facility was recommended for approval at the Credit Committee meeting on 17 August 2007.⁶⁸ The loan facility was approved at a Board meeting held on 30 August 2007.⁶⁹
- 4.85 From an examination of the loan file, Credit Committee and Board meeting minutes and packs, there is no evidence that the urgent credit decision approval procedures as set out in the Credit Committee Terms of Reference were complied with.
- 4.86 **The Inquiry finds that the CMO was issued prior to the appropriate recommendation being obtained and not in compliance with urgent credit decision approval procedures and that, accordingly, SPC 2.13 is proven as against INBS.**

⁶³ Commercial Mortgage Offer, dated 9 July 2007 (Doc ID: 0.7.120.25676).

⁶⁴ Commercial Loan Application, dated 4 July 2007 (Doc ID: 0.7.120.42654).

⁶⁵ Extract from Summit Account No [REDACTED] dated 11 January 2010 (Doc ID: 0.7.120.760628).

⁶⁶ Commercial Mortgage Offer, dated 9 July 2007 (Doc ID: 0.7.120.25676).

⁶⁷ Society Advance Detail, dated 10 July 2007 (Doc ID: 0.7.120.6816).

⁶⁸ Minutes of Credit Committee meeting, dated 17 August 2007 (Doc ID: 0.7.120.20598).

⁶⁹ Minutes of Board meeting, dated 30 August 2007 (Doc ID: 0.7.120.14027).

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

- 4.87 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

That policy stated that a personal guarantee should be acquired when the borrower was a private company.

- 4.88 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO⁷⁰ nor the CLA⁷¹ in respect to this loan made any reference to a personal guarantee from any of the identified directors of [REDACTED]. The Credit Committee recommendation⁷² made no reference to security and the Board decision⁷³ made no reference to guarantees from directors or controllers.

- 4.89 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to these loans and, accordingly, it finds that SPC 3.2 is proven against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

⁷⁰ Commercial Mortgage Offer, dated 9 July 2007 (Doc ID: 0.7.120.25676).

⁷¹ Commercial Loan Application, dated 4 July 2007 (Doc ID: 0.7.120.42654).

⁷² Minutes of Credit Committee meeting, dated 17 August 2007 (Doc ID: 0.7.120.20598).

⁷³ Minutes of Board meeting, dated 30 August 2007 (Doc ID: 0.7.120.14027).

Loan 2

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Three years' audited accounts.

4.90 The relevant policy here was the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

As can be seen from that policy, three years' audited accounts was listed as one of the basic criteria for commercial lending.

4.91 [REDACTED] was incorporated on 29 July 1997⁷⁴, and therefore three years' audited accounts would have been available. There is no evidence on the file that these accounts were sought or acquired by INBS in respect of this loan.

4.92 **The Inquiry finds that there is no evidence that three years' audited accounts was sought or acquired in respect of this loan and accordingly, it finds that SPC 1.3 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.93 The relevant policies were the 27 June 2007 Credit Risk Management Policy and the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

These policies stated that a personal guarantee should be acquired when the borrower was a private company.

4.94 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO⁷⁵ nor the CLA⁷⁶ in respect to this loan made any reference to a personal guarantee from any of the identified directors of [REDACTED]. The Credit Committee sanction⁷⁷ made no reference to security

⁷⁴ Equifax Report (Doc ID: 0.7.120.927837).

⁷⁵ Additional Commercial Mortgage Offer, dated 21 April 2008 (Doc ID: 0.7.120.34338).

⁷⁶ Commercial Loan Application, dated 21 February 2008 (Doc ID: 0.7.120.34949).

⁷⁷ Minutes of Credit Committee meeting, dated 21 February 2008 (Doc ID: 0.7.120.36169).

and the Board meeting minutes⁷⁸ made no reference to guarantees from directors or controllers.

- 4.95 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, it finds that SPC 3.2 is proven as against INBS.**

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

- 4.96 Mr McCollum introduced this loan in an internal memorandum to Mr Fingleton dated 7 April 2006.⁷⁹ In that memorandum, Mr McCollum outlined a proposal to provide a loan facility of £6.5 million to a Special Purpose Vehicle (SPV) called [REDACTED] which was jointly owned by existing customers of INBS. [REDACTED] was proposing to buy a hotel called [REDACTED] in [REDACTED]. At the time of purchase, the hotel had 57 bedrooms and planning permission was to be sought for a further 65 suites which would provide 100 rooms in total.
- 4.97 It was intended to market the rooms and suites on an individual basis, which would commence once planning permission was obtained. It was further intended that the INBS loan facility would be refinanced with another lender who would finance the construction costs. In the meantime, interest payments would be met through hotel income. Mr McCollum appended a detailed project appraisal, which indicated a projected profit of £6,871,718.⁸⁰ INBS was to be entitled to a 25% profit share.⁸¹ The loan facility was re-financed and the loan was redeemed on 17 September 2007.⁸²
- 4.98 There were six Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

⁷⁸ Minutes of the Board meeting, dated 10 March 2008 (Doc ID: 0.7.120.40486).

⁷⁹ Internal memorandum, from Gary McCollum to Michael Fingleton, dated 7 April 2006 (Doc ID: 0.7.120.24429).

⁸⁰ [REDACTED] Project Appraisal, Project [REDACTED] (Doc ID: 0.7.120.935697).

⁸¹ Fee Agreement between INBS and [REDACTED], dated 13 April 2006 (Doc ID: 0.7.120.925509).

⁸² Internal memorandum from Gary McCollum to Stan Purcell, dated 4 October 2007 (Doc ID: 0.7.120.894930).

SPC 2.5: Loans advanced prior to quorate Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with INBS's urgent credit decision approval procedures.

- 4.99 The relevant policies were the 16 October 2003 Credit Committee Terms of Reference, the UK Version of the April 2003 Credit Risk Policy and the April 2003 Credit Risk Policy. (See Table included at Appendix 12).

The April 2003 Credit Risk Policy stated that before a drawdown could take place, all conditions of the loan approval must have been complied with.

- 4.100 Approval for this loan required that the Credit Committee consider the loan and recommend it to the Board for approval and that the Board grant such approval, or that the loan be approved under the urgent credit decision approval procedures.
- 4.101 The CLA⁸³ for this loan was dated 10 April 2006. The drawdown date for this loan was 13 April 2006.⁸⁴ The Credit Committee recommended the loan for approval at a meeting on 20 April 2006⁸⁵ and the Board approved the loan at a meeting held on 25 April 2006.⁸⁶ The CLA on file, which was dated 10 April 2006 stated:

“Conclusion/Recommendation

Credit Committee have reviewed this application and sanction as set out is recommended to the Board”.

- 4.102 From an examination of the loan file and Credit Committee and Board meeting minutes and packs, there is no evidence that the urgent credit decision approval procedure as set out in the Credit Committee Terms of Reference was complied with. The agenda for the Credit Committee meeting on 20 April 2006⁸⁷, referred to the fact that exceptions would be discussed at the meeting, but there is no evidence that this occurred.
- 4.103 **The Inquiry finds that this loan was advanced prior to the Credit Committee meeting and that, accordingly, SPC 2.5 is proven as against INBS.**

⁸³ Commercial Loan Application, dated 10 April 2006 (Doc ID: 0.7.120.34958).

⁸⁴ Society Advance Detail, dated 13 April 2006 (Doc ID: 0.7.120.40950); Letter from Gary McCollum, INBS, to Martin Phillips, Howard Kennedy, dated 11 April 2006 (Doc ID: 0.7.120.895222).

⁸⁵ Minutes of Credit Committee meeting, dated 20 April 2006 (Doc ID: 0.7.120.19616).

⁸⁶ Minutes of Board meeting, dated 25 April 2006 (Doc ID: 0.7.120.40827).

⁸⁷ Agenda for Credit Committee meeting, dated 20 April 2006 (Doc ID: AD-0.7.120.519105).

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

- 4.104 The relevant policies here were the 16 October 2003 Commercial Credit Committee Terms of Reference and the UK Version of the April 2003 Credit Risk Policy. (See Table included at Appendix 12).
- 4.105 The CLA⁸⁸ for this loan was dated 10 April 2006. The drawdown date for this loan was 13 April 2006. The Credit Committee recommended the loan for approval at a meeting on 20 April 2006⁸⁹ and the Board approved the loan at a meeting held on 25 April 2006.⁹⁰
- 4.106 From an examination of the loan file and Credit Committee and Board meeting minutes, there is no evidence that the urgent credit decision approval procedures as set out in the Credit Committee Terms of Reference were complied with. The drawdown date for this loan facility was 13 April 2006. A number of documents on file show that £6.5 million was transferred to the account of INBS's solicitors, Howard Kennedy, who also acted for the borrower in this transaction. A SAD dated 13 April 2006⁹¹ and a letter from Mr McCollum to Howard Kennedy dated 11 April 2006 confirming that transfer would occur on that date⁹², both confirm the drawdown date.
- 4.107 **The Inquiry finds that the funds in respect of this loan were advanced prior to Board approval and without compliance with the required urgent credit decision approval procedures and that, accordingly, SPC 2.6 is proven as against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

- 4.108 The relevant policies were the 16 October 2003 Commercial Credit Committee Terms of Reference, the April 2003 Credit Risk Policy and the UK Version of the April 2003 Credit Risk Policy. (See Table included at Appendix 12).
- 4.109 The April 2003 Credit Risk Policy applied to loans originating from both the Dublin and the Belfast Branch of INBS, and the UK Version of the April 2003 Credit Risk Policy

⁸⁸ Commercial Loan Application, dated 10 April 2006 (Doc ID: 0.7.120.34958).

⁸⁹ Minutes of Credit Committee meeting, dated 20 April 2006 (Doc ID: 0.7.120.19616).

⁹⁰ Minutes of Board meeting, dated 25 April 2006 (Doc ID: 0.7.120.40827).

⁹¹ Society Advance Detail, dated 13 April 2006 (Doc ID: 0.7.120.40950).

⁹² Letter from Gary McCollum, INBS, to Martin Philips, Howard Kennedy, dated 11 April 2006 (Doc ID: 0.7.120.895222).

included some additional provisions that applied to loans originating from the Belfast Branch only. The urgent credit decision approval procedures were set out in the 16 October 2003 Commercial Credit Committee Terms of Reference.

4.110 The April 2003 Credit Risk Policy stated that Board submissions (i.e. CLAs) must be completed and approved before preparation of commercial offer letters. The Inquiry agrees with the Investigation Report submission that where the UK Version of the April 2003 Credit Risk Policy was silent on this issue, the April 2003 Credit Risk Policy provision in relation to Board submissions applied to this loan.⁹³

4.111 The CMO for this loan was sent by Mr McCollum to [REDACTED] on 7 April 2006.⁹⁴ A signed CMO was received by INBS on 12 April 2006.⁹⁵ The CLA for this loan was prepared on 10 April 2006.⁹⁶ The loan was recommended for approval at the Credit Committee meeting on 20 April 2006⁹⁷ and was approved by the Board at the Board meeting held on 25 April 2006.⁹⁸ From an examination of the loan file and Credit Committee and Board meeting minutes, there is no evidence that the urgent credit decision approval procedures as set out in the Credit Committee Terms of Reference were complied with.

4.112 **The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and without required urgent credit decision approval procedures and that, accordingly, SPC 2.13 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.113 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

⁹³ Investigation Report, Chapter 7, paragraph 7.49 (Doc ID: RDU_REL-000000031).

⁹⁴ Commercial Mortgage Offer, dated 7 April 2006 (Doc ID: 0.7.120.29475).

⁹⁵ Commercial Mortgage Offer, dated 7 April 2006 (Doc ID: 0.7.120.29475).

⁹⁶ Commercial Loan Application, dated 10 April 2006 (Doc ID: 0.7.120.34958).

⁹⁷ Minutes of Credit Committee meeting, dated 20 April 2006 (Doc ID: 0.7.120.19616).

⁹⁸ Minutes of Board meeting, dated 25 April 2006 (Doc ID: 0.7.120.40827).

4.114 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.⁹⁹

4.115 The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO¹⁰⁰ nor the CLA¹⁰¹ made any reference to a personal guarantee from either of the identified directors of [REDACTED]. The Credit Committee recommendation¹⁰² made no reference to security and the Board decision¹⁰³ made no reference to guarantees from directors or controllers.

4.116 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and it finds that, accordingly, SPC 3.2 is proven as against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.117 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

As noted above, the Inquiry has determined that the 9 November 2004 Commercial

⁹⁹ Having considered the submissions received from the LPT, Enforcement and Mr Purcell on this point, the Inquiry decided that the 9 November 2004 Commercial Lending Criteria did not constitute an internal INBS policy and therefore could not be the basis for any allegation of failure to adhere to policy either on the part of INBS or Mr Purcell. The reasons for this decision of the Inquiry are set out in full in Appendix 10 of this Findings Report.

¹⁰⁰ Commercial Mortgage Offer, dated 7 April 2006 (Doc ID: 0.7.120.29475).

¹⁰¹ Commercial Loan Application, dated 10 April 2006 (Doc ID: 0.7.120.34958).

¹⁰² Minutes of Credit Committee meeting, dated 20 April 2006 (Doc ID: 0.7.120.19616).

¹⁰³ Minutes of Board meeting, dated 25 April 2006 (Doc ID: 0.7.120.40827).

Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

4.118 In view of the Inquiry's determination regarding the 9 November 2004 Commercial Lending Criteria, no finding is made in relation to INBS in respect of this allegation.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As no finding has been made against INBS, this loan specific participation allegation against Mr Purcell now falls away.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.119 The relevant policy here was the 16 October 2003 Commercial Credit Committee Terms of Reference.

4.120 In circumstances where the Inquiry makes no finding in respect of SPC 3.4 above, this allegation no longer arises.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.121 [REDACTED] was a SPV used by [REDACTED] to purchase a substantial site in London. The site consisted of retail ground floor units and upper residential flats. Planning permission was granted in June 2006 for the demolition of the existing building and construction of three new buildings of 73,000 sq. ft. providing private and affordable residential units, retail and car parking accommodation.

4.122 The plan was to bring the properties to the market as soon as possible with a view to securing a number of off-plan sales. The internal memorandum dated 1 March 2007¹⁰⁴, from Mr McCollum to Mr Fingleton requested approval for a loan of £40 million to fund

¹⁰⁴ Internal memorandum from Gary McCollum to Michael Fingleton, dated 1 March 2007 (Doc ID: 0.7.120.922001).

the purchase and development of the site. Resale value was stated as £56.5 million. Profit on the development was estimated at £12.5 million and INBS was to receive a profit share of 25%.

- 4.123 The CLA¹⁰⁵ was dated 6 March 2007 and it outlined the details of the proposal including a capital and interest moratorium for the term of the loan. The project appraisal was attached to the CLA. The CLA was signed by Mr Shane McGowan and Mr Tom McMenamin, and recommended for approval at Credit Committee meeting dated 12 March 2007¹⁰⁶ and approved at Board Meeting dated 13 March 2007.¹⁰⁷ A valuation¹⁰⁸ dated 8 March 2007 was received from Gerald Eve, a real estate advisory business, which valued the site with planning at £19.1 million and gross development value at £51 million.
- 4.124 The CMO dated 9 March 2007 was signed by the borrower on 12 March 2007.¹⁰⁹ Drawdown of this loan was dated 15 March 2007¹¹⁰ totalling £19.67 million, comprising a £200,000 arrangement fee and £19.47 million remitted to Howard Kennedy. This drawdown covered the purchase of the site. The loan was part redeemed on 15 March 2008 and 22 August 2008, with final redemption being recorded on 13 August 2010.¹¹¹ INBS earned a profit share of just over £1.25 million on this loan.¹¹²
- 4.125 There were three Loan Specific Allegations advanced in respect of this loan. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Three years' audited accounts.

- 4.126 The relevant policy here was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

That policy stated that three years' audited accounts was a basic criteria for a commercial loan to a private company.

¹⁰⁵ Commercial Loan Application, dated 6 March 2007 (Doc ID: 0.7.120.24985).

¹⁰⁶ Minutes of Credit Committee meeting, dated 12 March 2007 (Doc ID: 0.7.120.37857).

¹⁰⁷ Minutes of Board meeting, dated 13 March 2007 (Doc ID: 0.7.120.10647).

¹⁰⁸ Gerald Eve Valuation, dated 8 March 2007 (Doc ID: 0.7.120.43756).

¹⁰⁹ Commercial Mortgage Offer, dated 9 March 2007 (Doc ID: 0.7.120.25820).

¹¹⁰ Internal memorandum from Gary McCollum to David Murray, dated 14 March 2007 (Doc ID: 0.7.120.925000).

¹¹¹ Loan Redemption Log (Doc ID: 0.7.120.918967).

¹¹² Income & Expenditure Summary [REDACTED], dated 3 February 2012 (Doc ID: 0.7.120.930020).

4.127 The certificate of incorporation¹¹³ indicated that [REDACTED] was incorporated on 13 July 2004, less than three years before this loan was granted; meaning that two years' accounts would have been available. The Consolidated Table in respect of this allegation stated in a footnote:

*“Or, for newly incorporated companies where three years audited accounts were not available at the time of loan application, the number of years of audited accounts that would have been available at the time of loan application (ie one or two years)”.*¹¹⁴

4.128 On this basis SPC 1.3 was alleged in respect of borrower companies that were less than three years old. However, the Inquiry has seen no basis in policy for this approach. The relevant policies all refer to “*Three years audited accounts*” and there is no provision for requiring accounts for a shorter period.

4.129 **The Inquiry finds that there was not a failure to acquire required information, namely three years' audited accounts. Accordingly, SPC 1.3 is not proven against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.130 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The applicable urgent credit decision approval procedures were in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.131 The CMO was issued on 9 March 2007 and was signed by the borrower on 12 March 2007.¹¹⁵ The Credit Committee meeting recommending the loan for approval was held on 12 March 2007¹¹⁶ and the Board meeting approving the loan was held on 13 March 2007.¹¹⁷ The Credit Committee recommendation for approval to the Board post-dated the CMO.

¹¹³ Certificate of Incorporation of [REDACTED], dated 13 July 2004 (Doc ID: 0.7.120.919118).

¹¹⁴ Consolidated Table C1.3 page vii, footnote 2 (Doc ID: RDU_REL1600-00000041).

¹¹⁵ Commercial Mortgage Offer, dated 9 March 2007 (Doc ID: 0.7.120.25820).

¹¹⁶ Minutes of Credit Committee meeting, dated 12 March 2007 (Doc ID: 0.7.120.37857).

¹¹⁷ Minutes of Board meeting, dated 13 March 2007 (Doc ID: 0.7.120.10647).

4.132 From an examination of the consolidated loan file and Credit Committee and Board meeting minutes and packs, there is no evidence that the urgent credit decision approval procedures as set out in the policy were complied with.

4.133 **The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures. Accordingly, SPC 2.13 is proven against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.134 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

4.135 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO¹¹⁸ nor the CLA¹¹⁹ make any reference to a personal guarantee from the identified directors of [REDACTED] and the Board decision made no reference to guarantees from directors or controllers.

4.136 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, it finds that SPC 3.2 is proven against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

¹¹⁸ Commercial Mortgage Offer, dated 9 March 2007 (Doc ID: 0.7.120.25820).

¹¹⁹ Commercial Loan Application, dated 6 March 2007 (Doc ID: 0.7.120.24985).

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loans

- 4.137 Mr McCollum sent an internal memorandum to Mr Fingleton dated 11 April 2005¹²⁰, outlining a proposed deal, which would be financed by INBS with a £25 million facility. This was later changed to £27.5 million.
- 4.138 Two existing customers of INBS ([REDACTED] and [REDACTED]), had jointly owned an island site at [REDACTED] London, for a number of years. Planning permission had been recently granted for the construction of a 913 room serviced aparthotel over 13 storeys.
- 4.139 At an adjoining site, [REDACTED] had developed the concept of investors purchasing a room which was then let out by the hotel producing a rental yield (or which could be used by the investor), and it was proposed to do a similar development at [REDACTED]. The two existing customers had an additional partner (and funder of the existing debt) who they wished to buy out to enable them to carry out the scheme themselves. The site was valued at £35 million with existing planning permission.
- 4.140 Mr McCollum proposed that INBS would provide a two year loan facility of £25 million (this figure was amended by hand on the internal memorandum to £27.5 million) to purchase the third shareholding and commence works.¹²¹ The site would be charged to INBS as security. A valuation from Savills, auctioneers and valuer, dated 29 September 2005¹²², valued the existing site with permission for a 743 room aparthotel at £40 million. An application to increase the permission to a 913 room aparthotel was planned to be lodged. In the event of it being granted, the site value would increase to £52.8 million. This permission was subsequently granted.
- 4.141 Marketing 50% of the units was to commence immediately and INBS was to be repaid when construction funding was provided by a third party. INBS was entitled to 33.34% of profits estimated at £80 million and would retain this entitlement after repayment of the facility. The initial loan was divided into two loans. One for £21 million and the other

¹²⁰ Internal memorandum, from Gary McCollum to Michael Fingleton, dated 11 April 2005 (Doc ID: 0.7.120.935793).

¹²¹ Internal memorandum, from Gary McCollum to Michael Fingleton, dated 11 April 2005 (Doc ID: 0.7.120.935793).

¹²² Savills Valuation Report, dated 29 September 2005 (Doc ID: 0.7.120.895430).

for £6.5 million. Two further loans were provided, Loan 3 for £3 million was granted on 10 April 2006¹²³ and Loan 4 for £9.4 million was granted on 30 June 2006.¹²⁴ The loans were structured with a full capital and interest moratorium with repayment either from the sale of the site or from a refinancing of the facility.

4.142 The loans were repaid in full at the end of March 2007 with the fee agreement to be guaranteed by the customer companies. It was proposed that INBS could take £13 million in 2016 if the development went to plan, or take an immediate payout of £3 million. In the end, INBS received £2,871,612.91 in cash¹²⁵ and 245,000 shares valued at £3.20 per share, which had to be retained for one year.¹²⁶

4.143 There were 15 Loan Specific Allegations advanced in respect of the four loans to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto. The Inquiry has dealt with each of the Loan Specific Allegations as they arise in respect of the four loans because of the close proximity of the loans to each other, and some of the findings apply across all four loans.

Loans 1, 2, 3 and 4

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Three years' audited accounts.

4.144 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

¹²³ Additional Commercial Mortgage Offer, dated 10 April 2006 (Doc ID: 0.7.120.22359).

¹²⁴ Additional Commercial Mortgage Offer, dated 30 June 2006 (Doc ID: 0.7.120.30244).

¹²⁵ Internal memorandum from Gary McCollum to Stan Purcell, dated 21 February 2008 (Doc ID: 0.7.120.924622).

¹²⁶ Email from [REDACTED] to Gary McCollum, INBS, dated 16 January 2008 (Doc ID: 0.7.120.918561).

Loan 3 and 4

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Forecast cash flow analysis.

4.145 The relevant Policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

Loan 4

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Business plan/proposals.

4.146 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

Loans 1 and 2

SPC 2.1: Funds advanced without Credit Committee approval or recommendation and not in compliance with INBS's urgent credit decision approval procedures.

4.147 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.148 The CLA for Loans 1 and 2 was issued on 14 April 2005.¹²⁷ The CMO for Loans 1 and 2 was issued on 26 April 2005¹²⁸ and a drawdown of £21 million occurred on 5 May

¹²⁷ Commercial Loan Application, dated 14 April 2005 (Doc ID: 0.7.120.935755).

¹²⁸ Commercial Mortgage Offer, dated 26 April 2005 (Doc ID: 0.7.120.895014).

2005.¹²⁹ The Inquiry has examined Credit Committee meeting minutes during the Review Period and there is no evidence that this loan for £27 million to [REDACTED] was considered at any of these meetings. The Inquiry has examined the consolidated loan file for these loans and there is no evidence that any urgent credit decision approval procedures as set out in the 16 October 2003 Commercial Credit Committee Terms of Reference were complied with.

- 4.149 **The Inquiry finds that these loans were advanced without being considered at a Credit Committee meeting and therefore without the required recommendation for approval. There is no evidence of compliance with urgent credit decision approval procedures and, accordingly, the Inquiry finds that SPC 2.1 is proven as against INBS.**

Loans 3 and 4

SPC 2.4: Credit Committee not quorate when loans were approved or recommended and loans not in compliance with INBS's urgent credit decision approval procedures.

- 4.150 This allegation was against INBS only and so it was not opened during the SPC 1 to 4 Loan Hearings. Accordingly, this allegation was not considered by the Inquiry.

Loan 4

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

- 4.151 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. The applicable urgent credit decision approval procedures were in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12). This allegation referred to the fourth loan extended to [REDACTED] for £9.4 million.
- 4.152 Mr McCollum sent an internal memorandum to Mr Fingleton, dated 27 June 2006, in relation to the additional advance required of £9.4 million.¹³⁰ The CMO was signed by

¹²⁹ Society Advance Detail, dated 5 May 2005 (Doc ID: 0.7.120.18306).

¹³⁰ Internal memorandum from Gary McCollum to Michael Fingleton, dated 27 June 2006 (Doc ID: 0.7.120.22718).

the borrower on 3 July 2006¹³¹ and the CLA was dated 7 July 2006.¹³² The initial drawdown, which is evidenced by the SAD dated 7 July 2007, was for £2,061,120.54¹³³ and [REDACTED] was named as the payee. The Credit Committee recommendation was delivered at a meeting held on 14 July 2006¹³⁴ and Board approval was given during a meeting held on 19 July 2006.¹³⁵

- 4.153 The Inquiry has examined the minutes for these meetings and subsequent meetings of the Credit Committee and the Board and can find no evidence that urgent credit decision approval procedures were complied with. There is no reference in the Board approval that this loan had been urgently approved or of the fact that drawdown had already occurred.
- 4.154 **The Inquiry finds that funds were advanced on this loan prior to Board approval and it did not comply with urgent credit decision approval procedures. Accordingly, SPC 2.6 is proven as against INBS.**

Loan 2

SPC 2.8: Loan amount advanced per the CMO was in excess of the amount outlined in the CLA and approved by the Board and additional funds were not appropriately approved.

- 4.155 The relevant policies were the Board Resolution September 2002, the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

INBS policy required that the loan offered to a borrower was consistent with the loan approved by the Board.

- 4.156 The CLA for this loan¹³⁶ was dated 14 April 2005 and the loan amount was identified as £25 million. There does not appear to have been a Credit Committee meeting at which this facility was recommended, but it was approved at a Board meeting on 19 April 2005.¹³⁷ The minutes of that meeting recorded the amount being provided as £25 million. The CMO which was issued to [REDACTED] was dated 26 April 2005 and

¹³¹ Additional Commercial Mortgage Offer, dated 30 June 2006 (Doc ID: 0.7.120.30244).

¹³² Commercial Loan Application, dated 7 July 2006 (Doc ID: 0.7.120.39637).

¹³³ Society Advance Detail, dated 7 July 2006 (Doc ID: 0.7.120.41664).

¹³⁴ Minutes of Credit Committee meeting, dated 14 July 2006 (Doc ID: 0.7.120.37899).

¹³⁵ Minutes of Board meeting, dated 19 July 2006 (Doc ID: 0.7.120.33969).

¹³⁶ Commercial Loan Application, dated 14 April 2005 (Doc ID: 0.7.120.935755).

¹³⁷ Minutes of Board meeting, dated 19 April 2005 (Doc ID: 0.7.120.39348).

it referred to a loan amount of £27.5 million.¹³⁸ The CMO divided the loan into two separate loans, one for £21 million and a second loan for £6.5 million. It was this second loan that this allegation referred to and if it had been issued in accordance with the CLA, this loan would have been for £4 million. The CMO was signed by Mr McCollum and by a director of the borrower on 27 April 2005.

- 4.157 The internal memorandum¹³⁹ sent by Mr McCollum to Mr Fingleton dated 11 April 2005 had a handwritten correction inserted beside the “*Total facility required*” section. Beside the figure of £25 million, Mr McCollum wrote “£27.5 M now required as advised to Tom McM for CLA. GMcC”. The “*Initial arrangement fee*” was also amended accordingly by hand from £125,000 to £137,500. The original facility figure of £25 million appears further down in the document. On the face of the documents it appears that the CLA¹⁴⁰ was prepared on the basis of the original facility figure and did not reflect the amendment made in the internal memorandum. Accordingly, the CMO was issued for £2.5 million more than was ultimately approved by the Board.
- 4.158 The Inquiry has examined the consolidated loan file for these loans and there is no evidence that any urgent credit decision approval procedures as set out in the 16 October 2003 Commercial Credit Committee Terms of Reference were complied with.
- 4.159 **The Inquiry finds that the loan amount advanced per the CMO was in excess of the amount outlined in the CLA and approved by the Board and without complying with urgent credit decision approval procedures. Accordingly, it finds that SPC 2.8 is proven as against INBS.**

Loan 4

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS’s urgent credit decision approval procedures.

- 4.160 The relevant policy was the April 2003 Credit Risk Policy. The applicable urgent credit decision approval procedures were in the Board Resolution September 2002, and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

¹³⁸ Commercial Mortgage Offer, dated 26 April 2005 (Doc ID: 0.7.120.895014).

¹³⁹ Internal memorandum from Gary McCollum to Michael Fingleton, dated 11 April 2005 (Doc ID: 0.7.120.935793).

¹⁴⁰ Commercial Loan Application, dated 14 April 2005 (Doc ID: 0.7.120.935755).

- 4.161 The CMO for this loan was issued and signed on behalf of Mr McCollum on 30 June 2006. The CMO was signed on behalf of the borrower on 3 July 2006.¹⁴¹ The Credit Committee recommended the loan for approval on 14 July 2006¹⁴² and the Board gave its approval on 19 July 2006.¹⁴³
- 4.162 There is no evidence from the consolidated loan file or from the Credit Committee or the Board meeting minutes and packs that any urgent credit decision approval procedures were applied in this case.
- 4.163 **The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and was not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.**

Loans 1, 2, 3 and 4

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

- 4.164 The relevant policies identified in the Investigation Report in respect of all four loans were the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007. The UK Version of the April 2003 Credit Risk Policy did apply to this allegation.

- 4.165 The Inquiry has examined the consolidated loan file for the four loans advanced to [REDACTED] and there is no evidence that a personal guarantee was either sought or obtained from the directors of the company. Neither the CMOs nor the CLAs refer to a personal guarantee from any of the identified directors of [REDACTED]
- 4.166 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to these loans and, accordingly, finds that SPC 3.2 is proven against INBS.**

¹⁴¹ Additional Commercial Mortgage Offer, dated 30 June 2006 (Doc ID: 0.7.120.30244).

¹⁴² Minutes of Credit Committee meeting, dated 14 July 2006 (Doc ID: 0.7.120.37899).

¹⁴³ Minutes of Board meeting, dated 19 July 2006 (Doc ID: 0.7.120.33969).

A Loan Specific Allegation was also advanced against Mr Purcell in respect of these loans. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meetings at which these loans were authorised and therefore knew or ought to have known that there were no guarantees indicated in the CLAs. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving these loans, did amount to participation in the authorisation of these loans without a personal guarantee from the corporate borrower. The Inquiry will have regard to these loan specific participation findings against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.167 INBS advanced £23.5 million to [REDACTED] to purchase a site at [REDACTED]. The site formed part of a 60 acre regeneration zone known as the [REDACTED], which was to see the construction of 2000 new homes with leisure and retail facilities as well as a new home for [REDACTED]

4.168 It was proposed that the two owners of [REDACTED], [REDACTED] [REDACTED] (66.66%) and [REDACTED] (33.34%), both existing customers of INBS, would immediately market the development for sale. In his internal memorandum dated 18 April 2005 to Mr Fingleton, Mr McCollum stated:

"It is intended to sell the majority of units off plan prior to refinancing the Society's facility with another lender who will also provide the construction finance.

6. The society will however retain its profit entitlement of 33.34%".¹⁴⁴

The purchase did not have to be completed until September 2005.

¹⁴⁴ Internal memorandum from Gary McCollum to Michael Fingleton, dated 18 April 2005 (Doc ID: 0.7.120.28399).

4.169 The CLA was dated 18 April 2005¹⁴⁵ and it provided a two year term with full capital and interest moratoria. The LTV was 100% and the security was a fixed and floating charge over the borrowing companies and the asset the subject matter of the loan.

4.170 The file, which has been examined by the Inquiry, is very sparse in terms of documentation. An email dated 27 September 2005 from Mr McCollum to Mark Nicholls (accounts clerk in INBS), copied to Mr McMenamin entitled "*Large Exposure Amendments*", states:

[REDACTED]

This loan is shortly to be refinanced and as such the full facility will not be required.

*As such the total exposure should now be limited to £5,000,000".*¹⁴⁶

4.171 An analysis of the Summit entries for this loan show that in fact only approximately £3.37 million of this facility was drawn down and that on 3 July 2006 the loan was redeemed in full.¹⁴⁷ A further document dated 13 June 2011 from INBS to BDO LLP, who appear to be the borrower's auditors, show a nil balance in the company's account with INBS.¹⁴⁸

4.172 There were seven Loan Specific Allegations advanced in respect of this loan. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Business plan/proposals.

4.173 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

¹⁴⁵ Commercial Loan Application, dated 18 April 2005 (Doc ID: 0.7.120.7847).

¹⁴⁶ Email from Gary McCollum to Mark Nicholls, INBS, dated 27 September 2005 (Doc ID: 0.7.120.894278).

¹⁴⁷ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760653).

¹⁴⁸ Letter from INBS to BDO LLP, dated 13 June 2011 (Doc ID: 0.7.120.22886).

SPC 2.1: Funds advanced without Credit Committee approval or recommendation and not in compliance with INBS's urgent credit decision approval procedures.

4.174 The relevant policies were the 16 October 2003 Credit Committee Terms of Reference and UK Version of the April 2003 Credit Risk Policy. The applicable urgent credit decision approval procedures were in the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

Both policies stipulated that CLAs in excess of a stipulated amount should be approved or recommended for approval by the Credit Committee. The UK Version of the April 2003 Credit Risk Policy set that level at £500,000.

4.175 The CMO for this loan is dated 15 April 2005.¹⁴⁹ An internal memorandum from Mr McCollum to Mr Fingleton was issued on 18 April 2005¹⁵⁰ and the CLA was also dated 18 April 2005.¹⁵¹ The Board meeting approving the loan was held on 19 April 2005.¹⁵² The CLA on file, which is dated 18 April 2005 stated:

“Conclusion/Recommendation:

*The foregoing Facility has been discussed by the Society's credit committee and sanction is recommended”.*¹⁵³

4.176 The Inquiry has examined Credit Committee meeting minutes during the Review Period and there is no evidence that this loan was considered at any meeting of the Credit Committee. There is no evidence that any urgent credit decision approval procedures were applied in this case.

4.177 The Inquiry finds that this loan was not approved/recommended for approval by the Credit Committee and was not in compliance with the urgent credit decision approval procedures and that, accordingly, SPC 2.1 is proven against INBS.

¹⁴⁹ Commercial Mortgage Offer, dated 15 April 2005 (Doc ID: 0.7.120.9218).

¹⁵⁰ Internal memorandum from Gary McCollum to Michael Fingleton, dated 18 April 2006 (Doc ID: 0.7.120.28399).

¹⁵¹ Commercial Loan Application, dated 18 April 2005 (Doc ID: 0.7.120.484745).

¹⁵² Minutes of Board meeting dated 19 April 2005 (Doc ID: 0.7.120.39348).

¹⁵³ Commercial Loan Application, dated 18 April 2005 (Doc ID: 0.7.120.484745).

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.178 The relevant policies were the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.179 The CMO for this loan was issued on 15 April 2005.¹⁵⁴ As outlined above, the Credit Committee does not appear to have considered this loan at any of its meetings. The Inquiry has examined Board meeting minutes from the time period of this loan. The minutes for the meeting on 19 April 2005¹⁵⁵ show that this facility was authorised by the Board. This approval post-dated both the CMO and the CLA of this loan.

4.180 There is no evidence that any urgent credit decision approval procedures were complied with and the Board meeting minutes did not refer to the fact that the CMO had already issued at the time it was considering this loan for approval.

4.181 The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures and, accordingly, that SPC 2.13 is proven against INBS.

SPC 2.16: CMO not appropriately signed by INBS.

4.182 The relevant policy was the UK Version of the April 2003 Credit Risk Policy. (See Table included at Appendix 12).

The UK Version of the April 2003 Credit Risk Policy stated that a senior commercial lender or the home loans manager or the underwriter or the UK Branch manager may sign the CMO.

4.183 The CMO was issued on 15 April 2005.¹⁵⁶ Mr McCollum's name was typed at the end of the letter but he does not appear to have signed it. The CMO was signed by one of the directors of [REDACTED] and dated 15 April 2005.

4.184 The Inquiry finds that the CMO was not appropriately signed by INBS and, accordingly, that SPC 2.16 is proven as against INBS.

¹⁵⁴ Commercial Mortgage Offer, dated 15 April 2005 (Doc ID: 0.7.120.9218).

¹⁵⁵ Minutes of Board meeting dated 19 April 2005 (Doc ID: 0.7.120.39348).

¹⁵⁶ Commercial Mortgage Offer, dated 15 April 2005 (Doc ID: 0.7.120.9218).

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.185 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007. The UK Version of the April 2003 Credit Risk Policy does apply to this allegation.

4.186 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO¹⁵⁷ nor the CLA¹⁵⁸ in respect of this loan made any reference to a personal guarantee from any of the directors of the company.

4.187 As outlined above, the Credit Committee does not appear to have considered this loan at any of its meetings, and the Board decision¹⁵⁹ made no reference to guarantees from directors or controllers.

4.188 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, that SPC 3.2 is proven as against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

¹⁵⁷ Commercial Mortgage Offer, dated 15 April 2005 (Doc ID: 0.7.120.9218).

¹⁵⁸ Commercial Loan Application, dated 18 April 2005 (Doc ID: 0.7.120.484745).

¹⁵⁹ Minutes of Board meeting dated 19 April 2005 (Doc ID: 0.7.120.39348).

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.189 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

4.190 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As no finding has been made against INBS, this loan specific participation allegation against Mr Purcell now falls away.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.191 The relevant policy here was the 16 October 2003 Commercial Credit Committee Terms of Reference.

4.192 In circumstances where the Inquiry makes no finding in respect of SPC 3.4, this allegation no longer arises.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.193 On 4 December 2006, Mr McCollum sent an internal memorandum to Mr Fingleton outlining a proposal to advance £41 million to [REDACTED] (later changed to [REDACTED]) to facilitate the purchase of a building in London.¹⁶⁰ The site, which comprised four acres, had planning permission for residential, commercial, retail and car parking development. The intention was for

¹⁶⁰ Internal memorandum from Gary McCollum to Michael Fingleton, dated 4 December 2006 (Doc ID: 0.7.120.44356).

INBS to fund the purchase of the site and marketing off plan, with the scheme being refinanced by another lender, who would support the construction.

- 4.194 A CLA dated 5 December 2006 was prepared.¹⁶¹ This stated that the LTV was 96%. A valuation was prepared by Gerald Eve, a real estate advisory business, dated 19 December 2006 and the LTV was confirmed as the site was valued at £42.5 million.¹⁶² The CLA referred to a 25% profit share for INBS on the profits of this proposed transaction. Full capital and interest moratorium was to be applied to the loan for the duration of the term, which was for 12 months.
- 4.195 The loan was considered at a Credit Committee meeting on 13 December 2006 and recommended to the Board for approval.¹⁶³ It was approved at a Board meeting on 19 December 2006.¹⁶⁴ The CMO was issued on 20 December 2006 and was signed on behalf of the borrower on 4 January 2007.¹⁶⁵ Initial funds of £39,144,345 were remitted to Howard Kennedy, on 12 January 2007.¹⁶⁶ At a Credit Committee meeting dated 23 July 2008 a further facility of £10 million to [REDACTED] was approved, but this does not form part of the present investigation.¹⁶⁷
- 4.196 A facility of up to £65 million had been arranged with [REDACTED] to part refinance the site cost and to finance the residential development.¹⁶⁸ As part of this INBS was to receive a £17.5 million repayment. In the event, this was limited to £5 million as is evidenced by the relevant entry in the Summit account for this loan.¹⁶⁹ The balance of this loan was transferred to NAMA.
- 4.197 There were four Loan Specific Allegations advanced in respect of this loan. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

¹⁶¹ Commercial Loan Application, dated 5 December 2006 (Doc ID: 0.7.120.6567).

¹⁶² Gerald Eve Valuation, dated 19 December 2006 (Doc ID: 0.7.120.29439).

¹⁶³ Minutes of Credit Committee meeting, dated 13 December 2006 (Doc ID: 0.7.120.20925).

¹⁶⁴ Minutes of Board meeting, dated 19 December 2006 (Doc ID: 0.7.120.16510).

¹⁶⁵ Commercial Mortgage Offer, dated 20 December 2006 (Doc ID: 0.7.120.29864).

¹⁶⁶ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760690).

¹⁶⁷ Minutes of Credit Committee meeting, dated 23 July 2008 (Doc ID: 0.7.120.30781).

¹⁶⁸ Minutes of meeting of [REDACTED], dated 24 September 2008 (Doc ID: 0.7.120.895896).

¹⁶⁹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760690).

SPC 2.9: Term of loan extended without appropriate approval.

4.198 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

The 21 April 2008 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation must be considered, approved and minuted by the Credit Committee. Under the Moratoria Policy 21 April 2008, variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

4.199 The term in the CMO¹⁷⁰ which was dated 20 December 2006, was for a period of 12 months with a full capital and interest moratorium. The Summit account for this loan¹⁷¹ shows that the loan was extended until 12 January 2010 at which point it showed a debit balance of £43,879,754.06.

4.200 The Inquiry has examined Credit Committee meeting minutes throughout the Review Period and there is no evidence that extensions to this loan were approved by the Credit Committee as required by internal policy, either in respect of term extensions or moratoria extensions. The Summit account details show that this loan was extended beyond its 12 month term. It was a loan that had a full moratorium on interest and capital repayments, but there was no reference to a request for, or provision of, the appropriate approvals.

4.201 **The Inquiry finds that this loan was extended without appropriate approval and, accordingly, that SPC 2.9 is proven against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.202 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria

¹⁷⁰ Commercial Mortgage Offer, dated 20 December 2006 (Doc ID: 0.7.120.29864).

¹⁷¹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760690).

was not a policy that applied to commercial lending between November 2004 and February 2007. The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower was a private company.

4.203 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO¹⁷² nor the CLA¹⁷³ made any reference to a personal guarantee from any of the identified directors of [REDACTED]. [REDACTED] The Credit Committee recommendation¹⁷⁴ made no reference to security and the Board decision¹⁷⁵ made no reference to guarantees from directors or controllers.

4.204 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, it finds that SPC 3.2 is proven as against INBS.**

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.205 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

4.206 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As no finding has been made against INBS, this loan specific participation allegation against Mr Purcell now falls away.

¹⁷² Commercial Mortgage Offer, dated 20 December 2006 (Doc ID: 0.7.120.29864).

¹⁷³ Commercial Loan Application, dated 5 December 2006 (Doc ID: 0.7.120.6567).

¹⁷⁴ Minutes of Credit Committee meeting, dated 13 December 2006 (Doc ID: 0.7.120.20925).

¹⁷⁵ Minutes of Board meeting, dated 19 December 2006 (Doc ID: 0.7.120.16510).

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.207 The relevant policy was the 19 July 2006 Commercial Credit Committee Terms of Reference.

4.208 In circumstances where the Inquiry makes no finding in respect of SPC 3.4, this allegation no longer arises.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Loan 1 and Loan 2 - background to loans

4.209 Mr McCollum outlined the transaction in respect of this loan in an internal memorandum to Mr Fingleton dated 8 November 2006.¹⁷⁶ Seven existing customers of INBS were proposing to purchase the [REDACTED] in [REDACTED] London and required a facility of £83.5 million. This figure covered the purchase cost of £81 million costs of 2.5% and interest shortfall of £500,000. Mr McCollum included an enclosure with this memorandum, which set out the details of the trading position of the hotel and the proposed investment.¹⁷⁷ Mr McCollum proposed a 12 month facility with an interest and capital moratorium. This was approved by Mr Fingleton who instructed Mr McMenamin to process the application.¹⁷⁸

4.210 The CMO was dated 14 November 2006.¹⁷⁹ The CLA for this loan was dated 17 November 2006.¹⁸⁰ It stated that the term of the loan was for one year, the repayments were to be interest only and the LTV was 100%. INBS was to be entitled to 25% of profits upon resale subject to a minimum of £4 million. The security was a first legal charge over the property. The CLA was signed by Mr Purcell on 29 November 2006.

¹⁷⁶ Internal memorandum from Gary McCollum to Michael Fingleton, dated 8 November 2006 (Doc ID: 0.7.120.22153).

¹⁷⁷ [REDACTED], dated 1 November 2006 (Doc ID: 0.7.120.23898).

¹⁷⁸ Internal memorandum from Gary McCollum to Michael Fingleton, dated 8 November 2006 (Doc ID: 0.7.120.22153).

¹⁷⁹ Commercial Mortgage Offer, dated 14 November 2006 (Doc ID: 0.7.120.26457).

¹⁸⁰ Commercial Loan Application, dated 17 November 2006 (Doc ID: 0.7.120.22866).

A further facility of £3 million (Loan 2) was provided in December 2006.¹⁸¹ A full valuation was provided by Savills, auctioneers and valuers, dated 19 December 2006, which valued the site at £81 million.¹⁸²

4.211 The Summit account¹⁸³ showed that there was an outstanding balance on Loan 1 of some £21 million in February 2010 and an outstanding balance of approximately £1.6 million on Loan 2.¹⁸⁴ This loan appears to have gotten into difficulties. In a document dated March 2013 relating to NAMA managed loans, the entry for this facility, dated 8 October 2012, notes: “*Debt sold – Do not request interest. Residual Balance written off*”.¹⁸⁵

4.212 There were 14 Loan Specific Allegations advanced in respect of the two loans to this borrower. Full details of these Loan Specific Allegations are set out below under each loan, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Loan 1

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers’ repayment capacity:

(a) Business plan/proposals.

(b) Forecast cash flow analysis.

4.213 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

4.214 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

¹⁸¹ Additional Commercial Mortgage Offer, dated 12 December 2006 (Doc ID: 0.7.120.24927).

¹⁸² Savills Valuation Report, dated 19 December 2006 (Doc ID: 0.7.120.432551).

¹⁸³ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760654).

¹⁸⁴ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760643).

¹⁸⁵ Extract from Nama Managed loan table, dated March 2013 (Doc ID: 0.7.120.929670).

SPC 2.5: Loans advanced prior to quorate Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with INBS's urgent credit decision approval procedures.

4.215 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

The above policies required that Credit Committee approval or recommendation be obtained prior to the issuing of a CMO.

4.216 The CMO was dated 14 November 2006.¹⁸⁶ The CLA was dated 17 November 2006¹⁸⁷ and the initial drawdown was also on 17 November 2006.¹⁸⁸ The Credit Committee meeting was held on 22 November 2006.¹⁸⁹ The urgent credit decision approval procedures as set out in the 19 July 2006 Commercial Credit Committee Terms of Reference, required two members of the Credit Committee and the Managing Director to approve the credit, with the Credit Committee and the Board signing off such loans as soon as practical. The Inquiry has examined the Credit Committee meeting minutes and the consolidated loan file and there is no evidence that any urgent credit decision approval procedures were complied with.

4.217 **The Inquiry finds that this loan was advanced prior to the Credit Committee meeting. There is no evidence of compliance with urgent credit decision approval procedures and, accordingly, the Inquiry finds that SPC 2.5 is proven as against INBS.**

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

4.218 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The applicable policy for urgent credit decision approval procedures was the Board Resolution September 2002. (See Table included at Appendix 12).

¹⁸⁶ Commercial Mortgage Offer, dated 14 November 2006 (Doc ID: 0.7.120.26457).

¹⁸⁷ Commercial Loan Application, dated 17 November 2006 (Doc ID: 0.7.120.22866).

¹⁸⁸ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760654).

¹⁸⁹ Minutes of Credit Committee meeting, dated 22 November 2006 (Doc ID: 0.7.120.37239).

4.219 The CMO was dated 14 November 2006.¹⁹⁰ The CLA was dated 17 November 2006¹⁹¹ and the initial drawdown was on 17 November 2006¹⁹² also. The Credit Committee meeting was held on 22 November 2006¹⁹³ and the Board meeting was held on 29 November 2006.¹⁹⁴ There is no reference in the Board approval that this loan had been urgently approved or to the fact that drawdown had already occurred. The urgent credit decision approval procedures provided that urgent approval could be given if it had been approved by the Credit Committee and signed by two directors and later advised to the Board in the normal way. There is no evidence of this procedure having been followed either in Board meeting minutes or in the consolidated loan file for this loan.

4.220 The initial drawdown, which was evidenced by the SAD of 17 November 2006¹⁹⁵, was paid to Howard Kennedy. This payment was also evidenced by the Summit account¹⁹⁶ for this loan.

4.221 **The Inquiry finds that funds were advanced on this loan prior to Board approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.6 is proven as against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

4.222 The relevant policies identified in the Investigation Report were the 28 February 2007 Commercial Mortgage Lending Policy, the 27 June 2007 Credit Risk Management Policy and the Moratoria Policy October 2003. (See Table included at Appendix 12).

The 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy applied to this allegation. These internal policies required that any variation to a loan had to be considered, approved and minuted by the Credit Committee and then submitted to the Managing Director for approval. This loan involved an interest only clause, which meant there was a moratorium on capital repayments. The Moratoria Policy October 2003¹⁹⁷ also applied. Under that policy variations to moratorium accounts could only be amended with the written approval of either the Managing Director, all members of the Credit Committee, or any two of the

¹⁹⁰ Commercial Mortgage Offer, dated 14 November 2006 (Doc ID: 0.7.120.26457).

¹⁹¹ Commercial Loan Application, dated 17 November 2006 (Doc ID: 0.7.120.22866).

¹⁹² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760654).

¹⁹³ Minutes of Credit Committee meeting, dated 22 November 2006 (Doc ID: 0.7.120.37239).

¹⁹⁴ Minutes of Board meeting, dated 29 November 2006 (Doc ID: 0.7.120.23075).

¹⁹⁵ Society Advance Detail, dated 17 November 2006 (Doc ID: 0.7.120.14216).

¹⁹⁶ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760654).

¹⁹⁷ The Moratoria Policy 2003 was incorporated in the Commercial Mortgage Lending Policy approved by the Board on 28 February 2007.

following: commercial lending manager; mortgage administration manager; or senior commercial lender.

4.223 The Summit account information from the credit review process¹⁹⁸ dated 9 August 2007 identified the termination date as 18 December 2007. A review of the Summit history for this account¹⁹⁹ shows that interest payments continued beyond that date until a capital repayment of £62 million was received on 18 April 2008. Interest continued to be paid on the balance of the facility until the end of the Summit history on 18 February 2010, but there is no further evidence of capital repayments. It would appear that the moratoria that had been applied to capital repayments had been extended although there is no formal evidence of this on the loan file. Approximately £21 million was owing on this loan as of February 2010.

4.224 The Inquiry has examined Credit Committee meeting minutes throughout the Review Period and there is no evidence that extensions to this loan were approved by the Credit Committee as required by internal policy. There is no evidence on the consolidated loan file that this loan was extended in accordance with internal policy.

4.225 **The Inquiry finds that this loan was extended without appropriate approval and, accordingly, finds that SPC 2.9 is proven against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.226 The relevant policy was the April 2003 Credit Risk Policy and, in relation to urgent credit decision approval procedures, the relevant policies were the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.227 The CMO was dated 14 November 2006.²⁰⁰ The CLA was dated 17 November 2006²⁰¹ and the initial drawdown was on 17 November 2006²⁰² also. The Credit Committee meeting was held on 22 November 2006²⁰³ and the Board meeting was held on 29

¹⁹⁸ Credit Review Summit Account Information, dated 9 August 2007 (Doc ID: 0.7.120.23833).

¹⁹⁹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760654).

²⁰⁰ Commercial Mortgage Offer, dated 14 November 2006 (Doc ID: 0.7.120.26457).

²⁰¹ Commercial Loan Application, dated 17 November 2006 (Doc ID: 0.7.120.22866).

²⁰² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760654).

²⁰³ Minutes of Credit Committee meeting, dated 22 November 2006 (Doc ID: 0.7.120.37239).

November 2006.²⁰⁴ The Credit Committee meeting recommending this loan occurred eight days after the issuing of the CMO.

4.228 The urgent credit decision approval procedures required that interim approval could be given if it had been approved by the Credit Committee and signed by two directors and later advised to the Board in the normal way. There is no evidence of this procedure having been followed either in Board meeting minutes or in the consolidated loan file for this loan.

4.229 **The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and was not in compliance with urgent credit decision approval procedures. Accordingly, it finds that SPC 2.13 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.230 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007. The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower was a private company.

4.231 The Inquiry has examined the consolidated loan files for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO²⁰⁵ nor the CLA²⁰⁶ make any reference to a personal guarantee from any of the identified directors of [REDACTED]. The Credit Committee recommendation²⁰⁷ made no reference to security and the Board decision²⁰⁸ made no reference to guarantees from directors or controllers.

²⁰⁴ Minutes of Board meeting, dated 29 November 2006 (Doc ID: 0.7.120.23075).

²⁰⁵ Commercial Mortgage Offer, dated 14 November 2006 (Doc ID: 0.7.120.26457).

²⁰⁶ Commercial Loan Application, dated 17 November 2006 (Doc ID: 0.7.120.22866).

²⁰⁷ Minutes of Credit Committee meeting, dated 22 November 2006 (Doc ID: 0.7.120.37239).

²⁰⁸ Minutes of Board meeting, dated 29 November 2006 (Doc ID: 0.7.120.23075).

4.232 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, that SPC 3.2 is proven as against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.233 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

4.234 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As no finding has been made against INBS, this loan specific participation allegation against Mr Purcell now falls away.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.235 The relevant policy was the 16 October 2003 Commercial Credit Committee Terms of Reference.

4.236 In circumstances where the Inquiry makes no finding in respect of SPC 3.4, this allegation no longer arises.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

Loan 2

SPC 1.1: No CLA was prepared at all.

- 4.237 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) **Business plan/proposals.**

(b) **Forecast cash flow analysis.**

- 4.238 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.4: Credit grades were not assigned to commercial loans.

- 4.239 The relevant policies were the 2006 Impairment Provisioning Policy and the 2006 Notes on the Implementation of Impairment Provisioning Policy. (See Table included at Appendix 11).

- 4.240 In his submissions to the Inquiry, Mr Purcell stated that the Impairment Provisioning Policy did not create new policy with regard to credit grades. The Inquiry agrees with this assertion and therefore no finding is made in respect of this allegation. The assigning of credit grades during the loan approval process is dealt with at Chapter 5 of this Findings Report (see paragraph 5.197 et seq.). That part of the Findings Report outlines Mr Purcell's submissions on this point and the reasoning for the Inquiry's

finding that a failure to assign a credit grade at the loan approval stage was not a breach of INBS internal policy.

SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval (as required) and not in compliance with INBS's urgent credit decision approval procedures.

4.241 This Loan Specific Allegation was not opened during the Loan Hearings, in error. Accordingly, it has not been considered by the Inquiry.

SPC 2.9: Term of the loan extended without appropriate approval.

4.242 The relevant policies identified were the December 2007 Commercial Mortgage Lending Policy and the Moratoria Policy December 2007. (See Table included at Appendix 12).

The December 2007 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation must be considered, approved and minuted by the Credit Committee. As with Loan 1 above, there was a capital moratorium on this loan. The Moratoria Policy December 2007 also applied. Under that policy, variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

4.243 The CMO for this loan was dated 12 December 2006 and was signed by Mr McCollum.²⁰⁹ The Summit history of this loan²¹⁰ showed that interest continued to be paid until February 2010. £1 million was paid off the capital amount on 23 April 2008 but there is no evidence of further capital payments. The extension was recorded in the Summit account information for the credit review process, dated 29 August 2008.²¹¹

4.244 The Inquiry has analysed Credit Committee meeting minutes and packs around the time that the initial facility was to have terminated, which was on 18 December 2007. There is no evidence that an application for an extension of this loan was brought before the Credit Committee for approval either at that time or at any subsequent Credit Committee meeting, as required by policy. There is no evidence on file that moratoria

²⁰⁹ Additional Commercial Mortgage Offer, dated 12 December 2006 (Doc ID: 0.7.120.24927).

²¹⁰ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760643).

²¹¹ Credit Review Summit Account Information, dated 29 August 2008 (Doc ID: 0.7.120.24187).

policy procedures were followed. There is no evidence on the consolidated loan file that this loan was extended in accordance with internal policy.

- 4.245 **The Inquiry finds that this loan was extended without appropriate approval and, accordingly, that SPC 2.9 is proven against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

- 4.246 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007. The UK Version of the April 2003 Credit Risk Policy applied to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower was a private company.

- 4.247 The Inquiry has examined the consolidated loan files for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the additional CMO²¹² nor the initial CLA²¹³ made any reference to a personal guarantee from any of the identified directors of [REDACTED]. [REDACTED] The Credit Committee recommendation for Loan 1²¹⁴ made no reference to security and the Board decision for Loan 1²¹⁵ made no reference to guarantees from directors or controllers.

- 4.248 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, it finds that SPC 3.2 is proven as against INBS.**

²¹² Additional Commercial Mortgage Offer, dated 12 December 2006 (Doc ID: 0.7.120.24927).

²¹³ Commercial Loan Application, dated 17 November 2006 (Doc ID: 0.7.120.22866).

²¹⁴ Minutes of Credit Committee meeting, dated 22 November 2006 (Doc ID: 0.7.120.37239).

²¹⁵ Minutes of Board meeting, dated 29 November 2006 (Doc ID: 0.7.120.23075).

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

- 4.249 On 27 June 2006 a director of [REDACTED], a customer of INBS, wrote to Mr McCollum asking whether INBS would be interested in funding the acquisition of two hotels in Berlin. He enclosed a one-page analysis of projected profits for the two hotels, provided by Savills.²¹⁶
- 4.250 Mr McCollum outlined the proposal in an internal memorandum to Mr Fingleton dated 11 June 2006.²¹⁷ He requested a facility of €42.5 million for five years. It was proposed that a number of existing customers of INBS would establish a SPV as directors. The SPV was subsequently named as [REDACTED]. The hotels were leased to [REDACTED] for 25 years and it was proposed that interest on the loan would be financed by the profit from the business. INBS was to be entitled to a profit share of 25%. The LTV was for 100% of the purchase price.
- 4.251 The internal memorandum was approved by Mr Fingleton who wrote by hand on the memorandum instructing Mr McMenamin to prepare the documents and noting that interest would be serviced for the duration of the loan.²¹⁸ A valuation dated 11 September 2006 was provided by Savills²¹⁹, which valued the first Berlin hotel at €18 million, and the second at €22 million.
- 4.252 An initial CLA was prepared for the Board dated 18 July 2006. This was dated by the Credit Committee on 18 July 2006 and was initialled by Mr Purcell with Board approval on 22 September 2006.²²⁰ An amended CLA was prepared dated 26 October 2006, and was signed by the Credit Committee on that date.²²¹ This second CLA identified the applicants as [REDACTED] rather than the individual shareholders. Both CLAs identified the security for the facility as a fixed and floating charge on the properties that were the subject of the loans.

²¹⁶ Letter from [REDACTED], to Gary McCollum, INBS, dated 27 June 2006 (Doc ID: 0.7.120.935770).

²¹⁷ Internal memorandum from Gary McCollum to Michael Fingleton, dated 11 July 2006 (Doc ID: 0.7.120.39600).

²¹⁸ Internal memorandum from Gary McCollum to Michael Fingleton, dated 11 July 2006 (Doc ID: 0.7.120.39600).

²¹⁹ Savills Valuation Certificate, dated 11 September 2006 (Doc ID: 0.7.120.895393).

²²⁰ Commercial Loan Application, dated 18 July 2006 (Doc ID: 0.7.120.33623).

²²¹ Amended Commercial Loan Application, dated 26 October 2006 (Doc ID: 0.7.120.12845).

4.253 The CMO was forwarded to [REDACTED] on 9 October 2006 and was returned as signed by the directors on 10 October 2006.²²² The initial drawdown for this facility occurred on 27 October 2006 for €20,912,500.²²³

4.254 The expected ability of the hotels to service the €42.5 million facility from income did not materialise. INBS required that the loan be further secured by an additional guarantee furnished by another related company of the borrower shareholders, [REDACTED]. The inter-company guarantee and indemnity was signed by [REDACTED] on 24 July 2009.²²⁴ In addition, INBS agreed to furnish a further €350,000.²²⁵

4.255 In November 2009, independent valuations were obtained from CBRE, which valued the two hotels at approximately €11 million each.²²⁶ This facility continued to accrue interest until 19 February 2010 at which date there was an outstanding balance of almost £44 million.²²⁷ This loan was transferred to NAMA.

4.256 There were five Loan Specific Allegations advanced in respect of this loan. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Forecast cash flow analysis.

4.257 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

²²² Commercial Mortgage Offer, dated 9 October 2006 (Doc ID: 0.7.120.19849).

²²³ Society Advance Detail, dated 27 October 2006 (Doc ID: 0.7.120.10983).

²²⁴ Inter Company Guarantee and Indemnity in favour of INBS, dated 24 July 2009 (Doc ID: 0.7.120.895485).

²²⁵ Internal memorandum from Michael Fingleton (Jnr) to the Credit Committee, dated 4 June 2009 (Doc ID: 0.7.120.43006).

²²⁶ CBRE Valuation Report, dated 30 November 2009 (Doc ID: 0.7.120.960877); CBRE Valuation Report, dated 30 November 2009 (Doc ID: 0.7.120.923260).

²²⁷ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760685).

[REDACTED]	16.66%	[REDACTED]	16.66%
[REDACTED]	16.66%	[REDACTED]	16.66%".

4.262 This is not consistent with the shareholding as set out in the CLA and marked as approved by the Credit Committee and the Board. This CLA was subsequently amended on 26 October 2006.²³⁴ This amended document stated that it was a "CHANGE OF APPLICANT PERSONAL NAME TO COMPANY NAME". The applicant was listed as [REDACTED]. The shareholders in [REDACTED] were described as:

[REDACTED]	40%
[REDACTED]	40%
[REDACTED]	20%".

4.263 This amended CLA was signed off as recommended by two members of the Credit Committee. The signatures of Ms Boyle and Mr McMenamin were dated 26 October 2006. No Credit Committee meeting minutes recording this decision were found by the Inquiry. The allegation that the CMO did not reflect the basis of approval by Credit Committee and/or Board appears to be supported by the documentation.

4.264 **The Inquiry finds that the allegation that the CMO did not reflect the basis of approval by Credit Committee and/or Board is adequately supported by the documentation and that, accordingly, SPC 2.14 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.265 The relevant policies identified in the Investigation Report were the UK version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

4.266 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007. The UK Version of the April 2003 Credit Risk Policy did apply to this

²³⁴ Amended Commercial Loan Application, dated 26 October 2006 (Doc ID: 0.7.120.12845).

allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower was a private company.

- 4.267 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO²³⁵ nor the CLA²³⁶ make any reference to a personal guarantee from any of the identified directors of [REDACTED]. The Credit Committee recommendation²³⁷ made no reference to security and the Board decision²³⁸ made no reference to guarantees from directors or controllers.
- 4.268 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, it finds that SPC 3.2 is proven as against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

- 4.269 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.
- 4.270 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

²³⁵ Commercial Mortgage Offer, dated 9 October 2006 (Doc ID: 0.7.120.19849).

²³⁶ Commercial Loan Application, dated 18 July 2006 (Doc ID: 0.7.120.33623); Amended Commercial Loan Application, dated 26 October 2006 (Doc ID: 0.7.120.12845).

²³⁷ Minutes of Credit Committee meeting, dated 18 August 2006 (Doc ID: 0.7.120.550864).

²³⁸ Minutes of Board meeting, dated 27 September 2006 (Doc ID: 0.7.120.34149).

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As no finding has been made against INBS, this loan specific participation allegation against Mr Purcell now falls away.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.271 The relevant policies were the 16 October 2003 Commercial Credit Committee Terms of Reference and the 19 July 2006 Commercial Credit Committee Terms of Reference.

4.272 In circumstances where the Inquiry makes no finding in respect of SPC 3.4, this allegation no longer arises.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.273 [REDACTED] was a SPV established by [REDACTED] to facilitate a joint venture with [REDACTED], a property development company in Central London. According to the internal memorandum sent by Mr McCollum to Mr Fingleton dated 25 July 2006²³⁹, [REDACTED] had purchased a property at [REDACTED] [REDACTED] some five years previously. It was now seeking to develop the property by building a 50 storey mixed use tower block comprising 470 residential units, 18,000 square foot of offices and a 1,600 square foot café unit. This internal memorandum requested approval for a loan of £11 million. The current value of the property was stated to be £20 million. The value with planning was estimated at £33.9 million. INBS was to receive a profit share of 25%.

4.274 Two accounts were established for this project, one for [REDACTED] and one for [REDACTED]. The loan currently under scrutiny is the [REDACTED] loan. The CLA for the two borrowers was dated 17 August 2006²⁴⁰ and it outlined the

²³⁹ Internal memorandum from Gary McCollum to Michael Fingleton, dated 25 July 2006 (Doc ID: 0.7.120.11293).

²⁴⁰ Commercial Loan Application, dated 17 August 2006 (Doc ID: 0.7.120.15418).

details of the proposal. The CLA was initialled and dated by Mr McMenamin on 17 August 2006, as having been recommended by the Credit Committee, although the Credit Committee meeting recommending the loan was not held until 18 August 2006.²⁴¹ Board approval was dated 24 August 2006.²⁴² The initial CMO to [REDACTED] was superseded by a revised CMO dated 21 August 2006, which concerned a total facility amount of £5.025 million.²⁴³ This CMO was signed on behalf of the borrower but the signatures were undated.

4.275 The drawdown of this loan to [REDACTED] was dated 27 September 2006 and was for £5.025 million.²⁴⁴ The payment was to Howard Kennedy. The existing property was generating rent of £402,000 per annum. This rent was to have been paid to INBS, but as evidenced by a letter written by Mr McCollum to [REDACTED] dated 15 February 2008, this was not paid to INBS at that time.²⁴⁵

4.276 There were two Loan Specific Allegations advanced in respect of this loan. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.277 The relevant policies were the 16 October 2003 Credit Committee Terms of Reference and the UK Version of the April 2003 Credit Risk Policy. In respect of urgent credit decision approval procedures the relevant policy was the Board Resolution September 2002. (See Table included at Appendix 12).

These policies stated that all loans must be recommended or approved as appropriate by the Credit Committee.

4.278 This loan was recommended for approval by the Credit Committee at a meeting held on 18 August 2006.²⁴⁶ A revised CMO was issued on 21 August 2006.²⁴⁷ The Board meeting approving the loan was held on 24 August 2006.²⁴⁸ The facility amount for

²⁴¹ Minutes of Credit Committee meeting, dated 18 August 2006 (Doc ID: 0.7.120.550864).

²⁴² Minutes of Board meeting, dated 24 August 2006 (Doc ID: 0.7.120.21569).

²⁴³ Revised Commercial Mortgage Offer, dated 21 August 2006 (Doc ID: 0.7.120.13965).

²⁴⁴ Society Advance Detail, dated 27 September 2006 (Doc ID: 0.7.120.27731).

²⁴⁵ Letter from Gary McCollum, INBS, to [REDACTED] dated 15 February 2008 (Doc ID: 0.7.120.894596).

²⁴⁶ Minutes of Credit Committee meeting, dated 18 August 2006 (Doc ID: 0.7.120.550864).

²⁴⁷ Revised Commercial Mortgage Offer, dated 21 August 2006 (Doc ID: 0.7.120.13965).

²⁴⁸ Minutes of Board meeting, dated 24 August 2006 (Doc ID: 0.7.120.21569).

██████████ of £5.025 million was drawn down on 27 September 2006.²⁴⁹ From these dates it can be seen that the CMO was issued after recommendation for approval by the Credit Committee but before approval by the Board. It is noted that drawdown occurred after Board approval. There is no evidence that any urgent credit decision approval was sought in this case.

4.279 The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures. Accordingly, it finds that SPC 2.13 is proven against INBS.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.280 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

4.281 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007. The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower was a private company.

4.282 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of ██████████. Neither the CMO²⁵⁰ nor the CLA²⁵¹ make any reference to a personal guarantee from any of the identified directors of ██████████. The Credit Committee recommendation²⁵² made no reference to security and the Board decision²⁵³ made no reference to guarantees from directors or controllers.

4.283 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, it finds that SPC 3.2 is proven as against INBS.

²⁴⁹ Society Advance Detail, dated 27 September 2006 (Doc ID: 0.7.120.27731).

²⁵⁰ Revised Commercial Mortgage Offer, dated 21 August 2006 (Doc ID: 0.7.120.13965).

²⁵¹ Commercial Loan Application, dated 17 August 2006 (Doc ID: 0.7.120.15418).

²⁵² Minutes of Credit Committee meeting, dated 18 August 2006 (Doc ID: 0.7.120.550864).

²⁵³ Minutes of Board meeting, dated 24 August 2006 (Doc ID: 0.7.120.21569).

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Loan 1 and Loan 2 - background to loans

- 4.284 Mr McCollum outlined the background to the first loan in an internal memorandum to Mr Fingleton dated 5 May 2004.²⁵⁴ In this memorandum, Mr McCollum stated that [REDACTED] an existing client of INBS, had been in negotiations to purchase [REDACTED] on the outskirts of Cardiff. Contracts had been exchanged, subject to planning permission. This permission had been granted and it was now proposed to refurbish the property to provide 245 one, two and three bedroomed units overlooking [REDACTED]
- 4.285 [REDACTED] had carried out extensive market research in the area and was confident that all units could be sold off-plan prior to the commencement of the main construction works. It had already received offers for a substantial number of apartments from its normal investor clients.
- 4.286 The loan required for this project was £20 million with an estimated profit of £8 million. The term of the loan was for three years and was subject to a capital and interest moratorium. It was proposed that as units were sold off, the income would be set against the loan. An initial profit of £1 million was to be paid to INBS. [REDACTED] [REDACTED] would receive the next £3 million profit and then INBS would be entitled to 25% of the remaining of the profits realised. A SPV, [REDACTED] was used for the project [REDACTED]

²⁵⁴ Internal memorandum from Gary McCollum to Michael Fingleton, dated 5 May 2004 (Doc ID: 0.7.120.6223).

4.287 Mr Fingleton wrote on this memorandum “*Tom, please process the [sic] this application and liaise with Gary, MF*”.

The facility was recommended by the Credit Committee on 19 May 2004²⁵⁵ and was approved by the Board on 25 May 2004²⁵⁶ (both predate the Review Period of 1 August 2004 to 30 September 2008).

4.288 A second loan of £5 million was provided to [REDACTED] by additional CMO dated 11 May 2006²⁵⁷ to continue with the refurbishment of the property. This loan was for 12 months and was on similar terms to the first loan. The terms of the original CMO, which was dated 7 May 2004²⁵⁸, and the additional CMO, had provided that proceeds from the whole or part of the property comprising INBS's security would be applied to the loan. These terms were varied in that sales proceeds were released to the borrower rather than applied against the loan. In February 2007, Martin Philips, a solicitor in Howard Kennedy, who was acting for INBS, indicated to Mr McCollum that [REDACTED] had requested to retain funds arising from sales and apply them towards further development expenditure on the project.²⁵⁹ This was agreed to by Mr McCollum.²⁶⁰ In September 2008, Howard Kennedy advised that net sale proceeds were being remitted to INBS but this did not occur.²⁶¹ In December 2008, Mr McCollum instructed Mr Philips to remit the proceeds of all future sales directly to INBS.²⁶²

4.289 This loan was transferred to NAMA in 2010 with 60 units still to be sold. NAMA continued to sell off the apartments throughout 2011 and 2012.

4.290 There were eight Loan Specific Allegations advanced in respect of the two loans to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto. The Inquiry has dealt with each of the allegations as they arise in respect of the two loans because of the close proximity of the loans to each other, and some of the findings apply across both loans.

²⁵⁵ Minutes of Credit Committee meeting, dated 19 May 2004 (Doc ID: 0.7.120.431546).

²⁵⁶ Minutes of Board meeting, dated 25 May 2004 (Doc ID: 0.7.120.432352).

²⁵⁷ Additional Commercial Mortgage Offer, dated 11 May 2006 (Doc ID: 0.7.120.12649).

²⁵⁸ Commercial Mortgage Offer, dated 7 May 2004 (Doc ID: 0.7.120.990992).

²⁵⁹ Letter from Martin Philips, Howard Kennedy, to Gary McCollum, INBS, dated 23 February 2007 (Doc ID: 0.7.120.487736).

²⁶⁰ Letter from Gary McCollum, INBS, to Martin Philips, dated Howard Kennedy, dated 27 February 2007 (Doc ID: 0.7.120.484466).

²⁶¹ Email from Rosaleen Joseph, Howard Kennedy, to Debbie Doran, INBS, dated 10 September 2008 (Doc ID: 0.7.120.487702).

²⁶² Letter from Gary McCollum, INBS, to Martin Philips, Howard Kennedy, dated 18 December 2008 (Doc ID: 0.7.120.485510).

Loan 2

SPC 1.1: No CLA was prepared at all.

- 4.291 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Three years' audited accounts.**
- (b) **Business plan/proposals.**
- (c) **Forecast cash flow analysis.**

- 4.292 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.4: Credit grades were not assigned to commercial loans.

- 4.293 The relevant policies were the 8 April 2003 Credit Grading System for Commercial Lending and the 2005 Impairment Provisioning Policy. (See Table included at Appendix 11).
- 4.294 In his submissions to the Inquiry, Mr Purcell stated that the Impairment Provisioning Policies did not create new policy with regard to credit grades. He further submitted that the 8 April 2003 Credit Grading System for Commercial Lending did not require that a CLA should have a credit grade when presented to the Credit Committee or the Board. The Inquiry agrees with both of these assertions and therefore no finding is made in respect of this allegation. The assigning of credit grades during the loan approval process is dealt with at Chapter 5 of this Findings Report (see paragraph 5.197 et seq.). That part of the Findings Report outlines Mr Purcell's submissions on

this point and the reasoning for the Inquiry's finding that a failure to assign a credit grade at the loan approval stage was not a breach of INBS internal policy.

SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval (as required) and not in compliance with INBS's urgent credit decision approval procedures.

4.295 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

Both policies made it clear that all commercial loan proposals in excess of the branch manager's discretion must be recommended for approval or approved by the Credit Committee. The 16 October 2003 Commercial Credit Committee Terms of Reference outlined the urgent credit decision approval procedures.

4.296 The Inquiry has examined all the Credit Committee meeting meetings that occurred around the same time as this loan of £5 million was made available to [REDACTED]. The CMO for this facility issued on 11 May 2006.²⁶³ The initial drawdown of £520,975.33 occurred on 9 June 2006.²⁶⁴

4.297 The Inquiry has examined all of the Credit Committee meetings during the Review Period and noted in particular that Credit Committee meetings occurred on 7 April 2006, 20 April 2006, 11 May 2006, 9 June 2006 and 14 June 2006. From the minutes and meeting packs it appears that no consideration of this loan took place at any of these meetings.

4.298 The Inquiry has examined the Board meeting minutes and the Board packs during the Review Period and noted in particular that Board meetings occurred on 25 April 2006, 16 May 2006, 18 May 2006, 30 May 2006 and 14 June 2006. This facility was not raised at any of these meetings. From an examination of the consolidated loan file there is no evidence that any urgent credit decision approval procedures were followed in this case.

4.299 **The Inquiry finds that the allegation that funds were advanced with no Credit Committee approval or recommendation and no Board approval and not in compliance with urgent credit decision approval procedures is adequately**

²⁶³ Additional Commercial Mortgage Offer, dated 11 May 2006 (Doc ID: 0.7.120.12649).

²⁶⁴ Society Advance Detail, dated 9 June 2006 (Doc ID: 0.7.120.25001).

supported by the documentation and, accordingly, finds that SPC 2.2 is proven against INBS.

SPC 2.9: Term of the loan extended without appropriate approval.

4.300 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the Moratoria Policy October 2003.²⁶⁵ (See Table included at Appendix 12).

4.301 The policies outlined the approval procedures that need to be followed in order to vary the terms of a loan approved by the Board.

The 28 February 2007 Commercial Mortgage Lending Policy required that any variation to a loan had to be considered, approved and minuted by the Credit Committee and then submitted to the Managing Director for approval. The Moratoria Policy October 2003 provided that variations to moratorium accounts could only be amended with the written approval of either the Managing Director, all members of the Credit Committee, or any two of the following: commercial lending manager; mortgage administration manager; or senior commercial lender.

4.302 The CMO for this loan dated 11 May 2006 stated that this loan would be the subject of an interest and capital moratorium.²⁶⁶ A review of the Summit history²⁶⁷ for this account shows that interest continued to be applied until 9 December 2009 with no recorded capital repayments until 16 February 2009.

4.303 The term and moratorium of the loan appear to have been extended beyond the termination date of 11 May 2007 (a year from the issuing of the CMO). There is no document on file nor evidence from Credit Committee meetings during the relevant period to indicate such an extension or that any of the procedures set out in the policies had been followed.

4.304 **The Inquiry finds that the allegation that the term of the loan was extended without appropriate approval is adequately supported by the documentation and, accordingly, that SPC 2.9 is proven as against INBS.**

²⁶⁵ The Moratoria Policy October 2003 was incorporated in the Commercial Mortgage Lending Policy approved by the Board on 28 February 2007.

²⁶⁶ Additional Commercial Mortgage Offer, dated 11 May 2006 (Doc ID: 0.7.120.12649).

²⁶⁷ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760709).

Loan 1 and Loan 2

SPC 2.10: Terms of CMO varied in that sales proceeds from property held as security was released to borrower without appropriate approval.

- 4.305 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 9 October 2006 Board Directive. (See Table included at Appendix 12).
- 4.306 These policies set out the procedures for dealing with changes to terms of a loan as agreed by the Board.
- 4.307 The 9 October 2006 Board Directive was signed by Mr McMenemy and copied to Mr Fingleton. An internal memorandum²⁶⁸ dated 9 October 2006 was sent by Mr McMenemy to a number of commercial lenders enclosing the 9 October 2006 Board Directive and requesting them to sign, date and return a copy "...as evidence that you have received and clearly understand the New Procedure". Mr McCollum's name is not included in the list of commercial lenders who were contacted by Mr McMenemy.
- 4.308 The two CMOs²⁶⁹ in respect of the two [REDACTED] loans set out similar requirements with regard to both loans, as follows:

"The proceeds from the sale of the whole or part of the property comprising the Society's security shall be paid to the loan account".

- 4.309 The suspected variation to this term of the CMOs occurred on 27 February 2007. A letter dated 23 February 2007²⁷⁰ was sent from Mr Philips, solicitor in Howard Kennedy who acted for INBS in this matter, to Mr McCollum. The letter stated:

"My plot sales department have received a request from [REDACTED] at [REDACTED] to the effect that all sale proceeds from now on could be sent to [REDACTED] rather than INBS.

Could you please confirm instructions in this regard?"

An email dated 26 February 2007²⁷¹ from [REDACTED] to Mr McCollum stated:

²⁶⁸ Internal memorandum from Tom McMenemy to a number of commercial lenders, dated 9 October 2006 (Doc ID: 0.7.120.719572).

²⁶⁹ Commercial Mortgage Offer, dated 7 May 2004, page 3 paragraph 16(vi) (Doc ID: 0.7.120.23066); Additional Commercial Mortgage Offer, dated 11 May 2006, page 3 paragraph 16 (v) (Doc ID: 0.7.120.12649).

²⁷⁰ Letter from Martin Philips, Howard Kennedy, to Gary McCollum, INBS, dated 23 February 2007 (Doc ID: 0.7.120.487736).

²⁷¹ Email from [REDACTED], to Gary McCollum, INBS, dated 26 February 2007 (Doc ID: 0.7.120.486499).

"Would you mind having a word with Martin Philips to get the funds released to us?"

On 27 February 2007, Mr McCollum replied to the letter of the 23 February 2007 and stated:

"...I can confirm that it is in order to release the sale proceeds directly to [REDACTED] until further notice.

Such sale proceeds are being used by [REDACTED] to fund ongoing completion works at the development".²⁷²

On 27 March 2007, an email²⁷³ from Howard Kennedy to INBS stated:

"Garry [sic] has given authority for completion monies to be paid to [REDACTED].

An email²⁷⁴ dated 10 September 2008 from Howard Kennedy to INBS referred to "[REDACTED] and [REDACTED]" and stated: *"...the net proceeds as set out on the attached Cash Statements have today been forwarded to Irish Nationwide".*

However, a handwritten note on a hard copy of the email on the loan file states: *"Spoke with [HK] monies not sent".*

The final document in this chain of documents is dated 18 December 2008 and is a letter from Mr McCollum to Howard Kennedy²⁷⁵, which states:

"...the Society now requires all completion monies to be forwarded to us and not [REDACTED] as all works have been completed".

4.310 The Summit accounts for these loans²⁷⁶ indicated that no repayments of any capital or interest occurred until 16 February 2009.

4.311 The Inquiry has examined the Credit Committee meeting minutes for the Review Period and has found no record that the Credit Committee considered the variation on these two loans. In addition, there is no evidence of the Managing Director approving

²⁷² Letter from Gary McCollum, INBS, to Martin Philips, Howard Kennedy, dated 27 February 2007 (Doc ID: 0.7.120.484466).

²⁷³ Email from Mike Acton, Howard Kennedy, to Debbie Dorrian, INBS, dated 27 March 2007 (Doc ID: 0.7.120.486513).

²⁷⁴ Email from Rosaleen Joseph, Howard Kennedy, to Debbie Dorrian, INBS, dated 10 September 2008 (Doc ID: 0.7.120.487702).

²⁷⁵ Email from Gary McCollum, INBS, to Martin Philips, Howard Kennedy, dated 18 December 2008 (Doc ID: 0.7.120.485510).

²⁷⁶ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760579) and [REDACTED] (Doc ID: 0.7.120.760709).

these variations to the loan conditions in accordance with the approval process in the 9 October 2006 Board Directive. There is no evidence in the documentation available to the Inquiry that amended letters of offer were prepared for these loans as required by the UK Version of the April 2003 Credit Risk Policy.

- 4.312 **The Inquiry finds that the allegation that the terms of CMO varied in that sales proceeds from property held as security was released to the borrower without appropriate approval is adequately supported by the documentation and, accordingly, that SPC 2.10 is proven as against INBS.**

Loan 2

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

- 4.313 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.
- 4.314 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007. The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be required where the borrower is a private company.
- 4.315 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. The CMO²⁷⁷ does not make any reference to a personal guarantee from any of the identified directors of the company.
- 4.316 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, that SPC 3.2 is proven as against INBS.**

²⁷⁷ Additional Commercial Mortgage Offer, dated 11 May 2006 (Doc ID: 0.7.120.12649).

Borrower: [REDACTED]

Loan Account: [REDACTED]

Loans 1, 2, 3, 4 and 5 - background to loans

4.317 [REDACTED] was a SPV incorporated by two existing customers of INBS, who had agreed to purchase a property in London called [REDACTED]. The purchase took place in June 2005.

4.318 On 24 May 2005, Mr McCollum sent an internal memorandum²⁷⁸ to Mr Fingleton setting out the proposal and seeking approval to proceed with a loan of £21.25 million subject to a satisfactory valuation and legal requirements. It was proposed that the property would continue to operate as a hotel and that the income generated would pay interest charges on the loan.

4.319 An extensive refurbishment of the hotel and club was undertaken by [REDACTED] as a result of which additional facilities amounting to £20.25 million were made available to [REDACTED] by INBS. The additional facilities made available were:

September 2006	£7.25 million	Loan 2 ²⁷⁹
November 2007	£5 million	Loan 3 ²⁸⁰
April 2008	£3 million	Loan 4 ²⁸¹
June 2008	£5 million	Loan 5 ²⁸²

4.320 The refurbishment period overran to August 2008. During the refurbishment period interest arrears arose and these were capitalised at £2.67 million in 2010, leaving a balance on the loan of £45.67 million. This loan was transferred to NAMA on 11 October 2010 for £38,995,000 (15% discount). In June 2010 the hotel was placed on the market and on 23 October 2010 it was sold for £55 million. As a result, this facility (of £45.67 million) was fully repaid and NAMA qualified for a profit share payout.

²⁷⁸ Internal memorandum from Gary McCollum to Michael Fingleton, dated 24 May 2005 (Doc ID: 0.7.120.29173).

²⁷⁹ Sterling Commercial Advance Static Sheet, dated 7 September 2006 (Doc ID: 0.7.120.40804).

²⁸⁰ Sterling Commercial Advance Static Sheet, dated 12 November 2007 (Doc ID: 0.7.120.8979).

²⁸¹ Sterling Commercial Advance Static Sheet, dated 23 April 2008 (Doc ID: 0.7.120.13397).

²⁸² Sterling Commercial Advance Static Sheet, dated 17 June 2006 (Doc ID: 0.7.120.38997).

4.321 There were 29 Loan Specific Allegations advanced in respect of the five loans to this borrower. Full details of these Loan Specific Allegations are set out below under each loan, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Loan 1

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) **Business plan/proposals.**

(b) **Forecast cash flow analysis.**

4.322 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

4.323 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval (as required) and not in compliance with INBS's urgent credit decision approval procedures.

4.324 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. The relevant policies for urgent credit decision approval procedures were the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

These policies required Credit Committee recommendation and Board approval for all commercial loans in excess of £500,000.

4.325 The Inquiry has examined the minutes from all the Credit Committee meetings that occurred around the time of this loan until the end of the Review Period and, from the minutes it appears that no consideration of this loan took place at any meeting of the Credit Committee. The Inquiry has examined the Board meeting minutes and the Board meeting packs from around the time of this loan to the end of the Review Period. This facility was not raised at any of these meetings of the Board.

4.326 The urgent credit decision approval procedures required that the loan be signed off by the Managing Director and two members of the Credit Committee and then signed off by the Credit Committee and the Board as soon as practicable. From an examination of the consolidated loan file, there is no evidence that any urgent credit decision approval procedures were followed in this case.

4.327 The Inquiry finds that no Credit Committee recommendation and no Board approval was obtained for this loan and there is no evidence of urgent credit decision approval procedures having been complied with. Accordingly, the Inquiry finds that SPC 2.2 is proven against INBS.

SPC 2.9: Term of the loan extended without appropriate approval.

4.328 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the Moratoria Policy October 2003.²⁸³ (See Table included at Appendix 12).

4.329 The extension to this loan was recorded on the Summit account²⁸⁴, which showed that this loan had been extended beyond the two year term specified in the CMO. A credit review carried out for this loan dated 29 August 2008²⁸⁵ showed a termination date of 22 December 2008, however, the Summit account showed it extending up to December 2009. The loan was transferred to NAMA in 2010 and the property was sold allowing the full facility to be paid off.

4.330 Under the 28 February 2007 Commercial Mortgage Lending Policy, any variation to a loan must be considered, approved and minuted by the Credit Committee and then submitted to the Managing Director for approval. The Moratoria Policy October 2003 also applied. Under that policy, variations to moratorium accounts could only be amended with the written approval of either the Managing Director, all members of the Credit Committee, or any two of the following: commercial lending manager; mortgage administration manager; or senior commercial lender.

4.331 The Inquiry has examined Credit Committee meeting minutes and packs around the time that the initial facility was to have terminated, which was in June 2007, and can see no evidence that an application for an extension of this loan was brought before the Credit Committee for approval, either at that time or at any subsequent Credit Committee meeting, as required by policy. There is no evidence on file that approval

²⁸³ The Moratoria Policy October 2003 was incorporated in the Commercial Mortgage Lending Policy approved by the Board on 28 February 2007.

²⁸⁴ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760631).

²⁸⁵ Credit Review Summit Account Information, dated 29 August 2008 (Doc ID: 0.7.120.18194).

procedures under the moratoria policy were followed. There is no evidence on the consolidated loan file that this loan was extended in accordance with internal policy.

- 4.332 **The Inquiry finds that this loan was extended without appropriate approval and, accordingly, finds that SPC 2.9 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

- 4.333 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The UK Version of the April 2003 Credit Risk Policy does apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower was a private company.

- 4.334 The Inquiry has examined the consolidated loan files for these loans and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMOs nor the CLAs make any reference to a personal guarantee from any of the identified directors of [REDACTED]. The security listed in the loan documentation refers to guarantees from two associated companies but these do not comply with the requirement for a personal guarantee from directors. In addition, there is no evidence as to the substance of this guarantee to enable the Inquiry to take account of it.

- 4.335 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan, and accordingly, it finds that SPC 3.2 is proven against INBS.**

SPC 3.3: A valuation report on the asset(s) used as security was not received by INBS before all or part of the loan was advanced.

- 4.336 The relevant policies identified in the Investigation Report are the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that a professional valuation must be acquired prior to a loan or part of a loan being advanced.

The UK Version of the April 2003 Credit Risk Policy referred to the requirement that INBS's terms and conditions must be complied with in full before any drawdown or stage payment is made.

- 4.337 By letter dated 26 May 2005²⁸⁶ Mr McCollum instructed Savills to undertake a valuation of [REDACTED] on the basis of (a) market value and (b) market value if let to an acceptable tenant for more than 15 years. He also requested that a desktop valuation be furnished ahead of the full valuation.

- 4.338 Savills submitted a written desktop valuation on 7 June 2005²⁸⁷ and a full valuation on 22 July 2005.²⁸⁸ The values set out in the desktop valuation were the same as those in the subsequent full valuation. Drawdown took place on 7 June 2005²⁸⁹ on the same date as the desktop valuation. The Inquiry is of the view that the desktop valuation was adequate to comply with policy in this regard.

- 4.339 **The Inquiry finds that the allegation that there was a failure to acquire a valuation report prior to the loan being advanced is not proven as against INBS.**

²⁸⁶ Letter from Gary McCollum, INBS, to Gerard Nolan, Savills, dated 26 May 2005 (Doc ID: 0.7.120.919626).

²⁸⁷ Savills Desktop Valuation, dated 7 June 2005 (Doc ID: 0.7.120.894716).

²⁸⁸ Savills Valuation Report, dated 22 July 2005 (Doc ID: 0.7.120.39654).

²⁸⁹ Sterling Commercial Advance Static Sheet, dated 7 June 2005 (Doc ID: 0.7.120.22703).

Loan 2

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Business plan/proposals.**
- (b) **Forecast cash flow analysis.**

4.340 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 2.4: Credit Committee not quorate when loans were approved or recommended and loans not in compliance with INBS's urgent credit decision approval procedures.

4.341 This allegation was against INBS only and so it was not opened during the SPC 1 to 4 Loan Hearings. Accordingly, this allegation was not considered by the Inquiry.

SPC 2.9: Term of the loan extended without appropriate approval.

4.342 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the Moratoria Policy October 2003. (See Table included at Appendix 12).

The 28 February 2007 Commercial Mortgage Lending Policy required that any variation to a loan had to be considered, approved and minuted by the Credit Committee and then submitted to the Managing Director for approval. This loan involved an interest only clause which meant there was a moratorium on capital repayments. The Moratoria Policy October 2003²⁹⁰ also applied. Under that policy, variations to moratorium accounts could only be amended with the written approval of either the Managing Director, all members of the Credit Committee, or any two of the following: commercial lending manager; mortgage administration manager; or senior commercial lender.

²⁹⁰ The Moratoria Policy 2003 was incorporated in the Commercial Mortgage Lending Policy approved by the Board on 28 February 2007.

4.343 The extension to this loan was recorded on the Summit account²⁹¹ and it showed that this loan had been extended beyond the term specified in the CMO²⁹² which stated that it was to run with Loan 1 which was until June 2007. The Summit account showed it extending up to 2009.

4.344 The Inquiry has examined Credit Committee meeting minutes throughout the Review Period and there is no evidence that extensions to this loan were approved by the Credit Committee as required by internal policy. There is no evidence on file that moratoria policy procedures were followed. There is no evidence on the consolidated loan file that this loan was extended in accordance with internal policy.

4.345 The Inquiry finds that this loan was extended without appropriate approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.9 is proven as against INBS.

SPC 2.14: CMO did not reflect the basis of approval by the Credit Committee and/or Board.

4.346 The relevant policy was the April 2003 Credit Risk Policy. (See Table included at Appendix 12).

That policy stated that any variation of the terms of any loans approved by the Board must be documented in the file, and an amended offer letter acknowledged by the borrower.

4.347 By internal memorandum dated 11 July 2006 from Mr McCollum to Mr Fingleton, the case was made for an additional advance of £7.25 million.²⁹³ On the internal memorandum the shareholding in [REDACTED] was correctly stated as:

[REDACTED]	50%
[REDACTED]	50%

4.348 The CLA for this additional advance was dated 12 July 2006.²⁹⁴ On the face of the CLA the shareholding in [REDACTED] was incorrectly stated as:

[REDACTED]	40%
------------	-----

²⁹¹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760631).

²⁹² Additional Commercial Mortgage Offer, dated 8 August 2006 (Doc ID: 0.7.120.32545).

²⁹³ Internal memorandum from Gary McCollum to Michael Fingleton, dated 11 July 2006 (Doc ID: 0.7.120.27189).

²⁹⁴ Commercial Loan Application, dated 12 July 2006 (Doc ID: 0.7.120.44556).

██████████ 40%

██████████ 20%

4.349 The Credit Committee recommended this additional loan for approval on 14 July 2006²⁹⁵ and the Board approved it at its meeting on 19 July 2006.²⁹⁶ Ms O'Boyle²⁹⁷ identified the discrepancy between the internal memorandum and the CLA and by email dated 12 July 2006 asked Mr McCollum to clarify.²⁹⁸ The subsequent CMO issued on 8 August 2006²⁹⁹ was duly amended and had the correct shareholding in ██████████ stated as:

██████████ 50%

██████████ 50%

For good order the rectification should have been reported to the Board and there is no clear evidence that this occurred. The Inquiry does not believe, however, that this breach is of sufficient materiality to justify an adverse finding.

4.350 **The Inquiry is satisfied that this breach is not adequately supported by the documentation and does not amount to a breach by INBS of SPC 2.14.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.351 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (see Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should

²⁹⁵ Minutes of Credit Committee meeting, dated 14 July 2006 (Doc ID: 0.7.120.37899).

²⁹⁶ Minutes of Board meeting, dated 19 July 2006 (Doc ID: 0.7.120.33969).

²⁹⁷ From 2006 to 2010, Cheryl O'Boyle worked as a commercial administrator and assistant lender in INBS. In 2009 she left the Dublin office and went to the Belfast office where she undertook the same role.

²⁹⁸ Email from Cheryl O'Boyle to Gary McCollum, dated 12 July 2006 (Doc ID: 0.7.120.923347).

²⁹⁹ Additional Commercial Mortgage Offer, dated 8 August 2006 (Doc ID: 0.7.120.32545).

be acquired where the borrower was a private company.

4.352 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO³⁰⁰ nor the CLA³⁰¹ make any reference to a personal guarantee from any of the identified directors of [REDACTED]. The security listed in the CMO refers to guarantees from two associated companies but these do not comply with the requirement for a personal guarantee from directors. In addition, there is no evidence as to the substance of this guarantee to enable the Inquiry to take account of it. The Credit Committee recommendation³⁰² made no reference to security and the Board decision³⁰³ made no reference to guarantees from directors or controllers.

4.353 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan, and accordingly, it finds that SPC 3.2 is proven as against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.354 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

³⁰⁰ Additional Commercial Mortgage Offer, dated 8 August 2006 (Doc ID: 0.7.120.32545).

³⁰¹ Commercial Loan Application, dated 12 July 2006 (Doc ID: 0.7.120.44556).

³⁰² Minutes of Credit Committee meeting, dated 14 July 2006 (Doc ID: 0.7.120.37899).

³⁰³ Minutes of Board meeting, dated 19 July 2006 (Doc ID: 0.7.120.33969).

4.355 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As no finding has been made against INBS, this loan specific participation allegation against Mr Purcell now falls away.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.356 The relevant policy was the 19 July 2006 Commercial Credit Committee Terms of Reference.

4.357 In circumstances where the Inquiry makes no finding in respect of SPC 3.4, this allegation no longer arises.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

Loan 3

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) **Three years' audited accounts.**

(b) **Business plan/proposals.**

(c) **Forecast cash flow analysis.**

4.358 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

That policy stated that when lending to a company, three years' audited accounts, business plan or proposals and forecast cash flow analysis should be obtained. These requirements were repeated in the section of the policy entitled "*Commercial Lending Sector Guide Criteria – Hotels*".

4.359 The internal memorandum from Mr McCollum to Mr Fingleton dated 30 October 2007, requested an additional £5 million for refurbishment works until refinance.³⁰⁴ The certificate of incorporation³⁰⁵ indicated that [REDACTED] was incorporated on 10 May 2005. This facility was drawn down on 12 November 2007 and therefore three years of accounts would not have been available when this facility was made available. The Consolidated Table in respect of this allegation stated in a footnote:

*“Or, for newly incorporated companies where three years audited accounts were not available at the time of loan application, the number of years of audited accounts that would have been available at the time of loan application (ie one or two years)”.*³⁰⁶

4.360 On this basis SPC 1.3 was alleged in respect of a borrower company that was less than three years old. However, the Inquiry has seen no basis in policy for this approach. The relevant policies all referred to *“Three years audited accounts”* and there is no provision for requiring accounts for a shorter period.

4.361 Updated valuations were received from Savills in October 2007³⁰⁷ and in March 2008³⁰⁸, which put a present uncompleted value on the hotel of £40 million and an anticipated completion value of £50 million. The CLA for this loan³⁰⁹ stated that the term was to run in line with [REDACTED] until March 2008, and was to be interest only.

4.362 The Inquiry has examined the information available for the first loan in this account and come to the view that there was enough documentation on file to constitute a business plan and a cash flow analysis. In circumstances where the quarterly interest rate had been paid to date, the Inquiry is satisfied that the information acquired for loan 1 and 2 can be applied to loan 3.

4.363 The Inquiry finds that the allegation that there was a failure to acquire required information, namely three years’ audited accounts, a business plan and a cash flow analysis, is not proven as against INBS.

³⁰⁴ Internal memorandum from Gary McCollum to Michael Fingleton, dated 30 October 2007 (Doc ID: 0.7.120.8991).

³⁰⁵ Certificate of Incorporation of [REDACTED], dated 10 May 2005 (Doc ID: 0.7.120.895756-000001).

³⁰⁶ Consolidated Table C1.3 page vii, footnote 2 (Doc ID: RDU_REL1600-0000041).

³⁰⁷ Savills Desktop Valuation, dated 22 October 2007 (Doc ID: 0.7.120.9871).

³⁰⁸ Savills Desktop Appraisal, dated 11 March 2008 (Doc ID: 0.7.120.11725).

³⁰⁹ Commercial Loan Application, dated 9 November 2007 (Doc ID: 0.7.120.21849).

SPC 2.5: Loans advanced prior to quorate Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with INBS's urgent credit decision approval procedures.

4.364 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.365 The third [REDACTED] loan was drawn down on 12 November 2007. This was evidenced in the Sterling Commercial Advance Static Sheet which showed the initial drawdown of £283,165.09 as occurring on that date.³¹⁰ The Credit Committee recommended this additional facility at the meeting on 14 November 2007.³¹¹

The Inquiry has analysed the consolidated loan file and the Credit Committee meeting minutes and there is no evidence that urgent credit decision approval procedures were followed.

4.366 **The Inquiry finds that this loan was advanced prior to the Credit Committee meeting which recommended it and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds SPC 2.5 is proven as against INBS.**

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

4.367 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The policies governing urgent credit decision approval procedures were the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Tables included at Appendix 12).

4.368 The date of the first drawdown as evidenced by the Sterling Commercial Advanced Static Sheet was 12 November 2007.³¹² The date of the Board meeting which approved this additional loan was 27 November 2007.³¹³

³¹⁰ Sterling Commercial Advance Static Sheet, dated 12 November 2007 (Doc ID: 0.7.120.8979).

³¹¹ Minutes of Credit Committee meeting, dated 14 November 2007 (Doc ID: 0.7.120.9055).

³¹² Sterling Commercial Advance Static Sheet, dated 12 November 2007 (Doc ID: 0.7.120.8979).

³¹³ Minutes of Board meeting, dated 27 November 2007 (Doc ID: 0.7.120.11889).

The Inquiry has examined the consolidated loan file and the Credit Committee and Board meeting minutes for this loan and there is no evidence of compliance with urgent credit decision approval procedures.

- 4.369 **The Inquiry finds that this loan was advanced prior to Board approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.6 is proven as against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

- 4.370 The relevant policies were the December 2007 Commercial Mortgage Lending Policy and the Moratoria Policy December 2007. (See Table included at Appendix 12).

The December 2007 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation must be considered, approved and minuted by the Credit Committee. This loan involved an interest only clause which meant there was a moratorium on capital repayments. The Moratoria Policy December 2007 provided that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

- 4.371 The extension to this loan was recorded on the Summit account³¹⁴ and that showed this loan had been extended beyond the term specified in the CMO³¹⁵, which stated that it was to run with Loan 1 and Loan 2 for a term of six months. The Summit account showed it extended up to 12 February 2010 with an outstanding balance of £5,387,593.85.
- 4.372 The Inquiry has analysed Credit Committee meeting minutes and can see no evidence that an application for an extension of this loan was brought before the Credit Committee for approval. There is no evidence on the consolidated loan file that this loan was extended in accordance with internal policy.
- 4.373 **The Inquiry finds that this loan was extended without appropriate approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds SPC 2.9 is proven as against INBS.**

³¹⁴ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760539).

³¹⁵ Additional Commercial Mortgage Offer, dated 31 October 2007 (Doc ID: 0.7.120.19173).

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

- 4.374 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The credit urgent decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).
- 4.375 The CMO was dated 31 October 2007.³¹⁶ The Credit Committee recommended the loan for approval on 14 November 2007³¹⁷ and the Board approved the loan on 27 November 2007.³¹⁸ Based on this information, the CMO does appear to have issued prior to appropriate approval.
- 4.376 The Inquiry has examined the consolidated loan file and the Credit Committee and Board meeting minutes for this loan and there is no evidence of compliance with urgent credit decision approval procedures.
- 4.377 **The Inquiry finds that the CMO for this loan was issued prior to the appropriate recommendation for approval or approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

- 4.378 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 13).
- These policies both stated that personal guarantees should have been acquired where the borrower was a private company.
- 4.379 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors

³¹⁶ Additional Commercial Mortgage Offer, dated 31 October 2007 (Doc ID: 0.7.120.19173).

³¹⁷ Minutes of Credit Committee meeting, dated 14 November 2007 (Doc ID: 0.7.120.9055).

³¹⁸ Minutes of Board meeting, dated 27 November 2007 (Doc ID: 0.7.120.11889).

of [REDACTED]. Neither the CMO³¹⁹ nor the CLA³²⁰ made any reference to a personal guarantee from any of the identified directors of [REDACTED]. The security listed in the CMO referred to a guarantee from an associated company but this does not comply with the requirement for a personal guarantee from directors. In addition, there is no evidence as to the substance of this guarantee to enable the Inquiry to take account of it. The Credit Committee recommendation³²¹ made no reference to security and the Board decision³²² made no reference to guarantees from directors or controllers.

4.380 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan, and accordingly, finds that SPC 3.2 is proven as against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

Loan 4

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) Three years' audited accounts.**
- (b) Business plan/proposals.**
- (c) Forecast cash flow analysis.**

³¹⁹ Additional Commercial Mortgage Offer, dated 31 October 2007 (Doc ID: 0.7.120.19173).

³²⁰ Commercial Loan Application, dated 9 November 2007 (Doc ID: 0.7.120.21849).

³²¹ Minutes of Credit Committee meeting, dated 14 November 2007 (Doc ID: 0.7.120.9055).

³²² Minutes of Board meeting, dated 27 November 2007 (Doc ID: 0.7.120.11889).

- 4.381 The relevant policy was the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).
- 4.382 This was an additional facility for £3 million which was requested by Mr McCollum on behalf of [REDACTED] in an internal memorandum to Mr Fingleton dated 9 April 2008.³²³ The loan was to be for three months and was on an interest only basis, as it was intended to refinance the loan facilities by 1 June 2008. The purpose of the loan was to fund the completion of works. Mr McCollum confirmed that he held updated valuations from Savills providing a current valuation of £40 million and a value of £50 million upon completion of the works and being open for business.
- 4.383 The CLA dated 17 April 2008³²⁴, noted that the total facility provided in respect of this transaction was £38.7 million plus the additional £3 million. The LTV was stated to be 96% at current value and 77% on completion. The certificate of incorporation³²⁵ indicated that [REDACTED] was incorporated on 10 May 2005. This facility was drawn down on 23 April 2008 and therefore a full three years of accounts would not have been available when this facility was made available. The Consolidated Table in respect of this allegation stated in a footnote:

“Or, for newly incorporated companies where three years audited accounts were not available at the time of loan application, the number of years of audited accounts that would have been available at the time of loan application (ie one or two years)”.³²⁶

- 4.384 On this basis SPC 1.3 was alleged in respect of borrower companies that were less than three years old. However, the Inquiry has seen no basis in policy for this approach. The relevant policies all referred to *“Three years audited accounts”* and there is no provision for requiring accounts for a shorter period.
- 4.385 The Inquiry has considered the documentation in this loan file and in circumstances where the loan was for a three month period and was closely linked to three earlier facilities, and where there was an up to date valuation, it appears that the policy requirements have been adequately met.

³²³ Internal memorandum from Gary McCollum to Michael Fingleton, dated 9 April 2008 (Doc ID: 0.7.120.32598).

³²⁴ Commercial Loan Application, dated 17 April 2008 (Doc ID: 0.7.120.10287).

³²⁵ Certificate of Incorporation of [REDACTED], dated 10 May 2005 (Doc ID: 0.7.120.895756-000001).

³²⁶ Consolidated Table C1.3 page vii, footnote 2 (Doc ID: RDU_REL1600-0000041).

4.386 **The Inquiry finds that the allegation that there was a failure to acquire required information, namely three years' audited accounts, a business plan and a cash flow analysis, is not proven as against INBS.**

SPC 2.5: Loans advanced prior to quorate Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with INBS's urgent credit decision approval procedures.

4.387 The relevant policy was the 21 April 2008 Commercial Mortgage Lending Policy. The applicable urgent credit decision approval procedures were set out in the December 2007 Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.388 The CLA was dated 17 April 2008.³²⁷ The additional CMO was dated 18 April 2008.³²⁸ The Board noted the new advance (which it stated had been approved by the Credit Committee) at the meeting held on 21 April 2008.³²⁹ The funds were advanced on 23 April 2008³³⁰ and the loan was sanctioned by the Credit Committee at a meeting on 2 May 2008.³³¹

4.389 In addition to the documentation set out above, the Inquiry has also seen a document prepared by Mr Killian McMahon, internal auditor, dated 1 December 2008.³³² This document listed all of the loans in INBS approved without Credit Committee approval and it included [REDACTED] Loan 4.

4.390 The Inquiry has examined the consolidated loan file and the Credit Committee and Board meeting minutes for this loan and there is no evidence of compliance with urgent credit decision approval procedures.

4.391 **The Inquiry finds that this loan was advanced prior to the Credit Committee meeting and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.5 is proven as against INBS.**

³²⁷ Commercial Loan Application, dated 17 April 2008 (Doc ID: 0.7.120.10287).

³²⁸ Additional Commercial Mortgage Offer, dated 18 April 2008 (Doc ID: 0.7.120.25533).

³²⁹ Minutes of Board meeting, dated 21 April 2008 (Doc ID: 0.7.120.7090).

³³⁰ Sterling Commercial Advance Static Sheet, dated 23 April 2008 (Doc ID: 0.7.120.13397).

³³¹ Minutes of Credit Committee meeting, dated 2 May 2008 (Doc ID: 0.7.120.19475).

³³² Email from Killian McMahon to Meryl Foster, dated 11 December 2008 (Doc ID: AD-0.7.120.424306).

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.392 This allegation was omitted from the Loan Hearing (in error). In those circumstances, the Inquiry has not considered this allegation.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.393 The relevant policies were the 27 June 2007 Credit Risk Management Policy and the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

These policies both stated that personal guarantees should be required where the borrower is a private company.

4.394 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO³³³ nor the CLA³³⁴ make any reference to a personal guarantee from any of the identified directors of [REDACTED]. The security listed in the CMO refers to a guarantee from an associated company but this does not comply with the requirement for a personal guarantee from directors. In addition, there is no evidence as to the substance of this guarantee to enable the Inquiry to take account of it. The Credit Committee sanction³³⁵ made no reference to security and the Board decision³³⁶ made no reference to guarantees from directors or controllers.

4.395 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan, and accordingly, finds that SPC 3.2 is proven as against INBS.**

³³³ Additional Commercial Mortgage Offer, dated 18 April 2008 (Doc ID: 0.7.120.25533).

³³⁴ Commercial Loan Application, dated 17 April 2008 (Doc ID: 0.7.120.10287).

³³⁵ Minutes of Credit Committee meeting, dated 2 May 2008 (Doc ID: 0.7.120.19475).

³³⁶ Minutes of Board meeting, dated 21 April 2008 (Doc ID: 0.7.120.7090).

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

- 4.396 The relevant policy was the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 13). The relevant sectoral codes were set out in the 27 June 2007 Credit Risk Management Policy.³³⁷
- 4.397 The CLA, dated 17 April 2008, noted that the total facility provided in respect of this transaction was £38.7 million plus the additional £3 million.³³⁸ The LTV was stated to be 96% at current value and 77% on completion. It listed the sectoral code as "H1". This applied to hotels and is consistent with the stated purpose of the loan. The applicable LTV for this sector was 70%. The applicable policy provided for a case by case assessment in the case of a facility that came under the category "Development Finance". Although the CLA had designated the purpose as coming under the category "Hotel", the Inquiry is of the view that this venture was better described as "Development Finance" and, as such, could be assessed on a case by case basis. In those circumstances, the Inquiry does not believe that, on the balance of probabilities, an adverse finding is justified in respect of this SPC allegation.
- 4.398 **The Inquiry finds that the LTV limit for this loan was not in excess of limits set out in internal policy and accordingly, finds that SPC 3.4 is not proven as against INBS.**

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

- 4.399 In light of the Inquiry's decision in relation to SPC 3.4 above, this allegation falls away.

Loan 5

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Three years' audited accounts.**
- (b) **Business plan/proposals.**

³³⁷ 27 June 2007 Credit Risk Management Policy (Doc ID: 0.7.120.431329).

³³⁸ Commercial Loan Application, dated 17 April 2008 (Doc ID: 0.7.120.10287).

(c) Forecast cash flow analysis.

- 4.400 The relevant policy was the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).
- 4.401 This loan was for £5 million and was advanced in June 2008³³⁹, shortly after Loan 4. In the internal memorandum from Mr McCollum to Mr Fingleton dated 4 June 2008³⁴⁰, Mr McCollum explained that although a number of banks were happy to provide funding on this project, no drawdown of such funding could take place until the hotel was completed and open for business. It was noted that completion was anticipated within the next 10 days with opening due in mid-July, but that there was now a requirement for funding to settle a number of outstanding accounts and refund [REDACTED] who had financed construction costs in the short term.
- 4.402 Mr Fingleton responded by forwarding the memorandum to Mr McMenemy with instructions to process it in the usual manner but to check that interest was being paid on the total facility. It was confirmed by Mr McCollum that interest arrears of £731,444 would be paid out of the additional £5 million.
- 4.403 The CLA was also dated 4 June 2008 and it provided for a £5 million loan for a term of three months on an interest only basis.³⁴¹ The LTV was stated to be 98% on current value and 87% on completion. As with the other four loans, INBS was to be entitled to a 25% profit share upon resale. A CMO on those terms issued on 9 June 2008.³⁴² The loan was sanctioned by the Credit Committee on 11 June 2008³⁴³ and noted by the Board on 30 June 2008.³⁴⁴ The first drawdown as evidenced by the Sterling Commercial Advance Static Sheet³⁴⁵ was on 17 June 2008.
- 4.404 Although this loan was for a three month term, the Summit account³⁴⁶ showed that it was still active up to 17 December 2009 at which time there was a £5,377,484.53 balance outstanding.
- 4.405 The Inquiry has looked at the consolidated loan file for this loan and although there is no evidence that these three pieces of information were acquired prior to the advance of this loan, there was a significant amount of information on file about the project and

³³⁹ Sterling Commercial Advance Static Sheet, dated 17 June 2008 (Doc ID: 0.7.120.38997).

³⁴⁰ Internal memorandum from Gary McCollum to Michael Fingleton, dated 4 June 2008 (Doc ID: 0.7.120.26418).

³⁴¹ Commercial Loan Application, dated 4 June 2008 (Doc ID: 0.7.120.40643).

³⁴² Additional Commercial Mortgage Offer, dated 9 June 2008 (Doc ID: 0.7.120.14472).

³⁴³ Minutes of Credit Committee meeting, dated 11 June 2008 (Doc ID: 0.7.120.10031).

³⁴⁴ Minutes of Board meeting, dated 30 June 2008 (Doc ID: 0.7.120.36108).

³⁴⁵ Sterling Commercial Advance Static Sheet, dated 17 June 2008 (Doc ID: 0.7.120.38997).

³⁴⁶ Extract from Summit Account [REDACTED] (Doc ID: 0.7.120.760532).

its progress. In addition there was an appraisal by Savills dated 11 March 2008.³⁴⁷ It should be noted that this facility was for a three month term. In all the circumstances, the Inquiry believes that INBS had the required information to make an assessment on the borrower's capacity to repay.

- 4.406 **The Inquiry finds that the allegation that there was a failure to acquire required information, namely three years' audited accounts, a business plan and a cash flow analysis, is not proven against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

- 4.407 The relevant policy was the 21 April 2008 Commercial Mortgage Lending Policy. The urgent credit decision approval procedures were in the December 2007 Credit Committee Terms of Reference. (See Table included at Appendix 12).

- 4.408 The CMO was dated 9 June 2008³⁴⁸ and the Credit Committee sanctioned the loan on 11 June 2008.³⁴⁹ The Inquiry has examined the consolidated loan file and the Credit Committee meeting minutes at which this loan was sanctioned and there is no evidence of compliance with urgent credit decision approval procedures.

- 4.409 **The Inquiry finds that the CMO was issued prior to appropriate approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

- 4.410 The relevant policies were the 27 June 2007 Credit Risk Management Policy and the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

These policies both stated that personal guarantees should be acquired where the borrower was a private company.

³⁴⁷ Savills Desktop Appraisal, dated 11 March 2008 (Doc ID: 0.7.120.11725).

³⁴⁸ Additional Commercial Mortgage Offer, dated 9 June 2008 (Doc ID: 0.7.120.14472).

³⁴⁹ Minutes of Credit Committee meeting, dated 11 June 2008 (Doc ID: 0.7.120.10031).

4.411 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO³⁵⁰ nor the CLA³⁵¹ make any reference to a personal guarantee from any of the identified directors of [REDACTED]. The security listed in the CMO refers to a guarantee from an associated company but this does not comply with the requirement for a personal guarantee from directors. In addition, there is no evidence as to the substance of this guarantee to enable the Inquiry to take account of it. The Credit Committee sanction³⁵² made no reference to security.

4.412 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.**

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.413 The relevant policy was the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 13). The relevant sectoral codes were set out in the 27 June 2007 Credit Risk Management Policy.³⁵³

4.414 The CLA dated 4 June 2008³⁵⁴ provided for a £5 million loan for a term of three months on an interest only basis. The LTV was stated to be 98% on current value and 87% on completion. As with the other four loans, INBS was to be entitled to a 25% profit share upon resale.

4.415 The CLA listed the sectoral code as "H1". This applied to hotels and is consistent with the stated purpose of the loan, however, as outlined in respect of the previous loans, the Inquiry is of the view that this venture was better described as "*Development Finance*" and, as such, could be assessed on a case by case basis. In those circumstances, the Inquiry does not think that, on the balance of probabilities, an adverse finding is justified in respect of this SPC Allegation.

³⁵⁰ Additional Commercial Mortgage Offer, dated 9 June 2008 (Doc ID: 0.7.120.14472).

³⁵¹ Commercial Loan Application, dated 4 June 2008 (Doc ID: 0.7.120.40643).

³⁵² Minutes of Credit Committee meeting, dated 11 June 2008 (Doc ID: 0.7.120.10031).

³⁵³ 27 June 2007 Credit Risk Management Policy (Doc ID: 0.7.120.431329).

³⁵⁴ Commercial Loan Application, dated 4 June 2008 (Doc ID: 0.7.120.40643).

4.416 The Inquiry finds that the LTV limit for this loan was not in excess of limits set out in internal policy and, accordingly, finds that SPC 3.4 is not proven as against INBS.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.417 In light of the Inquiry's decision in relation to SPC 3.4 above, this allegation falls away.

CUSTOMER 2 - [REDACTED]

4.418 [REDACTED], was a company owned by [REDACTED]. In the context of this Inquiry, [REDACTED] was the umbrella name used for all loans associated with [REDACTED] and [REDACTED]. Most loans were through SPVs either controlled by [REDACTED] or controlled by him in association with others. The Inquiry identified 42 loans to [REDACTED] with a euro or euro equivalent value in the region of €480 million to purchase investment properties in the UK and Europe, of which about 60% was made available for projects in France in 2006/2007. In France the main focus was on the Cap D'Antibes and Cote D'Azur areas, as well as ski resorts in [REDACTED] and [REDACTED]. A further €30 million was made available, also in 2007, in respect of a resort in Italy.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Loan 1 and Loan 2 - background to loans

4.419 This loan proposal was outlined in an internal memo from Mr McCollum to Mr Fingleton, dated 12 June 2006.³⁵⁵ [REDACTED] and [REDACTED] intended to purchase the [REDACTED] and a 3.5 acre residential site at [REDACTED] [REDACTED] Cote D'Azur, France, along with [REDACTED], also on the Cote D'Azur. The requested loan facility for the three properties was for €35 million, €15 million of which was for the [REDACTED].

4.420 The current value of all three properties was stated to be €45 million and the value with revised planning was estimated at €50 million. The loan was to be for two years and

³⁵⁵ Internal memorandum from Gary McCollum to Michael Fingleton, dated 12 June 2006 (Doc ID: 0.7.120.44919).

INBS was to be entitled to 25% of the profit. This proposal followed on from the provision of a €60 million facility to purchase the [REDACTED]³⁵⁶ (see paragraph 4.516 et seq. below). Mr Fingleton signed off his approval of the proposal on the face of the internal memorandum.

4.421 The CLA, which was for the three properties, was dated 14 June 2006.³⁵⁷ It provided €35 million for a term of 24 months, a capital and interest moratorium and a LTV of 78% at current value and 70% on approval of revised planning. The valuation on the CLA showed these figures as €45 million and €50 million respectively, but these amounts were to be confirmed.³⁵⁸ INBS was to receive 25% of profits upon resale of the property. The Board approved the composite loan on 19 July 2006.³⁵⁹ The CMO issued on 20 July 2006³⁶⁰ and offered the sum of €15 million for 24 months for the purchase of the [REDACTED]. The first drawdown was on 19 July 2006 to Kurgansky Notaries who were INBS's lawyers in France, and was for €14,925,000. This was evidenced by the Summit account for this loan.³⁶¹

4.422 A further loan of €2.5 million was advanced for this project. In another internal memorandum dated 13 April 2007³⁶², Mr McCollum stated that the plans for the redevelopment were well advanced and likely to receive a building permit by September 2007. Again, Mr Fingleton signed off his approval of the proposal on the face of the internal memorandum.

4.423 The additional facility was for demolition and planning costs. The CLA for this loan was dated 13 April 2007.³⁶³ This additional loan was recommended by the Credit Committee on 23 April 2007.³⁶⁴ It was approved by the Board of INBS on 24 April 2007.³⁶⁵ The additional CMO was issued on 23 May 2007.³⁶⁶ The internal memorandum correctly identified the additional loan required as €2.5 million. The CLA incorrectly translated this as £2.5 million and this amount was recommended by the Credit Committee and approved by the Board. However it was rectified in the CMO which, correctly, referred to €2.5 million. The drawdowns of the sums were in euro.

³⁵⁶ Internal memorandum from Gary McCollum to Michael Fingleton, dated 12 June 2006 (Doc ID: 0.7.120.44919).

³⁵⁷ Commercial Loan Application, dated 14 June 2006 (Doc ID: 0.7.120.12302).

³⁵⁸ Commercial Loan Application, dated 14 June 2006 (Doc ID: 0.7.120.12302).

³⁵⁹ Minutes of Board meeting, dated 19 July 2006 (Doc ID: 0.7.120.33969).

³⁶⁰ Commercial Mortgage Offer, dated 20 July 2006 (Doc ID: 0.7.120.5197).

³⁶¹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760542).

³⁶² Internal memorandum from Gary McCollum to Michael Fingleton, dated 13 April 2007 (Doc ID: 0.7.120.5752).

³⁶³ Commercial Loan Application, dated 13 April 2007 (Doc ID: 0.7.120.10020).

³⁶⁴ Minutes of Credit Committee meeting, dated 23 April 2007 (Doc ID: 0.7.120.39746).

³⁶⁵ Minutes of Board meeting, dated 24 April 2007 (Doc ID: 0.7.120.7630).

³⁶⁶ Additional Commercial Mortgage Offer, dated 23 May 2007 (Doc ID: 0.7.120.10111).

Since the sum offered in the CMO was less than the sum approved there was no need to revert to the Board.

- 4.424 The first drawdown for this loan was on 30 May 2007 for over €800,000, payable to [REDACTED].³⁶⁷ The Summit account for these loans showed that they continued beyond their initial two year term. On 19 January 2010, Loan 1 showed an outstanding balance of almost €18 million.³⁶⁸ On 30 November 2009, Loan 2 showed an outstanding balance of €1,828,122.³⁶⁹
- 4.425 The overall exposure to this customer was discussed at a Credit Committee meeting on 23 August 2010³⁷⁰ and it was decided that INBS's interests were best served by extending limits to it. The loan was not repaid and the full facility was eventually transferred to NAMA.
- 4.426 There were four Loan Specific Allegations advanced in respect of the two loans to this borrower. Full details of these Loan Specific Allegations are set out below under each loan, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Loan 1

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) Business plan/proposals.**
- (b) Forecast cash flow analysis.**

- 4.427 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

³⁶⁷ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760661).

³⁶⁸ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760542).

³⁶⁹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760661).

³⁷⁰ Minutes of Credit Committee meeting, dated 23 August 2010 (Doc ID: 0.7.120.7858).

SPC 2.1: Funds advanced without Credit Committee approval or recommendation and not in compliance with INBS's urgent credit decision approval procedures.

4.428 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference (See Table included at Appendix 12).

The Investigation Report identified the urgent credit decision approval procedures as being set out in the 19 July 2006 Commercial Credit Committee Terms of Reference, which required two Credit Committee members' signatures as well as sign off by the Managing Director. The loan was then to be presented to the Credit Committee as soon as possible thereafter.

4.429 The CLA for this loan, which was dated 14 June 2006³⁷¹, identified the borrower as [REDACTED], adding the words "*this is liable to change*". The directors or shareholders were not confirmed at the time of the preparation of the CLA, although the exposure was identified as [REDACTED]. The purpose of the facility as stated in the CLA was to purchase three properties in the south of France, one of which was identified as [REDACTED]. The total amount requested was €35 million.

4.430 The Board meeting at which the €35 million was approved, and in the minutes of which [REDACTED] was specifically listed, also approved the loan in the name of [REDACTED]. This meeting was held on 19 July 2006.³⁷² A Credit Committee meeting was held on 21 June 2006³⁷³ that recommended a loan of €35 million to [REDACTED]. The three properties were again listed and [REDACTED] was one of them.

4.431 It would therefore appear to the Inquiry that this loan was in fact considered by the Credit Committee and recommended for approval although not under the name of the borrower company, [REDACTED], which eventually received the facility. The allegation is that the loan was not considered by the Credit Committee, and it appears that this allegation is not supported by the documentation. It should be noted that the applicable policy for this Credit Committee meeting would in fact have been the 2003

³⁷¹ Commercial Loan Application, dated 14 June 2006 (Doc ID: 0.7.120.12302)

³⁷² Minutes of Board meeting, dated 19 July 2006 (Doc ID: 0.7.120.33969).

³⁷³ Minutes of Credit Committee meeting, dated 21 June 2006 (Doc ID: 0.7.120.8787).

Commercial Credit Committee Terms of Reference as this meeting occurred before the 19 July 2006 Commercial Credit Committee Terms of Reference came into force.

- 4.432 **The Inquiry finds that this loan was considered at a Credit Committee meeting although not under the name of the company that eventually received the facility. Accordingly, it finds that SPC 2.1 is not proven as against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

- 4.433 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

- 4.434 The CMO³⁷⁴ stated that there was a full capital and interest moratorium on this loan. The Inquiry examined a letter dated 28 May 2008³⁷⁵, which was sent by INBS to [REDACTED] [REDACTED] which stated: "*Please be advised that the term should expire on the 18th July 2008*". This is consistent with the term of the loan in the CLA³⁷⁶ and CMO.

- 4.435 A Term Report³⁷⁷ which deals with both Loans 1 and 2 stated "*Gary advises that this term should be extended out for a further 6 months to allow for planning permission to go through*". A further letter dated 16 July 2008, was written by INBS to [REDACTED] [REDACTED]³⁷⁸, and stated that the loan which was due to expire on 18 July 2008 had been extended to 18 January 2009. The extension to this loan is recorded on the Summit account³⁷⁹, which showed that this loan was extended beyond the two year term specified in the CMO and beyond the six month extension identified above. This loan continued to operate until 19 January 2010 at which time there was an outstanding balance of €17,988,604.92. Policy required that any extension to this loan should have been approved by the Credit Committee.

- 4.436 The 21 April 2008 Commercial Mortgage Lending Policy, stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation was to be considered, approved and minuted by the Credit Committee. The Inquiry has analysed Credit Committee meeting minutes and packs throughout the Review Period and can see no evidence that an application for an extension of this

³⁷⁴ Commercial Mortgage Offer, dated 20 July 2006 (Doc ID: 0.7.120.5197).

³⁷⁵ Letter from Mark Hearne, INBS, to [REDACTED] dated 28 May 2008 (Doc ID: 0.7.120.23700).

³⁷⁶ Commercial Loan Application, dated 14 June 2006 (Doc ID: 0.7.120.12302).

³⁷⁷ Term Report (Doc ID: 0.7.120.35110).

³⁷⁸ Letter from Mark Hearne, INBS, to [REDACTED] dated 16 July 2008 (Doc ID: 0.7.120.30548).

³⁷⁹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760542).

loan was brought before the Credit Committee for approval at any Credit Committee meeting, as required by policy.

4.437 As this was a loan involving a capital and interest moratorium, the Moratoria Policy 21 April 2008 applied. It required that variation to moratorium accounts could only be made with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager. There is no evidence on the consolidated loan file that this loan was extended in accordance with the moratoria policy.

4.438 **The Inquiry finds that this loan was extended without appropriate approval and, accordingly, that SPC 2.9 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.439 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007. The UK Version of the April 2003 Credit Risk Policy did apply to this allegation.

The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower is a private company.

4.440 The Inquiry has examined the consolidated loan files for these loans and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO³⁸⁰ nor the CLA³⁸¹ made any reference to a personal guarantee from any of the identified directors of [REDACTED]. The security listed in the loan documentation, which consisted of fixed and floating charges over the properties the subject matter of the loan and a cross collateral charge over another property, did not refer to a personal guarantee.

³⁸⁰ Commercial Mortgage Offer, dated 20 July 2006 (Doc ID: 0.7.120.5197).

³⁸¹ Commercial Loan Application, dated 14 June 2006 (Doc ID: 0.7.120.12302).

4.441 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to these two loans, and accordingly, finds SPC 3.2 is proven as against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

Loan 2

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) Business plan/proposals.**
- (b) Forecast cash flow analysis.**

4.442 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.443 This additional loan was provided nine months after Loan 1 and it was for £2.5 million. The purpose, as stated in the CLA³⁸² was to provide finance to assist with ongoing planning costs and demolition works at [REDACTED]. The valuation referred to in Loan 1 which was dated 30 November 2006³⁸³, valued the property at €35 million. The value of the project when developed was estimated at €87.5 million. This loan was secured on the value of the asset being purchased, and in circumstances where the valuation was so significantly in excess of the sums being borrowed, the capacity of the borrower to repay the loan was adequately met by the valuation provided.

³⁸² Commercial Loan Application, dated 13 April 2007 (Doc ID: 0.7.120.10020).

³⁸³ Francois Odet Valuation Report, dated 30 November 2006 (Doc ID: 0.7.120.36375).

4.444 A forecast cash flow analysis was not obtained for this additional facility, but in light of the project involved and the valuation available, the lack of such a document would not have added significantly to the risk undertaken by INBS.

4.445 **The Inquiry finds that although this loan was advanced without a business plan or a forecast cash flow analysis, the capacity of the borrower to repay the loan was established by the valuation report received in November 2006 and, accordingly, the Inquiry finds that SPC 1.3 is not proven as against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

4.446 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

4.447 The CMO³⁸⁴ stated that there was a full capital and interest moratorium on this loan. The Inquiry examined a letter dated 28 May 2008³⁸⁵, which was sent by INBS to [REDACTED] [REDACTED] which is outlined above in respect of Loan 1. This letter also referred to Loan 2 and advised that the term expired on 29 July 2008.

4.448 A Term Report³⁸⁶ which deals with both Loan 1 and Loan 2 stated "*Gary advises that this term should be extended out for a further 6 months to allow for planning permission to go through*". A further letter was written by INBS to [REDACTED]³⁸⁷, which stated that the loan which was due to expire on 29 July 2008 had been extended to 29 January 2009. The extension to this loan was recorded on the Summit account³⁸⁸, which showed that this loan was extended beyond the six month extension identified above. The Summit account showed that this loan continued to be active until 30 November 2009, at which time there was an outstanding balance of €1,828,122.24.

4.449 The 21 April 2008 Commercial Mortgage Lending Policy required that any extension to this loan should be considered, approved and minuted by the Credit Committee, but as outlined in respect of Loan 1, there was no consideration of the extension referred to in the correspondence above by the Credit Committee. In that regard, the Inquiry has analysed Credit Committee meeting minutes throughout the Review Period and can see no evidence that an application for an extension of this loan was brought

³⁸⁴ Additional Commercial Mortgage Offer, dated 23 May 2007 (Doc ID: 0.7.120.10111).

³⁸⁵ Letter from Mark Hearne, INBS, to [REDACTED], dated 28 May 2008 (Doc ID: 0.7.120.23700).

³⁸⁶ Term Report (Doc ID: 0.7.120.35110).

³⁸⁷ Letter from Mark Hearne, INBS to [REDACTED], dated 16 July 2008 (Doc ID: 0.7.120.30548).

³⁸⁸ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760661).

before the Credit Committee for approval at any Credit Committee meeting, as required by policy.

4.450 As this was a loan involving a capital and interest moratorium, the Moratoria Policy 21 April 2008 applied. It required that variations to moratorium accounts only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager. There is no evidence on the consolidated loan file that this loan was extended in accordance with the moratoria policy.

4.451 **The Inquiry finds that this loan was extended without appropriate approval and, accordingly, SPC 2.9 is proven as against INBS.**

SPC 2.12: Terms outlined in the CLA and approved by the Board differed to the terms outlined in the CMO.

4.452 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 12).

That policy stated that no individual member of staff was authorised to vary the conditions of a loan approved by the Board. Any such variation had to be considered, approved and minuted by the Credit Committee and submitted to the Managing Director for approval.

4.453 The CLA dated 13 April 2007³⁸⁹ stated that the term of the loan was for 12 months. This document was recommended by the Credit Committee and approved by the Board. The CMO dated 23 May 2007³⁹⁰, stated that the term of the loan was for 14 months. While the variation to the CMO should have been communicated, as outlined above, the Inquiry finds that this contravention does not meet the required level of seriousness to merit an adverse finding in this instance.

4.454 **The Inquiry finds that although the terms of the CMO differed from the CLA as approved by the Board, the contravention is not of such a serious nature as to merit an adverse finding and, accordingly, finds that SPC 2.12 is not proven as against INBS.**

³⁸⁹ Commercial Loan Application, dated 13 April 2007 (Doc ID: 0.7.120.10020).

³⁹⁰ Additional Commercial Mortgage Offer, dated 23 May 2007 (Doc ID: 0.7.120.10111).

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.455 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

That policy stated that personal guarantees should be acquired where the borrower was a private company.

4.456 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA³⁹¹ nor the CMO³⁹² make any reference to a personal guarantee from any of the identified directors of the borrowing company. The Credit Committee and Board meeting minutes similarly do not refer to a personal guarantee from directors.

4.457 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds SPC 3.2 is proven as against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

³⁹¹ Commercial Loan Application, dated 13 April 2007 (Doc ID: 0.7.120.10020).

³⁹² Additional Commercial Mortgage Offer, dated 23 May 2007 (Doc ID: 0.7.120.10111).

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

- 4.458 This was a loan for €5 million, which was to facilitate the purchase of a property known as [REDACTED], in [REDACTED], France, and to fund construction work on the same property. According to the internal memorandum sent by Mr McCollum to Mr Fingleton, dated 11 September 2006³⁹³, this property was the former staff accommodation for the [REDACTED] which had already been bought by the customer and consisted of a four story residential block of 29 apartments and studios. The customer intended to refurbish the building to provide a block of luxury apartments.
- 4.459 A CMO was issued to [REDACTED] on 15 September 2006 for €5 million on a 24 month term.³⁹⁴ The loan was subject to a capital and interest moratorium and an arrangement fee of €25,000 and a separate profit share agreement³⁹⁵, which entitled INBS to 25% of any net profits. The CLA for this loan was dated 19 September 2006³⁹⁶, and it was for two properties; [REDACTED] the second of which was the subject of a separate CMO. The term of the loan was for 24 months and there was a capital and interest moratorium for the full term. The combined LTV for both properties was stated to be 76%. INBS was entitled to 25% share in profits upon resale.
- 4.460 €1,625,000 was drawn down on 19 September 2007 and various sums were advanced during the life of the loan, but the full facility was not drawn down. The Summit account³⁹⁷ shows that as of 14 December 2009, just over €2.5 million was still outstanding on this account. This loan was transferred to NAMA. [REDACTED] was sold in October 2009 for €2.6 million.
- 4.461 There were seven Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

³⁹³ Internal memorandum from Gary McCollum to Michael Fingleton, dated 11 September 2006 (Doc ID: 0.7.120.41646).

³⁹⁴ Commercial Mortgage Offer, dated 15 September 2006 (Doc ID: 0.7.120.486051).

³⁹⁵ Fee Agreement between INBS and [REDACTED] dated 15 September 2006 (Doc ID: 0.7.120.925111).

³⁹⁶ Commercial Loan Application, dated 19 September 2006 (Doc ID: 0.7.120.32609).

³⁹⁷ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760606).

SPC 1.2: CLA was not prepared in advance of funds being drawn down.

4.462 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) **Business plan/proposals.**

(b) **Forecast cash flow analysis.**

4.463 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 2.9: Term of the loan extended without appropriate approval.

4.464 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

The 21 April 2008 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation was to be considered, approved and minuted by the Credit Committee.

4.465 The CMO stated that there was a full capital and interest moratorium on this loan.³⁹⁸ The loan file contains a Term Report³⁹⁹ that recorded the fact that this loan was to have expired on 13 September 2008. It stated "*Term to be extended until 13th December 2008 as the property is under offer*". Further down the document, there was a handwritten note which crossed out 13 December 2008 and stated "*13th March 2009*" and "*6 mnth extension*". The Inquiry looked at the Credit Committee meeting minutes to see if this extension was discussed around the time the loan expired in September

³⁹⁸ Commercial Mortgage Offer, dated 15 September 2006 (Doc ID: 0.7.120.486051).

³⁹⁹ Term Report (Doc ID: 0.7.120.33485).

2008. There were Credit Committee meetings on 23 July 2008⁴⁰⁰ and on 15 September 2008⁴⁰¹, and it was not mentioned at either of these meetings. Subsequent Credit Committee meetings or packs did not record any consideration of this loan extension by the Credit Committee. The Summit account⁴⁰² for this loan dated 14 December 2009, showed that it was still active to that date, and had an outstanding balance of €2,500,284.

4.466 As this was a loan involving a capital and interest moratorium, the Moratoria Policy 21 April 2008 required that variation to moratorium accounts could only be made with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager. There is no evidence on the consolidated loan file or from Credit Committee or Board meeting minutes or packs that this loan was extended in accordance with the moratoria policy.

4.467 **The Inquiry finds that this loan was extended without appropriate approval and, accordingly, finds SPC 2.9 is proven as against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.468 The relevant policy was the April 2003 Credit Risk Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.469 The CMO⁴⁰³ was issued on 15 September 2006. The CLA⁴⁰⁴ was issued on 19 September 2006. The Credit Committee meeting⁴⁰⁵ was held on 27 September 2006 and the Board meeting⁴⁰⁶ was held on 25 October 2006. The urgent credit decision approval procedures were set out in the 19 July Commercial Credit Committee Terms of Reference and required two Credit Committee members' signatures and sign off by the Managing Director. The loan should then be presented to the Credit Committee as soon as possible thereafter. The Inquiry has examined the consolidated loan file for

⁴⁰⁰ Minutes of Credit Committee meeting, dated 23 July 2008 (Doc ID: 0.7.120.30781).

⁴⁰¹ Minutes of Credit Committee meeting, dated 15 September 2008 (Doc ID: 0.7.120.20327).

⁴⁰² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760606).

⁴⁰³ Commercial Mortgage Offer, dated 15 September 2006 (Doc ID: 0.7.120.486051).

⁴⁰⁴ Commercial Loan Application, dated 19 September 2006 (Doc ID: 0.7.120.30990).

⁴⁰⁵ Minutes of Credit Committee meeting, dated 27 September 2006 (Doc ID: 0.7.120.42494).

⁴⁰⁶ Minutes of Board meeting, dated 25 October 2006 (Doc ID: 0.7.120.35325).

this loan and the Credit Committee meeting minutes and packs and there is no evidence that any urgent credit decision approval procedure was complied with.

- 4.470 **The Inquiry finds that the CMO for this loan issued prior to appropriate recommendation for approval and/or approval. There is no evidence of compliance with urgent credit decision approval procedures and, accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

- 4.471 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower was a private company.

- 4.472 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO⁴⁰⁷ nor the CLA⁴⁰⁸ make any reference to a personal guarantee from any of the identified directors of [REDACTED]. The security listed in the loan documentation which included a fixed and floating charge over the property the subject matter of the loan, did not refer to a personal guarantee.

- 4.473 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to these two loans and, accordingly, finds SPC 3.2 is proven as against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore

⁴⁰⁷ Commercial Mortgage Offer, dated 15 September 2006 (Doc ID: 0.7.120.486051).

⁴⁰⁸ Commercial Loan Application, dated 19 September 2006 (Doc ID: 0.7.120.30990).

knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.474 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

4.475 A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As no finding has been made against INBS, this loan specific participation allegation against Mr Purcell now falls away.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.476 The relevant policy was the 19 July 2006 Commercial Credit Committee Terms of Reference.

4.477 In circumstances where the Inquiry makes no finding in respect of SPC 3.4, this allegation no longer arises.

4.478 A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

- 4.479 The internal memorandum from Mr McCollum to Mr Fingleton, dated 12 April 2006, outlined the proposal, seeking a loan of €27 million for a three year term.⁴⁰⁹ The application was on behalf of [REDACTED] [REDACTED] 50% and [REDACTED] 50%, and was for the construction and resale of two [REDACTED] in Rotterdam and The Hague. Both companies were described as “*long established customers of the Society*”.⁴¹⁰
- 4.480 Both companies had jointly concluded negotiations with [REDACTED] (the property arm of [REDACTED]) for [REDACTED] to build two 126 bed [REDACTED] [REDACTED] adjoining the [REDACTED] in The Hague and in Rotterdam. [REDACTED] was required to deliver the hotels to [REDACTED] ready to operate, with funding for the fixed price construction to be provided by INBS. [REDACTED] [REDACTED] would operate the hotels for 18 months prior to resale. Mr McCollum stated in his internal memorandum that the [REDACTED] were particularly suited to the two sites, and that [REDACTED] expertise in the operation of the brand also meant that trading figures could be forecast with a large degree of certainty. The CMO for this loan was advanced on 2 March 2007.⁴¹¹ It was for €33.5 million and was divided into “*Facility A*” for €2,817,333 and “*Facility B*” for €30,682,662.67. The term of the loan was for 36 months and an interest and capital moratorium applied. In a letter dated 21 June 2007⁴¹², INBS sought an account update from the borrower who replied on 20 August 2007, stating that both contracts were dependent on planning permission which had not been finalised as of that date.⁴¹³
- 4.481 The initial drawdown was for €1.5 million and in September 2008, the Summit account recorded “*FUNDS NOT REQUIRED €30,000,000.00*”.⁴¹⁴ There is a note of a conference call⁴¹⁵ that appeared to have occurred in October 2008 which outlined the

⁴⁰⁹ Internal memorandum from Gary McCollum to Michael Fingleton, dated 12 April 2008 (Doc ID: 0.7.120.24973).

⁴¹⁰ Internal memorandum from Gary McCollum to Michael Fingleton, dated 12 April 2008 (Doc ID: 0.7.120.24973).

⁴¹¹ Commercial Mortgage Offer, dated 2 March 2007 (Doc ID: 0.7.120.10083).

⁴¹² Letter from INBS to [REDACTED], dated 21 June 2007 (Doc ID: 0.7.120.24910).

⁴¹³ Letter from [REDACTED] to Gary McCollum, INBS, dated 20 August 2007, page 2 (Doc ID: 0.7.120.24910).

⁴¹⁴ Extract from Summit Account [REDACTED] No (Doc ID: 0.7.120.760723).

⁴¹⁵ Draft letter from INBS to [REDACTED] noting contents of conference call (Doc ID: 0.7.120.917361).

fact that [REDACTED] rescinded the contract in 2008 on the grounds that it was uneconomic. INBS were seeking to recover the deposit of €2,817,337.33. The Summit account showed that this loan was still accruing interest in February 2010 when there was an outstanding balance of just over £892,000. This loan was transferred to NAMA.

4.482 There were six Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.1: No CLA was prepared at all.

4.483 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.484 The Inquiry has seen a CLA dated 19 April 2006.⁴¹⁶ It was for a loan of €27 million and the applicants were [REDACTED] 50% and [REDACTED] 50%. The purpose of the loan was to fund the fixed price construction of two [REDACTED] [REDACTED] adjoining the [REDACTED] in The Hague and Rotterdam. This CLA was recommended by the Credit Committee and approved by the Board.

4.485 This CLA was a full 11 months prior to the CMO that was ultimately relied upon for this transaction and was 13 months before the loan was incepted on Summit. There were important differences between the CLA and the CMO⁴¹⁷, which was dated 2 March 2007. The borrowers were different – there were four borrower companies listed in the CMO. The amount of the loan was €33.5 million in the CMO and there were alterations to the structure of the transaction that resulted in differences to the security. A complication arose because the borrowers required 10% of the money up front, but they would not be the legal owners of the property until later in the transaction and therefore would not be in a position to provide a legal charge over the property to secure the initial advance.

4.486 The CMO separated this 10% out of the loan amount and divided it into “*Facility A*” for €2,817,337.33 and “*Facility B*” for €30,682,662.67. “*Facility A*” was secured by a performance guarantee but there was no charge over the land in place. Only “*Facility A*” was ever drawn down.

⁴¹⁶ Commercial Loan Application, dated 19 April 2006 (Doc ID: 0.7.120.5884).

⁴¹⁷ Commercial Mortgage Offer, dated 2 March 2007 (Doc ID: 0.7.120.10083).

4.487 The Inquiry finds that there was an original CLA in place, but such significant-variations were introduced by the time the CMO came to be offered, that it required a fresh CLA outlining such variations to be submitted through the Credit Committee to the Board.

4.488 **The Inquiry finds that there was no CLA prepared for this loan and, accordingly, finds SPC 1.1 is proven as against INBS.**

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Business plan/proposals.

4.489 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.490 There were two documents in the loan file that are market assessments and valuations of each of the proposed hotels.⁴¹⁸ They were conducted by Howarth Consulting and were both dated March 2006. The hotels were valued at €17,738,766 and €17,807,647 respectively. These were both comprehensive documents and cover matters such as the location and surroundings of the proposed developments, the hotel supply and demand in each of the locations, a financial analysis of the future hotel performance, expected profit and loss account and an estimation of present value. Notwithstanding the fact that these reports were prepared a year prior to the issuing of the CMO, the Inquiry finds that these documents represent a reasonable business plan for the loan in question.

4.491 **The Inquiry finds that there was a business plan/proposal in respect of this loan and, accordingly, finds SPC 1.3 is not proven as against INBS.**

SPC 1.4: Credit grades were not assigned to commercial loans.

4.492 The relevant policies were the 2006 Impairment Provisioning Policy and the 2006 Notes on the Implementation of Impairment Provisioning Policy. (See Table included at Appendix 11).

4.493 In his submissions to the Inquiry, Mr Purcell stated that the Impairment Provisioning Policy did not create new policy with regard to credit grades. The Inquiry agrees with this assertion and therefore no finding is made in respect of this allegation. The

⁴¹⁸ [REDACTED] dated March 2006 (Doc ID: 0.7.120.894599-000003); [REDACTED], dated March 2006 (Doc ID: 0.7.120.894599-000005).

assigning of credit grades during the loan approval process is dealt with at Chapter 5 of this Findings Report (see paragraph 5.197 et seq.). That part of the Findings Report outlines Mr Purcell's submissions on this point and the reasoning for the Inquiry's finding that a failure to assign a credit grade at the loan approval stage was not a breach of INBS internal policy.

SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval (as required) and not in compliance with INBS's urgent credit decision approval procedures.

4.494 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.495 The CLA, dated 19 April 2006, was recommended by the Credit Committee at a meeting dated 20 April 2006⁴¹⁹, and was approved by the Board at a meeting dated 25 April 2006. However, as set out under SPC 1.1 above, a fresh CLA should have been prepared and submitted to the Credit Committee for recommendation to the Board.

There is no evidence on the consolidated loan file of any urgent credit decision approval procedures having been complied with.

4.496 **The Inquiry finds that there was no Credit Committee approval or recommendation and no Board approval and no compliance with urgent credit decision approval procedures. Accordingly, it finds SPC 2.2 is proven against INBS.**

SPC 3.1: Loans were unsecured.

4.497 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

4.498 The CMO outlined above provided for "*Facility A*" to be drawn down without any charge on the land being obtained. What was provided was an assignment of a performance guarantee from the construction company. The policy stated that all facilities should be secured and that all security should be professionally valued. It stated:

⁴¹⁹ Minutes of Credit Committee meeting, dated 20 April 2006 (Doc ID: 0.7.120.632286).

“The Society’s advance must be secured by way of First Legal Charge, however Second Legal Charge is accepted as additional security... Acceptable security comprises freehold property or leasehold property...”.

4.499 **The Inquiry finds that this loan was not secured and, accordingly, finds SPC 3.1 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.500 The relevant policies are the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 13).

These policies both stated that personal guarantees should be acquired where the borrower was a private company.

4.501 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED] or any of the other associated companies involved in this loan. The CMO made no reference to a personal guarantee from any of the identified directors of the borrowing companies. The security listed in the loan documentation which consisted of a fixed and floating charge over the property the subject matter of the loan, did not refer to a personal guarantee.

4.502 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds SPC 3.2 is proven against INBS.**

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.503 This loan for €55 million was initially approved in respect of the customer in a personal capacity. The full amount was drawn a month later and was transferred to a SPV, [REDACTED] (see Loans [REDACTED] and 4 below). €5 million of that drawdown was applied in repayment of this personal loan to [REDACTED]. This loan to [REDACTED] was the first of a series of six loans which were all related to the purchase

of the [REDACTED] Hotel in [REDACTED], France. Each of these loans will be dealt with in analysis conducted on the following two borrower loan accounts.

- 4.504 The proposed transaction was described in an internal memorandum from Mr McCollum to Mr Fingleton dated Wednesday 26 April 2006.⁴²⁰ Mr McCollum said that [REDACTED], “one of the Society’s longest established customers” with a “net worth in excess of £100million”, wanted to purchase the [REDACTED] Hotel, in [REDACTED], France. He enclosed a full summary of the property and an outline of the transaction, and requested a loan of €55 million for a 12 month term. INBS was to be entitled to a 25% share of profits upon resale. Mr McCollum estimated the current value of the property at €65 million, increasing to €75 million with revised planning. Mr McCollum said that he had inspected the premises and could fully support the customer’s summary and the demand in the area. He concluded by saying €5 million was required by Friday (which would have been two days’ time) to pay the deposit.
- 4.505 The CLA dated 27 April 2006⁴²¹, divided the loan into two facilities. Loan A was for €5 million to cover the deposit, and was drawn down on 2 May 2006. Loan B was for €50 million and it was to cover the purchase of the property. It was never drawn down in the name of [REDACTED]. The CLA also stated that planning permission had been obtained for 60 luxury apartments which it was hoped could be extended to 80.
- 4.506 Loan A was secured by an existing charge on [REDACTED] and by a personal guarantee from [REDACTED]. Loan A was fully redeemed less than one month later on 24 May 2006 when the facility was re-financed with INBS in the name of [REDACTED]. The full facility was drawn down by [REDACTED]. [REDACTED] The Credit Committee recommended Loan A and Loan B on 11 May 2006⁴²² and the Board approved them at a meeting on 18 May 2006. Since Loan B was never the drawn down the SPC Allegations listed below apply only to Loan A.
- 4.507 There were three Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

⁴²⁰ Internal memorandum from Gary McCollum to Michael Fingleton, dated 26 April 2006 (Doc ID: 0.7.120.28586).

⁴²¹ Commercial Loan Application, dated 27 April 2006 (Doc ID: 0.7.120.41435).

⁴²² Minutes of Credit Committee meeting, dated 11 May 2006 (Doc ID: 0.7.120.40591).

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Statement of affairs (net worth).**
- (b) **Income details.**
- (c) **Bank statements (six months' current accounts).**
- (d) **Loan statements (personal & business).**
- (e) **Business plan/proposals (individual).**

4.508 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 2.4: Credit Committee not quorate when loans were approved or recommended and loans not in compliance with INBS's urgent credit decision approval procedures.

4.509 This allegation was against INBS only and so it was not opened during the SPC 1 to 4 Loan Hearings. Accordingly, this allegation was not considered by the Inquiry.

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

4.510 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.511 The Board approved this loan at a meeting held on 18 May 2006.⁴²³ The date of the first drawdown was 2 May 2006⁴²⁴, some 16 days prior to Board approval.

⁴²³ Minutes of Board meeting, dated 18 May 2006 (Doc ID: 0.7.120.5499).

⁴²⁴ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760733).

The Inquiry has examined the consolidated loan file and there is no evidence of any urgent credit decision approval procedures being complied with in this loan. The minutes recording Board approval made no reference to the fact that this loan had already been drawn down.

- 4.512 **The Inquiry finds that funds were advanced prior to Board approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.6 is proven as against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

- 4.513 The relevant policy was the April 2003 Credit Risk Policy. The urgent credit decision approval procedures were in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

- 4.514 An internal memorandum⁴²⁵ was prepared on 26 April 2006. The CMO⁴²⁶ was also dated 26 April 2006. The Credit Committee recommendation⁴²⁷ was made on 11 May 2006 and the Board meeting approving the loan⁴²⁸ was held on 18 May 2006.

The Inquiry has examined the consolidated loan file and there is no evidence of any urgent credit decision approval procedures being complied with in this loan.

- 4.515 **The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decisions approval procedures. Accordingly, it finds that SPC 2.13 is proven as against INBS.**

⁴²⁵ Internal memorandum, from Gary McCollum to Michael Fingleton, dated 26 April 2006 (Doc ID: 0.7.120.28586).

⁴²⁶ Commercial Mortgage Offer, dated 26 April 2007 (Doc ID: 0.7.120.5200).

⁴²⁷ Minutes of Credit Committee meeting, dated 11 May 2006 (Doc ID: 0.7.120.40591).

⁴²⁸ Minutes of Board meeting, dated 18 May 2006 (Doc ID: 0.7.120.5499).

Borrower: [REDACTED]

Loan Account: [REDACTED]

Loans 1, 2, 3 and 4 - background to loans

- 4.516 These loans relate to the same transaction as the loan outlined above. [REDACTED] [REDACTED] was a SPV set up under a complicated tax structure through Luxembourg for the purpose of purchasing a hotel in France. The four loans were made over the course of two years from 2006 to 2008 totalling in excess of €100 million. The first of these facilities was advanced to the customer in his personal capacity but was redeemed shortly after and the [REDACTED] account was incepted. The documentation for the previous loan and the [REDACTED] [REDACTED] documentation have to be read as one facility to assess the extent of the information available to INBS when this loan was initially advanced.
- 4.517 The first loan for €60 million was activated on the Summit account on 22 May 2006. It continued until 22 February 2010 when it showed an outstanding balance of €72,583,778.76.⁴²⁹
- The second loan for €25 million was activated on the Summit account on 6 December 2006. It continued until 29 November 2009 when it showed an outstanding balance of €28,781,242.17.⁴³⁰
- The third loan for €15 million was activated on Summit on 21 February 2008. It continued until 21 February 2010 when it showed an outstanding balance of €16,281,188.14.⁴³¹
- The fourth loan for €3.5 million was activated on Summit on 24 September 2008. It continued until 24 December 2009 when it showed an outstanding balance of €3,693,293.88.⁴³²
- 4.518 INBS was to be entitled to a 25% profit share upon resale of the property. These loans were all transferred to NAMA.
- 4.519 There were 14 Loan Specific Allegations advanced in respect of the four loans to this borrower. Full details of these Loan Specific Allegations are set out below under each

⁴²⁹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760618).
⁴³⁰ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760701).
⁴³¹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760607).
⁴³² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760727).

loan, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Loan 1

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) **Business plan/proposals.**

(b) **Forecast cash flow analysis.**

4.520 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 2.4: Credit Committee not quorate when loans were approved or recommended and loans not in compliance with INBS's urgent credit decision approval procedures.

4.521 This allegation was against INBS only and so it was not opened during the SPC 1 to 4 Loan Hearings. Accordingly, this allegation was not considered by the Inquiry.

SPC 2.8: Loan amount advanced per the CMO was in excess of the amount outlined in the CLA and approved by the Board and additional funds were not appropriately approved.

4.522 The relevant policies were the Board Resolution September 2002, the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.523 In the CLA dated 27 April 2006, the loan amount was stated to be €55 million.⁴³³ At the Credit Committee meeting that considered this loan, the loan amount was stated to be €55 million.⁴³⁴ The minutes of the Board meeting which approved this loan, dated 18

⁴³³ Commercial Loan Application, dated 27 April 2006 (Doc ID: 0.7.120.41435).

⁴³⁴ Minutes of Credit Committee meeting, dated 11 May 2006 (Doc ID: 0.7.120.40591).

May 2006, also recorded the loan amount as €55 million.⁴³⁵ The CMO dated 23 May 2006 indicated a loan amount of €60 million.⁴³⁶

- 4.524 A memorandum from Mr McCollum to the commercial lending department dated 26 May 2006 stated:

“The CLA attached provides for a total facility of €55,000,000, however, the facility has been increased to provide for taxes, VAT and initial works to be carried out to the Property. The CLA will be amended in due course to cater for this”.⁴³⁷

Notwithstanding this assurance, there is no evidence in Credit Committee or Board meeting minutes during the Review Period of any recommendation or approval of the increased facility. Neither is there any evidence of a revised CLA in the consolidated loan file for this loan.

- 4.525 **The Inquiry finds that the loan amount advanced per the CMO was in excess of the amount outlined in the CLA and approved by the Board. Accordingly, it finds that SPC 2.8 is proven as against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

- 4.526 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

The 21 April 2008 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation was to be considered, approved and minuted by the Credit Committee.

As this loan had an interest and capital moratorium, the Moratoria Policy 21 April 2008 applied and it stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

- 4.527 The CLA and CMO for this loan stated that the term of the loan was for 24 months from 23 May 2006 and that there was a capital and interest moratorium for the duration of

⁴³⁵ Minutes of Board meeting, dated 18 May 2006 (Doc ID: 0.7.120.5499).

⁴³⁶ Commercial Mortgage Offer, dated 23 May 2006 (Doc ID: 0.7.120.30523).

⁴³⁷ Internal Memorandum, from Gary McCollum to Barbara Donaldson, INBS, dated 26 May 2006 (Doc ID: 0.7.120.15143).

the facility. A Term Report dated 15 July 2008⁴³⁸, showed the expiry date for this loan as being 21 May 2008. Under “Update” it stated: “To extend out the terms until October to allow for sales”. The extension was to continue until 21 October 2008. The Summit account showed that this loan continued to accrue interest until February 2010 when there was an outstanding balance of €72,583,778.76.⁴³⁹

4.528 From an examination of the loan files, Credit Committee meeting minutes and Board meeting minutes, there is no evidence that the term extension approval process as set out in policy was complied with in respect of this facility.

4.529 **The Inquiry finds that this loan was extended without the appropriate approval policy being followed and, accordingly, that SPC 2.9 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.530 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (see Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower was a private company.

4.531 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA nor the CMO made any reference to a personal guarantee from any of the identified directors of the borrowing company. The security listed includes a fixed and floating charge over the property the subject matter of the loan. The Credit Committee or Board meeting minutes similarly do not refer to a personal guarantee from directors.

⁴³⁸ Term Report (Doc ID: 0.7.120.566806).

⁴³⁹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760618).

4.532 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, it finds that SPC 3.2 is proven as against INBS.**

Although Mr Purcell attended the Board meeting at which this loan was approved, no allegation of participation was made against him in the Investigation Report and therefore no finding is made against him in respect of this loan.

Loan 2

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Forecast cash flow analysis.

4.533 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 2.9: Term of the loan extended without appropriate approval.

4.534 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

The 21 April 2008 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation was to be considered, approved and minuted by the Credit Committee.

4.535 As this loan had an interest and capital moratorium, the Moratoria Policy 21 April 2008 applied and it stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

4.536 The CLA⁴⁴⁰ for this loan stated that the term of the loan was for 20 months from 17 August 2006, the CMO, dated 15 September 2006⁴⁴¹, stated that the term was for 21 months, and both documents stated that there was a capital and interest moratorium for the duration of the facility. A Term Report dated 15 July 2008⁴⁴², showed the expiry date for this loan as being 28 August 2008. Under “*Update*” it stated: “*To extend out the terms until October to allow for sales*”. The extension was to continue until 28 October 2008. The extract from the Summit account on file, showed that this loan continued to accrue interest until 29 November 2009 when it showed a balance of €28,781,242.17.⁴⁴³

4.537 From an examination of the loan files, Credit Committee meeting minutes⁴⁴⁴ and Board meeting minutes⁴⁴⁵, there is no evidence that the term extension approval process as set out in policy was complied with in respect to this additional facility.

4.538 **The Inquiry finds that this loan was extended without the appropriate approval policy being followed and, accordingly, that SPC 2.9 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.539 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (see Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower is a private company.

4.540 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors

⁴⁴⁰ Commercial Loan Application, dated 17 August 2006 (Doc ID: 0.7.120.20799).

⁴⁴¹ Commercial Mortgage Offer, dated 15 September 2006 (Doc ID: 0.7.120.699108).

⁴⁴² Term Report (Doc ID: 0.7.120.566806).

⁴⁴³ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760701).

⁴⁴⁴ Minutes of Credit Committee meeting, dated 18 August 2006 (Doc ID: 0.7.120.550864).

⁴⁴⁵ Minutes of Board meeting, dated 24 August 2006 (Doc ID: 0.7.120.21569).

of [REDACTED] Neither the CLA⁴⁴⁶ nor the CMO⁴⁴⁷ made any reference to a personal guarantee from any of the identified directors of the borrowing company. The identified security did not refer to a personal guarantee. The Credit Committee or Board meeting minutes similarly did not refer to a personal guarantee from directors.

4.541 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, that SPC 3.2 is proven as against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.542 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

4.543 A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As no finding has been made against INBS, this loan specific participation allegation against Mr Purcell now falls away.

⁴⁴⁶ Commercial Loan Application, dated 17 August 2006 (Doc ID: 0.7.120.20799).

⁴⁴⁷ Commercial Mortgage Offer, dated 15 September 2006 (Doc ID: 0.7.120.38172).

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.544 The relevant policy was the 19 July 2006 Commercial Credit Committee Terms of Reference.

In circumstances where the Inquiry makes no finding in respect of SPC 3.4, this allegation no longer arises.

4.545 A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

Loan 3

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Three years' audited accounts.

4.546 The relevant policy was the December 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.547 This third loan was for €15 million and was drawn down on 21 February 2008. The purpose of the loan was to provide additional funds in relation to enabling works, construction works and marketing at the [REDACTED].

4.548 [REDACTED] was a SPV incorporated in May 2006. Three years' audited accounts would not have been available in February 2008. The Consolidated Table in respect of this allegation stated in a footnote:

"Or, for newly incorporated companies where three years audited accounts were not available at the time of loan application, the number of years of audited accounts that would have been available at the time of loan application (ie one or two years)".⁴⁴⁸

On this basis SPC 1.3 was alleged in respect of borrower companies that were less than three years old. However, the Inquiry has seen no basis in policy for this

⁴⁴⁸ Consolidated Table C1.3 page vii, footnote 2 (Doc ID: RDU_REL1600-00000041).

approach. The relevant policies all referred to “*Three years audited accounts*” and there is no provision for requiring accounts for a shorter period.

4.549 The Inquiry finds that there was not a failure to acquire required information, namely three years’ audited accounts. Accordingly, it finds SPC 1.3 is not proven against INBS.

SPC 2.9: Term of the loan extended without appropriate approval.

4.550 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

4.551 The 21 April 2008 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation must be considered, approved and minuted by the Credit Committee. As this loan had an interest and capital moratorium, the Moratoria Policy 21 April 2008 applied and it stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

4.552 The CLA⁴⁴⁹ and CMO⁴⁵⁰ for this loan stated that the term of the loan was three months and five months respectively and that there was a capital and interest moratorium for the duration of the facility. A Term Report dated 15 July 2008⁴⁵¹, showed the expiry date for this loan as being 20 July 2008. Under “*Update*” it stated: “*To extend out the terms until October to allow for sales*”. The extension was to continue until 20 October 2008. The extract from the Summit account on file, shows that this loan continued to accrue interest until 21 February 2010 when it showed an outstanding balance of €16,281,188.14.⁴⁵²

4.553 From an examination of the loan files, Credit Committee meeting minutes and Board minutes, there is no evidence that the term extension approval process as set out in policy was complied with in respect to this additional facility.

4.554 The Inquiry finds that this loan was extended without the appropriate approval policy being followed and, accordingly, that SPC 2.9 is proven as against INBS.

⁴⁴⁹ Commercial Loan Application, dated 24 January 2008 (Doc ID: 0.7.120.24632).

⁴⁵⁰ Commercial Mortgage Offer, dated 8 February 2008, page 2 of document bundle (Doc ID: 0.7.120.23358).

⁴⁵¹ Term Report, dated 15 July 2008 (Doc ID: 0.7.120.566806).

⁴⁵² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760607).

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.555 The relevant policies were the 27 June 2007 Credit Risk Management Policy and the December 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

These policies both stated that personal guarantees should be acquired where the borrower was a private company.

4.556 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA nor the CMO made any reference to a personal guarantee from any of the identified directors of the borrowing company. The Credit Committee or Board meeting minutes similarly did not refer to a personal guarantee from directors.

4.557 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.

Loan 4

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) Three years' audited accounts.**
- (b) Business plan/proposal.**
- (c) Forecast cash flow analysis.**

4.558 The relevant policy was the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.559 In an internal memorandum from Mr McCollum to Mr Fingleton dated 4 September 2008⁴⁵³, Mr McCollum outlined the basis for a request for €3.5 million of additional funding. He said that to date, the site had been cleared and show flats completed with

⁴⁵³ Internal memorandum from Gary McCollum to Michael Fingleton, dated 4 September 2008 (Doc ID: 0.7.120.40668).

20 of the 59 apartments agreed for sale for a total of €155 million. The requested funds were to cover 50% of outstanding invoices. The CLA⁴⁵⁴ and CMO⁴⁵⁵ provided for a three month term, 59% LTV and a full moratorium for the term.

4.560 In relation to the requirement for three years' audited accounts, the Inquiry's reasoning and finding in respect of Loan 3 at paragraph 4.546 et seq. above, apply equally to this loan, where [REDACTED] was only incorporated as a SPV in May 2006, and three years' audited accounts would not have been available.

4.561 The requirement of a business plan or proposal must be looked at in the context of the particular lending model in this case. The loan was asset based and its repayment depended on resale of the property. INBS had an up to date valuation which showed a reasonable prospect of a healthy profit once the project was completed. The financial collapse in 2008 had a significant impact but it is not clear that a business plan or proposal would have anticipated that.

4.562 The valuation provided by DTZ, a property valuation and consultancy firm, dated 2 January 2008 and addressed to INBS, was described as a report and valuation to assist in considering the suitability of the property as security for a commercial mortgage. The document went into a lot of detail about expenditure and expected sales. It stated "*Our appraisal thus results in a developers profit of €47 million on a final net land value of €195, 000,000.00*".⁴⁵⁶

INBS had provided a facility to date of €100 million with a current outstanding balance of €111 million.

4.563 The Development Appraisal provided by [REDACTED] own development company was dated two days after the drawdown of this loan but the accounts on which it is based are from August 2008, and it is possible that the contents of the appraisal were already known to INBS.

4.564 On balance, the Inquiry finds that there was enough information on file to constitute a business plan for this additional facility. A reasonably detailed cash flow analysis was contained in both the DTZ valuation and the Development Appraisal and they were sufficient to meet the requirements of policy in this regard.

⁴⁵⁴ Commercial Loan Application, dated 11 September 2008 (Doc ID: 0.7.120.22876).

⁴⁵⁵ Commercial Mortgage Offer, dated 25 September 2008 (Doc ID: 0.7.120.699119).

⁴⁵⁶ DTX Eurexi, Report and Valuation, dated 2 January 2008, page 22 (Doc ID: 0.7.120.929819).

4.565 **The Inquiry finds that there was no failure to acquire required information, namely three years' audited accounts. Accordingly, it finds SPC 1.3 is not proven against INBS.**

The Inquiry finds that required information, namely a business plan or proposal and a forecast cash flow analysis was acquired in respect of this loan and, accordingly, that SPC 1.3 is not proven as against INBS.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.566 The relevant policies were the 27 June 2007 Credit Risk Management Policy and the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

These policies both stated that personal guarantees should be acquired where the borrower is a private company.

4.567 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA nor the CMO made any reference to a personal guarantee from any of the identified directors of the borrowing company. The Credit Committee or Board meeting minutes similarly do not refer to a personal guarantee from directors.

4.568 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, that SPC 3.2 is proven as against INBS.**

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.569 This is another loan relating to property being acquired by the customer in the south of France. The property that was the subject matter of this loan was a 3.5 acre site known as [REDACTED]. It was one of the three properties mentioned in the [REDACTED] documentation referred to above. The facility requested in respect of this site was €15 million. In his proposal letter to Mr McCollum dated 7 June 2006, the customer said that a planning permission granted in 1992 had lapsed. It was hoped that he would be

able to get permission for approximately 125 apartments "...which, in my opinion, would have a minimum site value of anywhere between 30/40 Million Euros".⁴⁵⁷

4.570 In his internal memorandum to Mr Fingleton, dated 12 June 2006⁴⁵⁸, Mr McCollum requested a loan facility of €35 million for all three properties. He stated the current value at €45 million and the value with revised planning at €50 million. The loan was to be for 24 months and INBS was to be entitled to 25% of profits.

4.571 The CLA⁴⁵⁹ in the name of [REDACTED] (with the proviso that it was liable to change), was dated 14 June 2006 and it was in respect of three properties – [REDACTED] [REDACTED] and the [REDACTED]. There was a valuation of the site dated 16 June 2006, which estimated it at €23 million.⁴⁶⁰ The valuation after construction of the apartments was estimated at €115 million. The CMO was dated 20 July 2006 and was signed on that date by a director of the borrowing company.⁴⁶¹

4.572 This loan was initially drawn down in the name of [REDACTED] on 19 July 2006 in the sum of €15 million. This loan continued to accrue interest until January 2010, when according to the Summit account it had an outstanding balance of almost €18 million.⁴⁶² This loan was transferred to NAMA.

4.573 There were four Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Business plan/proposals.**
- (b) **Forecast cash flow analysis.**

4.574 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

⁴⁵⁷ Letter from [REDACTED] to Gary McCollum, INBS, dated 7 June 2006 (Doc ID: 0.7.120.924460).

⁴⁵⁸ Internal memorandum from Gary McCollum to Michael Fingleton, dated 12 June 2006 (Doc ID: 0.7.120.44919).

⁴⁵⁹ Commercial Loan Application, dated 14 June 2006 (Doc ID: 0.7.120.30340).

⁴⁶⁰ Francois Odet Valuation, dated 16 June 2006 (Doc ID: 0.7.120.12682).

⁴⁶¹ Commercial Mortgage Offer, dated 20 July 2006 (Doc ID: 0.7.120.43348).

⁴⁶² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760552).

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 2.1: Funds advanced without Credit Committee approval or recommendation and not in compliance with INBS's urgent credit decision approval procedures.

4.575 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.576 There was a minute of a Credit Committee meeting⁴⁶³ held on 21 June 2006 that recorded a recommendation for a loan of €35 million to enable the purchase of three properties, one of which was listed as "a 3.5 acre residential site at [REDACTED], [REDACTED], Cote D'Azur, France...".

The Inquiry is satisfied that this is a record of Credit Committee recommendation for approval in this case.

4.577 The Inquiry finds that Credit Committee recommendation was acquired in respect of this loan and, accordingly, finds that SPC 2.1 is not proven as against INBS.

SPC 2.9: Term of the loan extended without appropriate approval.

4.578 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

The 21 April 2008 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation was to be considered, approved and minuted by the Credit Committee.

4.579 As this loan had an interest and capital moratorium, the Moratoria Policy 21 April 2008 applied and it stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of

⁴⁶³ Minutes of Credit Committee meeting, dated 21 June 2006 (Doc ID: 0.7.120.6823).

the following: managing director; commercial lending manager; or mortgage administration manager.

- 4.580 The CLA⁴⁶⁴ and CMO⁴⁶⁵ for this loan stated that the term of the loan was 24 months and that there was a capital and interest moratorium for the duration of the facility. A Term Report dated 15 July 2008 identified the expiry date for this loan as 18 July 2008. The report stated: "*Gary says clients are in negotiations to sell. To extend out until November 2008 to allow for the sale of the property*".⁴⁶⁶ The report showed an extension granted until 18 November 2008. The Summit account⁴⁶⁷ for this loan showed that interest continued to accrue until January 2010, when it had an outstanding balance of almost €18 million.
- 4.581 From an examination of the loan files, Credit Committee meeting minutes and Board meeting minutes, there is no evidence that the term extension approval process as set out in policy was complied with in respect to this additional facility.
- 4.582 **The Inquiry finds that this loan was extended without the appropriate approval policy being followed and, accordingly, SPC 2.9 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

- 4.583 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (see Table included at Appendix 13) and the 9 November 2004 Commercial Lending Policy.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

- 4.584 The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower is a private company.
- 4.585 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors

⁴⁶⁴ Commercial Loan Application, dated 14 June 2006 (Doc ID: 0.7.120.30340).

⁴⁶⁵ Commercial Mortgage Offer, dated 20 July 2006 (Doc ID: 0.7.120.43348).

⁴⁶⁶ Term Report, dated 15 July 2008 (Doc ID: 0.7.120.566616).

⁴⁶⁷ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760552).

of [REDACTED]. Neither the CLA nor the CMO made any reference to a personal guarantee from any of the identified directors of the borrowing company. The identified security did not refer to a personal guarantee. The Credit Committee or Board meeting minutes similarly did not refer to a personal guarantee from directors.

- 4.586 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Loan 1 and Loan 2 - background to loans

- 4.587 Loan 1 was a facility of €5 million for the purposes of the acquisition of a former garage and staff quarters known as [REDACTED], that were situated close to the [REDACTED]. This is the hotel that was the subject matter of previous loan reviews in this section of this Findings Report.
- 4.588 The CMO⁴⁶⁸ was issued on 15 September 2006 and it offered €5 million for a 24 month term, a full capital and interest moratorium and security which included a mortgage over the property the subject matter of the loan. There was a 25% Profit Share Agreement in place for when the property was resold. The CLA⁴⁶⁹ was issued on 19 September 2006 and it covered both this loan and a loan for another property, [REDACTED], which is the subject matter of a separate loan analysis in this section. The

⁴⁶⁸ Commercial Mortgage Offer, dated 15 September 2006 (Doc ID: 0.7.120.37854).

⁴⁶⁹ Commercial Loan Application, dated 19 September 2006 (Doc ID: 0.7.120.24498).

LTV was stated to be 76% for both properties. The loan was recommended by the Credit Committee⁴⁷⁰ on 27 September 2006 and approved by the Board⁴⁷¹ on 25 October 2006. The first drawdown⁴⁷² occurred on 14 September 2006 in the sum of €1.65 million.

4.589 Loan 2 was outlined in an internal memorandum⁴⁷³ from Mr McCollum to Mr Fingleton dated 19 April 2007, Mr McCollum stated that the borrower was in discussions with the Mayor to convert ██████████ to an apartment development but in the short term it would be used as show apartments for the ██████████ development. The borrower had agreed to purchase an adjacent villa to ██████████ and now required a further €1.45 million that would bring the overall facility up to €6.45 million. In a letter from ██████████ to Mr McCollum, dated 16 May 2007, ██████████ requested a further €5 million to cover expenditure on design and construction on the site.⁴⁷⁴ The letter stated that this facility, together with the €1.45 million already requested would bring the total loan amount to €11.3 million (a figure that does not appear to be accurate).

4.590 An additional CMO⁴⁷⁵ was issued for €5 million on 8 June 2007 for 14 months, which was for the purpose of funding construction works at ██████████. This also provided for a full capital and interest moratorium. The Summit account for Loan 2 showed that it continued to accrue interest beyond the 14 month term and as at 21 December 2009, it had an outstanding balance of approximately €5,589,000.⁴⁷⁶

In terms of the alleged SPCs it can be noted that a note is on the file dated 19 October 2010⁴⁷⁷ which stated: "***There is no signed offer for the main advance on our file and no signed CLA for the additional 5m***".

These loans were transferred to NAMA.

4.591 There were 12 Loan Specific Allegations advanced in respect of the two loans to this borrower. Full details of these Loan Specific Allegations are set out below under each loan, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

⁴⁷⁰ Minutes of Credit Committee meeting, dated 27 September 2006 (Doc ID: 0.7.120.42494).

⁴⁷¹ Minutes of Board meeting, dated 25 October 2006 (Doc ID: 0.7.120.35325).

⁴⁷² Society Advance Detail (Doc ID: 0.7.120.26475).

⁴⁷³ Internal memorandum from Gary McCollum to Michael Fingleton, dated 19 April 2007 (Doc ID: 0.7.120.22619).

⁴⁷⁴ Letter from ██████████ to Gary McCollum, INBS, dated 16 May 2007 (Doc ID: 0.7.120.917210).

⁴⁷⁵ Additional Commercial Mortgage Offer, dated 8 June 2007 (Doc ID: 0.7.120.894072-000006).

⁴⁷⁶ Extract from Summit Account No ██████████ (Doc ID: 0.7.120.760646).

⁴⁷⁷ Email from Olena Lavryk, INBS, to Debbie Dorrian, INBS, dated 19 October 2010 (Doc ID: 0.7.120.924023).

Loan 1

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Business plan/proposals.**
- (b) **Forecast cash flow analysis.**

4.592 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 2.9: Term of the loan extended without appropriate approval.

4.593 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

The 21 April 2008 Commercial Mortgage Lending Policy, stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation was to be considered, approved and minuted by the Credit Committee.

4.594 As this loan had an interest and capital moratorium, the Moratoria Policy 21 April 2008 applied and it stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

4.595 The CLA and CMO for this loan stated that the term of the loan was 24 months and that there was a capital and interest moratorium for the duration of the facility. A Term Report dated 4 December 2008⁴⁷⁸ identified the expiry date for this loan as 13 September 2008. It showed an extension provided to 13 September 2009. The Summit account for this loan showed that interest continued to accrue until 14 December 2009, at which time it had an outstanding balance of €5,822,418.52.⁴⁷⁹

⁴⁷⁸ Term Report, dated 4 December 2008 (Doc ID: 0.7.120.34366).

⁴⁷⁹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760559).

4.596 From an examination of the loan files, Credit Committee meeting minutes and Board meeting minutes, there is no evidence that the term extension approval process as set out in policy was complied with in respect to this facility.

4.597 **The Inquiry finds that this loan was extended without the appropriate approval policy being followed and, accordingly, that SPC 2.9 is proven as against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.598 The relevant policy was the April 2003 Credit Risk Policy. The urgent credit decision approval procedures were in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.599 The initial drawdown took place on 14 September 2006.⁴⁸⁰ The CMO⁴⁸¹ was dated 15 September 2006 and the CLA⁴⁸² was dated 19 September 2006. The Credit Committee recommendation⁴⁸³ was 27 September 2006 and Board approval⁴⁸⁴ was dated 25 October 2006.

4.600 From an examination of the loan files and Credit Committee and Board meeting minutes, there is no evidence that the urgent credit decision approval procedures as set out in internal policy were complied with.

4.601 **The Inquiry finds that the CMO for this loan was advanced prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.**

⁴⁸⁰ Society Advance Detail (Doc ID: 0.7.120.26475).

⁴⁸¹ Commercial Mortgage Offer, dated 15 September 2006 (Doc ID: 0.7.120.37854).

⁴⁸² Commercial Loan Application, dated 19 September 2006 (Doc ID: 0.7.120.24498).

⁴⁸³ Minutes of Credit Committee meeting, dated 27 September 2006 (Doc ID: 0.7.120.42494).

⁴⁸⁴ Minutes of Board meeting, dated 25 October 2006 (Doc ID: 0.7.120.35325).

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

- 4.602 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (see Table included at Appendix 13) and the 9 November 2004 Commercial Lending Policy.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower was a private company.

- 4.603 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA nor the CMO make any reference to a personal guarantee from any of the identified directors of the borrowing company. The identified security did not refer to a personal guarantee. Similarly, neither the Credit Committee nor the Board meeting minutes referred to a personal guarantee from directors.

- 4.604 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.605 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

4.606 A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As no finding has been made against INBS, this loan specific participation allegation against Mr Purcell now falls away.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.607 The relevant policy was the 19 July 2006 Commercial Credit Committee Terms of Reference.

In circumstances where the Inquiry makes no finding in respect of SPC 3.4, this allegation no longer arises.

4.608 A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

Loan 2

SPC 1.1: No CLA was prepared at all.

4.609 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

That policy provided that a CLA must be in place before a loan can be advanced.

4.610 This additional facility was for €5 million and the first drawdown occurred on 21 June 2007.⁴⁸⁵ A note was on the consolidated loan file dated 19 October 2010 which stated:

⁴⁸⁵ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760646).

“There is no signed offer for the main advance on our file and no signed CLA for the additional 5m”.⁴⁸⁶

In a letter from the borrower to Mr McCollum, dated 16 May 2007, a further €5 million was requested to cover expenditure on design and construction on the site. An additional CMO was issued for €5 million on 8 June 2007, for 14 months, which was for the purpose of funding construction works at [REDACTED]. This also provided for a full capital and interest moratorium.⁴⁸⁷

4.611 Having analysed the consolidated loan file for this borrower together with the Credit Committee and Board meeting minutes and packs, the Inquiry was unable to identify a CLA in respect of this additional facility. This, coupled by the fact that there was no internal memo in respect of this loan, and that it was not presented to either the Credit Committee or the Board for approval, reinforces the Inquiry’s view that no CLA was prepared in this case.

4.612 **The Inquiry finds that the allegation that funds of £5m were advanced to [REDACTED] without a CLA being prepared is supported by the absence of any such document in the consolidated loan file for this facility. Accordingly, the Inquiry finds that SPC 1.1 is proven as against INBS.**

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers’ repayment capacity:

(a) Business plan/proposals.

(b) Forecast cash flow analysis.

4.613 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.614 This additional facility was requested by the borrower by letter dated 16 May 2007, eight months after the first loan was advanced. The purpose was to convert the existing [REDACTED] site into new offices and marketing suite for the [REDACTED].⁴⁸⁸

⁴⁸⁶ Email from Olena Lavryk, INBS, to Debbie Dorrian, INBS, dated 19 October 2010 (Doc ID: 0.7.120.924023).

⁴⁸⁷ Additional Commercial Mortgage Offer, dated 8 June 2007 (Doc ID: 0.7.120.894072-000006).

⁴⁸⁸ Letter from [REDACTED] to Gary McCollum, INBS, dated 16 May 2007 (Doc ID: 0.7.120.917210).

A CMO⁴⁸⁹ issued on 8 June 2007 offering €5 million for a 14 month term with a capital and interest moratorium for the term of the loan. This CMO was signed by the borrower on 15 June 2006.⁴⁹⁰ The initial drawdown on this loan occurred on 11 June 2006.⁴⁹¹

4.615 As with Loan 1, the Commercial Advance Static Sheet referred to a valuation of €7.7 million which was dated 6 September 2006.⁴⁹² According to the borrower, [REDACTED] site was to be developed as show apartments and an office for the [REDACTED] development. In a memorandum from Mr McCollum to Orna Cooke⁴⁹³ in INBS dated 2 September 2008, Mr McCollum stated that [REDACTED] site had been converted into sales and administration offices and show suites. He added: "*It is now likely that the Garage building will remain as is i.e. Sales Office and Show Apartments for the next 12 months with a planning permission for conversion to residential apartments being submitted in the early part of 2009*".⁴⁹⁴ A Credit Review Pro-Forma dated 23 November 2006⁴⁹⁵ recorded that the proposed apartments "...will not take place for at least two years".

4.616 The plan as outlined by [REDACTED] and repeated by Mr McCollum in his internal memorandum to Mr Fingleton in relation to Loan 1, was to apply for planning permission to develop a block of luxury apartments on the site. This had now significantly changed.

Apart from the original letter from [REDACTED] and the internal INBS memorandum referred to above, there is nothing in the consolidated loan file that could be construed as a business plan or proposal for this project. If the planning for this project was not to commence until after one year, there was no clear proposal as to how this loan, which was for 14 months, would be financed or repaid.

4.617 Such a proposal should have been backed up by a comprehensive forecast cash flow analysis which would include a pricing of the full cost of construction, a timeline for same and an estimated profit after the first year of office use had been completed. There is no evidence from the consolidated loan file that such a document was sought or received in respect of this loan.

⁴⁸⁹ Additional Commercial Mortgage Offer, dated 8 June 2007 (Doc ID: 0.7.120.894072-000006).

⁴⁹⁰ Signed Commercial Mortgage Offer, dated 15 June 2007 (Doc ID: 0.7.120.9067).

⁴⁹¹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760646).

⁴⁹² Commercial Advance Static Sheet for [REDACTED] (Doc ID: 0.7.120.37122).

⁴⁹³ Ms Cooke commenced employment with INBS in January 2002. From 2004 to 2006 she worked as a mortgage underwriter in the mortgage advance department, and from 2006 to 2008 she worked as a credit reviewer in the credit risk department. She ceased employment with INBS in October 2008.

⁴⁹⁴ Email from Gary McCollum, INBS, to Orna Cooke, INBS, dated 2 September 2008 (Doc ID: 0.7.120.15321).

⁴⁹⁵ Credit Review Pro-Forma (Doc ID: 0.7.120.471867).

4.618 **The Inquiry finds that required information, namely a business plan or proposal and a forecast cash flow analysis was not acquired in respect of this loan and, accordingly, finds that SPC 1.3 is proven as against INBS.**

SPC 1.4: Credit grades were not assigned to commercial loans.

4.619 The relevant policies were the 2006 Impairment Provisioning Policy and 2006 Notes on the Implementation of Impairment Provisioning Policy. (See Table included at Appendix 11).

4.620 In his submissions to the Inquiry, Mr Purcell stated that the Impairment Provisioning Policy did not create new policy with regard to credit grades. The Inquiry agrees with this assertion and therefore no finding is made in respect of this allegation. The assigning of credit grades during the loan approval process is dealt with at Chapter 5 of this Findings Report (see paragraph 5.197 et seq.). That part of the Findings Report outlines Mr Purcell's submissions on this point and the reasoning for the Inquiry's finding that a failure to assign a credit grade at the loan approval stage was not a breach of INBS internal policy.

SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval (as required) and not in compliance with INBS's urgent credit decision approval procedures.

4.621 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. Urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.622 There is no evidence from Credit Committee meeting minutes of any Credit Committee consideration of this loan or any minute indicating recommendation for approval during the Review Period. There is no evidence from Board meeting minutes or packs of any Board consideration of this loan or any minute indicating approval during the Review Period. There is no evidence that any urgent credit decision approval procedures were complied with.

4.623 **The Inquiry finds that this loan did not have Credit Committee approval or recommendation and no Board approval and was not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.2 is proven as against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

4.624 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

The 21 April 2008 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation was to be considered, approved and minuted by the Credit Committee.

4.625 As this loan had an interest and capital moratorium, the Moratoria Policy 21 April 2008 applied and it stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

A Term Report dated 4 December 2008⁴⁹⁶ identified the expiry date for this loan as 20 August 2008. It showed an extension provided to 20 September 2009. The Summit account for this loan showed that interest continued to accrue until 21 December 2009, at which time it had an outstanding balance of €5,589,086.57.⁴⁹⁷

4.626 From an examination of the loan files, Credit Committee meeting minutes and Board meeting minutes, there is no evidence that the term extension approval process as set out in policy was complied with in respect to this additional facility.

4.627 **The Inquiry finds that this loan was extended without the appropriate approval policy being followed and, accordingly, finds that SPC 2.9 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.628 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

That policy stated that personal guarantees should be acquired where the borrower was a private company.

⁴⁹⁶ Term Report, dated 4 December 2008 (Doc ID: 0.7.120.34366).

⁴⁹⁷ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760646).

4.629 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA nor the CMO made any reference to a personal guarantee from any of the identified directors of the borrowing company. The Credit Committee meeting minutes or Board meeting minutes similarly did not refer to a personal guarantee from directors.

4.630 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, SPC 3.2 is proven as against INBS.**

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.631 This is another loan connected to the acquisition of the [REDACTED] in [REDACTED] [REDACTED], France. Mr McCollum set out the proposal in an internal memorandum to Mr Fingleton dated 19 April 2007.⁴⁹⁸ [REDACTED] had agreed to purchase a villa adjacent to [REDACTED] site, which he said would provide additional space and better access. Mr McCollum proposed that an additional facility of €1.45 million would be added to [REDACTED] loan thus increasing the value of that loan to €6.45 million against property valued at €9.15 million. Mr McCollum said that once planning permission was obtained (which he described as non-contentious), the value would increase substantially.

4.632 The CLA for this loan was dated 3 September 2007⁴⁹⁹ and it was not added to [REDACTED] loan as suggested by Mr McCollum but was a standalone facility for €1.45 million for a term of two years with a capital and interest moratorium. INBS was to be entitled to 25% of the profit upon resale. The loan was secured by a first legal charge over the property the subject matter of the loan and the LTV was described as being 100% based on current value.

4.633 There were three Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

⁴⁹⁸ Internal memorandum from Gary McCollum to Michael Fingleton, dated 19 April 2007 (Doc ID: 0.7.120.22619).

⁴⁹⁹ Commercial Loan Application, dated 3 September 2007 (Doc ID: 0.7.120.29183).

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of Borrowers' repayment capacity:

(a) Business plan/proposals.

(b) Forecast cash flow analysis.

4.634 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.635 The proposal was to acquire this property and by securing planning permission for development, enhance its value. The valuation dated 15 March 2007, valued the [REDACTED] at €1.45 million.⁵⁰⁰ The valuation was 100% of the loan advanced and in those circumstances, the asset would be insufficient to meet the repayment of the loan. A more detailed proposal of what planning permission was being applied for and when it could be expected to be acquired would have been a minimum requirement.

4.636 A clear outline of how the loan would be repaid at the end of the two year period was also a basic requirement. There is no evidence from the consolidated loan file that any substantive inquiries in this regard were made before this money was advanced.

4.637 The Inquiry finds that required information, namely a business plan or proposal and a forecast cash flow analysis was not acquired in respect of this loan and, accordingly, finds that SPC 1.3 is proven as against INBS.

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.638 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.639 The CMO⁵⁰¹ was dated 11 September 2007. The Credit Committee recommended⁵⁰² the loan for approval on 26 September 2007 and the Board approved⁵⁰³ the loan on 28 September 2007. The urgent credit decision approval procedures would have

⁵⁰⁰ Francois Odet Valuation Report, dated 15 March 2007 (Doc ID: 0.7.120.14567).

⁵⁰¹ Commercial Mortgage Offer, dated 11 September 2007 (Doc ID: 0.7.120.8147).

⁵⁰² Minutes of Credit Committee meeting, dated 26 September 2007 (Doc ID: 0.7.120.38276).

⁵⁰³ Minutes of Board meeting, dated 28 September 2007 (Doc ID: 0.7.120.20357).

required the signatures of two members of the Credit Committee, sign off by the Managing Director and presentation to the Credit Committee as soon as practicable thereafter.

4.640 The Inquiry has examined the consolidated loan file, the Credit Committee meeting minutes and packs and the Board meeting minutes and packs for the Review Period, and can see no evidence that urgent credit decision approval procedures were complied with.

4.641 **The Inquiry finds that the CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.642 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 13).

These policies stated that personal guarantees should be acquired where the borrower was a private company.

4.643 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA nor the CMO make any reference to a personal guarantee from any of the identified directors of the borrowing company. The Credit Committee or Board meeting minutes similarly do not refer to a personal guarantee from directors.

4.644 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA.

The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to the loan

4.645 This loan was requested by [REDACTED] in a letter⁵⁰⁴ to Mr McCollum dated 10 October 2007. He set out details of a proposed acquisition of a tennis club on [REDACTED] in France. He proposed developing a new tennis club with medical spa and fitness suite. In addition, he proposed constructing two luxury villas, the larger of which he estimated could be sold for €20 million. Mr McCollum proposed a 12 month loan of €10 million which he described as "*Initial Facility Required*" with a capital and interest moratorium. The loan was secured by a personal guarantee from [REDACTED].⁵⁰⁵ The full loan was drawn down on 11 December 2007.

The CMO was issued in draft form⁵⁰⁶ on 10 December 2007 and in a finalised version on 12 December 2007⁵⁰⁷, on which date it was accepted by the borrower company. The smaller of the two villas constructed on this site was sold in 2009 for €1 million.

4.646 The Summit account⁵⁰⁸ for this loan showed that it continued to accrue interest until 11 December 2009 at which time it had an outstanding balance of €11,121,344.67. This loan was transferred to NAMA.

4.647 There were two Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

⁵⁰⁴ Letter from [REDACTED] to Gary McCollum, INBS, dated 10 October 2007 (Doc ID: 0.7.120.895346).

⁵⁰⁵ Internal Memorandum from Gary McCollum to Michael Fingleton, dated 24 January 2008 (Doc ID: 0.7.120.6876).

⁵⁰⁶ Draft Commercial Mortgage Offer, dated 10 December 2007 (Doc ID: 0.7.120.17054).

⁵⁰⁷ Commercial Mortgage Offer, dated 12 December 2007 (Doc ID: 0.7.120.432554).

⁵⁰⁸ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760612).

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

- 4.648 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).
- 4.649 At a meeting of the Board held on 11 December 2007, Sharon van Sinderen⁵⁰⁹, an employee of INBS, was authorised to act as Notaire on behalf of INBS in order to complete the mortgage arrangements in relation to the purchase of this property. This meeting also appointed legal representatives to act on behalf of INBS for the transaction.⁵¹⁰ This loan did not require Board approval as it was presented for approval after December 2007, and therefore it had to be approved by the Credit Committee only in accordance with the December 2007 Credit Committee Terms of Reference.⁵¹¹
- 4.650 The CMO⁵¹² for the loan issued on 12 December 2007. The Credit Committee⁵¹³ approved the loan on 24 January 2008 and the Board meeting minutes dated 18 February 2008 noted the approval.⁵¹⁴ The urgent credit decision approval procedures would have required the signatures of two members of the Credit Committee, sign off by the Managing Director and presentation to the Credit Committee as soon as practicable thereafter.
- 4.651 The Inquiry has examined the consolidated loan file, the Credit Committee meeting minutes and packs and the Board meeting minutes and packs for the Review Period and can see no evidence that urgent credit decision approval procedures were complied with.
- 4.652 **The Inquiry finds that the CMO for this loan issued prior to appropriate approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds SPC 2.13 is proven as against INBS.**

⁵⁰⁹ Ms van Sinderen commenced employment with INBS in September 2007 as a solicitor in the legal department.

⁵¹⁰ Minutes of Board meeting, dated 11 December 2007 (Doc ID: 0.7.120.12490).

⁵¹¹ The relevant policy provisions concerning the approval process and approval thresholds are set out in Appendix 12.

⁵¹² Commercial Mortgage Offer, dated 12 December 2007 (Doc ID: 0.7.120.432554).

⁵¹³ Minutes of Credit Committee meeting, dated 24 January 2008 (Doc ID: 0.7.120.8324).

⁵¹⁴ Minutes of Board meeting, dated 18 February 2008 (Doc ID: 0.7.120.5941).

SPC 4.1: Commercial lenders did not monitor loans during the term of the loan to the end of the Review Period.

- 4.653 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy, the December 2007 Commercial Mortgage Lending Policy, and the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 14).
- 4.654 The 28 February 2007 Commercial Mortgage Lending Policy stated that commercial lenders were responsible for the ongoing monitoring and control of loan facilities. The other two policies stated that individual branch managers remained responsible for the ongoing monitoring of applications that they source, but that passed to a commercial lender upon drawdown.
- 4.655 INBS's policy provisions for commercial loan monitoring by commercial lenders did not prescribe what constituted monitoring by commercial lenders. On this basis, it was explained in the Investigation Report that a breach of these policy provisions was not alleged where any indication of monitoring in any form by the lender had been observed.⁵¹⁵ Paragraph 9.11 of the Investigation Report set out in detail what it considered monitoring a loan, in particular a loan with an interest and capital moratorium, would look like, and this included regular engagement and updates from the borrower, obtaining up to date valuations and periodic site visits to large developments.
- 4.656 The Inquiry has seen a document on the consolidated loan file dated 16 July 2008, which is entitled a "*Mortgage Account Statement*".⁵¹⁶ It showed hand written calculations that appear to relate to accruing interest on this loan. There is also a Term Report on file which sought a six month extension of the loan to 10 June 2009.⁵¹⁷ Under the section of this Term Report that stated "*A review of this loan has been completed*", there is a tick under the word "yes" and a date of 4 December 2008. It was signed by Mr McCollum. This loan's expiry date was 10 December 2008.
- 4.657 In circumstances where this allegation is said to have only been made where there has been no evidence of any monitoring on the loan, it appears to the Inquiry that some monitoring of this loan did occur during the lifetime of the loan.

⁵¹⁵ Investigation Report, Chapter 9, paragraph 9.12 (Doc ID: RDU_REL-000000033).

⁵¹⁶ Mortgage Account Statement, dated 16 July 2008 (Doc ID: 0.7.120.917677).

⁵¹⁷ Term Report, page 41 (Doc ID: 0.7.120.566826).

4.658 **The Inquiry finds that commercial lenders did monitor this loan during the term of the loan to end of the Review Period and accordingly, SPC 4.1 is not proven against INBS.**

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.659 This loan was one of a series of loans to [REDACTED] to purchase various properties in the south of France. This Findings Report has already analysed a number of these loans in the foregoing sections.

This proposal was first introduced by Mr McCollum in an internal memorandum to Mr Fingleton dated 12 June 2006.⁵¹⁸ He stated that INBS had recently provided a facility of €60 million to purchase the [REDACTED] in [REDACTED], France. He said that [REDACTED] had now agreed to purchase two other adjacent sites along with a nearby golf course. The two adjacent sites have already been analysed at paragraphs 4.419 et seq. and 4.569 et seq. above, they were [REDACTED] and the [REDACTED] site. The third proposed acquisition was the [REDACTED], which was a ten minute drive away from the [REDACTED]. It was proposed to develop it as a conference and banqueting venue for the local market as well as the corporate golf market and to link it with the [REDACTED] and [REDACTED] developments. The internal memorandum sought a single advance for these three projects of €35 million for a 24 month term. The proposal was approved by Mr Fingleton subject to an open market valuation being obtained.⁵¹⁹

4.660 The CLA⁵²⁰ was prepared on 14 June 2006 in the name of [REDACTED] (although it was noted on the CLA that this name was liable to change), and it provided for a capital and interest moratorium for the term of the loan. It stated that the LTV was 78% of current value and 70% on revised planning approval. This was still on the basis that three transactions were involved. This CLA was recommended by the Credit Committee on 21 June 2006⁵²¹ and approved by the Board on 19 July 2006.⁵²²

⁵¹⁸ Internal memorandum from Gary McCollum to Michael Fingleton, dated 12 June 2006 (Doc ID: 0.7.120.44919).

⁵¹⁹ Internal memorandum from Gary McCollum to Michael Fingleton, dated 12 June 2006 (Doc ID: 0.7.120.44919).

⁵²⁰ Commercial Loan Application, dated 14 June 2006 (Doc ID: 0.7.120.12302).

⁵²¹ Minutes of Credit Committee meeting, dated 21 June 2006 (Doc ID: 0.7.120.8787).

⁵²² Minutes of Board meeting, dated 19 July 2006 (Doc ID: 0.7.120.33969).

4.661 A valuation, dated 18 December 2006, valued the golf course at €7.15 million.⁵²³ The CMO⁵²⁴ was issued to the directors of [REDACTED] on 12 December 2007 and was for the sum of €5.5 million. The Summit account showed a significant capital repayment of €3,499,000 on 18 November 2009 but as of 25 January 2010 there remained an outstanding balance of over €2.3 million.⁵²⁵ This loan was transferred to NAMA.

4.662 There were four Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Three years' audited accounts.

(b) Business plan/proposals.

(c) Forecast cash flow analysis.

4.663 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.664 There was documentation on the file that included an email from the borrower company which referred to purchasing [REDACTED] as well as a certification from the French equivalent of the Companies Office which showed that this company had been registered in Antibes on 16 June 2003.⁵²⁶

4.665 Three years' audited accounts for this company would have been available, but there is no evidence from the loan file that they were sought or obtained by INBS.

4.666 The loan for this facility was €5.5 million for a property that was valued at €7.15 million.⁵²⁷ However, it was not the borrower's intention to seek planning permission and sell on. The borrower had elaborate plans to re-develop the property and run it as a business. There is no evidence on file of any business plan in respect of this project.

⁵²³ Francois Odet Valuation, dated 18 December 2006 (Doc ID: 0.7.120.16056).

⁵²⁴ Commercial Mortgage Offer, dated 12 December 2007, page 10 of document bundle (Doc ID: 0.7.120.431863).

⁵²⁵ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760551).

⁵²⁶ Loan documentation, pages 9 and 11 (Doc ID: 0.7.120.431303).

⁵²⁷ Francois Odet Valuation, dated 18 December 2006 (Doc ID: 0.7.120.16056).

There was no market analysis, no construction or development costings and no timeline. In the circumstances of this loan, the valuation does not constitute an adequate business plan.

There is no evidence on file of a forecast cash flow analysis which would give assurance as to a repayment schedule.

4.667 The Inquiry finds that there was a failure to acquire required information from the borrower, namely three years' audited accounts, business plan or proposals or a forecast cash flow analysis. Accordingly, the Inquiry finds SPC 1.3 is proven as against INBS.

SPC 2.1: Funds advanced without Credit Committee approval or recommendation and not in compliance with INBS's urgent credit decision approval procedures.

4.668 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The applicable urgent credit decision approval procedures are in the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.669 The CLA⁵²⁸ for this loan was in respect of three separate transactions and the loan required for the three transactions was €35 million. There was no breakdown in the CLA between the three properties. This CLA was presented to the Board at a meeting on 19 July 2006⁵²⁹ and the Board approved a facility to [REDACTED] to acquire the three properties; [REDACTED], [REDACTED] site and the [REDACTED].

By the time the CMO⁵³⁰ for the [REDACTED] facility was issued on 12 December 2007, there was already €31,675,000 of the loan drawn down. However of this amount €1,675,000 was a facility in the name of [REDACTED] described as a deposit on the [REDACTED]. This was redeemed by the [REDACTED] facility of €5.5 million leaving the true balance on the combined three facilities at €35.5 million, €35 million of which had been recommended by the Credit Committee on 21 June 2006.⁵³¹

⁵²⁸ Commercial Loan Application, dated 14 June 2006 (Doc ID: 0.7.120.12302).

⁵²⁹ Minutes of Board meeting, dated 19 July 2006 (Doc ID: 0.7.120.33969).

⁵³⁰ Commercial Mortgage Offer, dated 12 December 2007, page 10 of document bundle (Doc ID: 0.7.120.431863).

⁵³¹ Minutes of Credit Committee meeting, dated 21 June 2007 (Doc ID: 0.7.120.8787).

4.670 **The Inquiry finds that this loan was considered at a Credit Committee meeting and, accordingly, that SPC 2.1 is not proven as against INBS.**

SPC 2.8: Loan amount advanced per the CMO was in excess of the amount outlined in the CLA and approved by the Board and additional funds were not appropriately approved.

4.671 The relevant policies were set out in the Board Resolution September 2002; the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.672 The CLA for this loan referred to a facility of €35 million for three acquisitions. The CMO for the first of these, the [REDACTED] site ([REDACTED]), issued on 20 July 2006 and was for a sum of €15 million.⁵³² The CMO for the second property, [REDACTED] ([REDACTED]) was also issued on the 20 July 2006 and was also for €15 million.⁵³³ The CMO for a third loan which was for deposit monies for the purchase of the [REDACTED] [REDACTED] was issued on 13 September 2007 for €1,675,000.⁵³⁴

The facility for the [REDACTED] [REDACTED] was for €5.5 million and the CMO⁵³⁵ for this loan was issued on 12 December 2007. Facility number [REDACTED] in the amount of €1.675 million was redeemed from the proceeds of facility number [REDACTED], leaving the true balance on the combined three facilities at €35.5 million. The Inquiry does not consider the excess of €0.5 million to be material.

4.673 **The Inquiry finds that the loan amount advance per the CMO was not in excess of the amount outlined in the CLA and approved by the Board. Accordingly, the Inquiry finds SPC 2.8 is not proven as against INBS.**

SPC 2.12: Terms outlined in the CLA and approved by the Board differed to the terms outlined in the CMO.

4.674 The relevant policies were the 28 February 2008 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 12).

⁵³² Commercial Mortgage Offer, dated 20 July 2006 (Doc ID: 0.7.120.43348).

⁵³³ Commercial Mortgage Offer, dated 20 July 2006 (Doc ID: 0.7.120.5197).

⁵³⁴ Commercial Mortgage Offer, dated 13 September 2007 (Doc ID: 0.7.120.34148).

⁵³⁵ Commercial Mortgage Offer, dated 12 December 2007, at page 10 (Doc ID: 0.7.120.431863).

4.675 The CLA⁵³⁶ dated 14 June 2006 cited a loan amount of €35 million at an interest rate of 1.75% above 3 month Eurobor. The purpose of the loan was to enable the purchase of three named properties. The CMOs that issued in respect of the first two properties cited the interest rate and the purpose of the loan as per the CLA. The CMO⁵³⁷ in respect of the [REDACTED] cited the interest rate as:

“Interest on the facility will be in respect of successive periods of three months (‘Interest Period’). The interest rate in each Interest Period will be 2% p.a. plus the rate at which three month Euribor deposits are offered to the Society on the Interbank Euro Market on the first day of the interest period”.

The purpose of the loan according to the CMO was to provide funds for the [REDACTED] [REDACTED] to repay existing indebtedness and to provide funds to pay for notarial and legal fees incurred by the borrower in connection with the loan facility.⁵³⁸

4.676 Both the provisions outlined above were different from the terms as outlined in the CLA, however the Inquiry does not believe that this a sufficiently serious breach as to merit and adverse finding.

4.677 The Inquiry finds that the terms outlined in the CLA and approved by the Board did not differ significantly to the terms outlined in the CMO. Accordingly, the Inquiry finds SPC 2.12 is not proven as against INBS.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.678 This was another loan related to the CLA⁵³⁹ dated 14 June 2006, cited in the loan above, which was to provide funds for the purchase of three properties in Antibes in France; [REDACTED], [REDACTED] site and the [REDACTED]. This was a loan of €1,675,000 to [REDACTED] to provide funds in relation to deposit monies required to purchase the [REDACTED].

⁵³⁶ Commercial Loan Application, dated 14 June 2006 (Doc ID: 0.7.120.12302).

⁵³⁷ Commercial Mortgage Offer, dated 12 December 2007, at page 10 (Doc ID: 0.7.120.431863).

⁵³⁸ Commercial Mortgage Offer, dated 12 December 2007, at page 10 (Doc ID: 0.7.120.431863).

⁵³⁹ Commercial Loan Application, dated 14 June 2006 (Doc ID: 0.7.120.12302).

4.679 The documentation in this loan is similar to that of the previous loan. There was an internal memorandum⁵⁴⁰ from Mr McCollum to Mr Fingleton outlining the proposal, and the composite CLA was approved by the Board on 19 July 2006.⁵⁴¹ There is a document on the file dated 20 September 2007 to Mr Fingleton from the commercial lending department⁵⁴² that stated “Please note the above loan was approved by the Board on 19th July 2006 under the name [REDACTED]. This loan drewdown in the name of [REDACTED] on 20th September 2007. The attached CLA has been amended to reflect the change of name. Please sign the below in agreement to this amendment”.

4.680 Mr Fingleton’s signature is at the end of this document. The amended CLA had the words added: “(Loan went out in the Name of [REDACTED] -20/09/07 A/C [REDACTED])”.⁵⁴³

The CMO for this loan was issued and accepted by [REDACTED] on 13 September 2007 and was for a three month period.⁵⁴⁴ The Summit account for this loan⁵⁴⁵ was incepted on 20 September 2007 and redeemed in full on 14 December 2007.

4.681 There were three Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers’ repayment capacity:

- (a) **Statement of affairs (net worth).**
- (b) **Income details.**
- (c) **Bank statements six months’ current accounts).**
- (d) **Loan statements (personal & business).**

⁵⁴⁰ Internal memorandum from Gary McCollum to Michael Fingleton, dated 12 June 2006 (Doc ID: 0.7.120.44919).

⁵⁴¹ Minutes of Board meeting, dated 19 July 2006 (Doc ID: 0.7.120.33969).

⁵⁴² Memo from Commercial Lending Department to Michael Fingleton, dated 20 September 2007 (Doc ID: 0.7.120.6022).

⁵⁴³ Commercial Loan Application, dated 14 June 2006 (Doc ID: 0.7.120.6276).

⁵⁴⁴ Commercial Mortgage Offer, dated 13 September 2007 (Doc ID: 0.7.120.34148).

⁵⁴⁵ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760543).

(e) Business plan/proposals.

4.682 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.683 The context for this loan is important. [REDACTED] was a long established customer of INBS and had completed a number of successful projects in the south of France. It is arguable that all of the information identified in this allegation would already have been known to INBS through this on-going engagement. It might be noted that in the CLA⁵⁴⁶ for this loan, [REDACTED] net worth was described as being “*in excess of Stg£100 million*”. His exposure to INBS in advance of this loan was stated to be in excess of €138 million.

The CMO⁵⁴⁷ for this loan stated that it was for a period of three months so there was an expectation that the deposit amount would be refinanced by the larger facility to purchase the golf course, and this is what in fact occurred.

4.684 In the circumstances outlined above and the very short duration of this loan, the Inquiry does not believe an adverse finding would be proportionate in this case.

4.685 The Inquiry finds that in the circumstances of this loan, the failure to acquire required information did not amount to a breach of SPC 1.3. Accordingly, the Inquiry finds that SPC 1.3 is not proven as against INBS.

SPC 2.1: Funds advanced without Credit Committee approval or recommendation and not in compliance with INBS’s urgent credit decision approval procedures.

4.686 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.687 The Credit Committee did consider the CLA outlining the three loans including the purchase of the [REDACTED] at a meeting held on 21 June 2006.⁵⁴⁸ It recommended the facility of €35 million, and this was duly approved by the Board on 19 July 2006.⁵⁴⁹ The borrower was identified as [REDACTED] with the

⁵⁴⁶ Commercial Loan Application, dated 14 June 2006 (Doc ID: 0.7.120.12302).

⁵⁴⁷ Commercial Mortgage Offer, dated 13 September 2007 (Doc ID: 0.7.120.34148).

⁵⁴⁸ Minutes of Credit Committee meeting, dated 21 June 2007 (Doc ID: 0.7.120.8787).

⁵⁴⁹ Minutes of Board meeting, dated 19 July 2006 (Doc ID: 0.7.120.33969).

added note that this was liable to change. As each of these transactions proceeded to the stage of issuing a CMO, the borrower was identified as a separate company.

Whilst it cannot be said that the Credit Committee specifically considered this personal loan to [REDACTED], nevertheless the overall facility was considered and recommended by it.

4.688 **The Inquiry finds that the allegation in respect of this loan that there was no Credit Committee approval or recommendation and that it was not in compliance with urgent credit decision approval procedures is not sufficiently supported by the documentation. Accordingly, the Inquiry finds SPC 2.1 is not proven as against INBS.**

SPC 4.1: Commercial lenders did not monitor loans during the term of the loan to the end of the Review Period.

4.689 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy, the December 2007 Commercial Mortgage Lending Policy, and the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 14).

There was a Credit Review Report on file in relation to this loan dated 29 November 2007.⁵⁵⁰ This is an adequate monitoring of this loan, which was for a period of no more than three months.

4.690 **The Inquiry finds that the allegation that commercial lenders did not monitor this loan during the term of the loan to the end of the Review Period is not supported by the documentation. Accordingly, the Inquiry finds that SPC 4.1 is not proven as against INBS.**

Borrower: [REDACTED]
[REDACTED]

Loan Account: [REDACTED]

Loans 1, 3 and 4 - background to loans

4.691 A company called [REDACTED] which was owned by [REDACTED], owned a site at [REDACTED] in London. [REDACTED] decided to sell half of this site to a nominee company. It intended to pay off an existing facility with Anglo Irish Bank

⁵⁵⁰ Credit Review Summit Account Information, dated 29 November 2007 (Doc ID: 0.7.120.9127).

with a £7.5 million loan from INBS. [REDACTED] used companies called [REDACTED] and [REDACTED] for this transaction. These were two separate companies but from the perspective of analysing the loans they were one account in INBS. The CMOs in respect of the loans were issued to [REDACTED] and [REDACTED]. The proposal was that [REDACTED] would apply for planning permission to develop a hotel and residential units on the site. [REDACTED] had a purchaser for the site lined up subject to planning permission.

4.692 [REDACTED] management company, wrote to Mr McCollum on 28 September 2004⁵⁵¹ outlining the plans they had for developing the site at [REDACTED]. The current valuation was estimated at £10 million and the value with planning consent was estimated at over £15 million. INBS agreed to finance the project and three loans were advanced to [REDACTED]

Loan 1 for £7.5 million was advanced on 30 March 2005 to refinance existing borrowings of [REDACTED]. The Summit account for this loan showed that it continued to accrue interest beyond its 24 month term and as of 30 December 2009, it had an outstanding balance of £10,228,616.63.⁵⁵²

Loan 3 for £5 million was advanced on 23 May 2006 to finance planning and demolition costs.⁵⁵³

Loan 4 for £3.55 million was to purchase a property in [REDACTED]. It was drawn down on 20 December 2007.⁵⁵⁴

4.693 In a letter updating INBS on progress⁵⁵⁵ dated 20 August 2007, [REDACTED] said that they had agreed to sell the site subject to planning permission to [REDACTED] and anticipated receiving in excess of £30 million before the end of the year. Planning permission was not obtained and as a result the proposed sale fell through and the loan was transferred to NAMA.

4.694 There were 15 Loan Specific Allegations advanced in respect of the three loans to this borrower. Full details of these Loan Specific Allegations are set out below under each

⁵⁵¹ Letter from [REDACTED] to Gary McCollum, INBS, dated 28 September 2004 (Doc ID: 0.7.120.921097).

⁵⁵² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760691).

⁵⁵³ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760577).

⁵⁵⁴ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760576).

⁵⁵⁵ Letter exchange between INBS and [REDACTED], [REDACTED], dated 21 June 2007, page 7 (Doc ID: 0.7.120.24910).

loan, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Loan 1

SPC 1.1: No CLA was prepared at all.

- 4.695 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) **Three years' audited accounts.**

(b) **Forecast cash flow analysis.**

- 4.696 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.4: Credit grades were not assigned to commercial loans.

- 4.697 The relevant policy was the 8 April 2003 Credit Grading System for Commercial Lending. (See Table included at Appendix 11).

- 4.698 In his submissions to the Inquiry, Mr Purcell stated that the 8 April 2003 Credit Grading System for Commercial Lending did not require that a CLA should have a credit grade when presented to the Credit Committee or the Board. The Inquiry agrees with this assertion and therefore no finding is made in respect of this allegation. The assigning of credit grades during the loan approval process is dealt with at Chapter 5 of this Findings Report (see paragraph 5.197 et seq.). That part of the Findings Report outlines Mr Purcell's submissions on this point and the reasoning for the Inquiry's finding that a failure to assign a credit grade at the loan approval stage was not a breach of INBS internal policy.

SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval (as required) and not in compliance with INBS's urgent credit decision approval procedures.

4.699 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Risk Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.700 The initial drawdown of this loan occurred on 30 March 2005, when £7.5 was advanced to Howard Kennedy. This was evidenced by the SAD⁵⁵⁶ for this loan and is recorded on the Summit account.

There is no evidence in Credit Committee meeting minutes or packs during the Review Period that this loan was considered by the Credit Committee. There is no evidence in Board meeting minutes or packs that this loan was considered by the Board for approval.

4.701 **The Inquiry finds that funds were advanced where the Credit Committee did not recommend the loan for approval and the Board did not approve the loan as required. Accordingly, the Inquiry finds that SPC 2.2 is proven as against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

4.702 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the Moratoria Policy October 2003. (See Table included at Appendix 12).

Under the 28 February 2007 Commercial Mortgage Lending Policy, any variation to a loan was to be considered, approved and minuted by the Credit Committee and then submitted to the Managing Director for approval. The Moratoria Policy October 2003⁵⁵⁷ also applied to this loan. Under that policy, variations to moratorium accounts could only be amended with the written approval of either the Managing Director, all members of the Credit Committee, or any two of the following: commercial lending manager; mortgage administration manager; or senior commercial lender.

⁵⁵⁶ Society Advance Detail (Doc ID: 0.7.120.11053).

⁵⁵⁷ The Moratoria Policy 2003 was incorporated into the Commercial Mortgage Lending Policy approved by the Board on 28 February 2007.

4.703 The CMO⁵⁵⁸ for this loan, which was dated 22 March 2005, stated that it was for a term of 24 months with a full capital and interest moratorium. It was due to expire in March 2007. The Summit account for this loan showed that interest continued to accrue until 30 December 2009, at which time it had an outstanding balance of £10,228,616.63.⁵⁵⁹

4.704 From an examination of the loan files, Credit Committee meeting minutes and Board meeting minutes and packs, there is no evidence that the term extension approval process as set out in either of the above policies was complied with in respect to this additional facility.

4.705 **The Inquiry finds that this loan was extended without the appropriate approval policy being followed and, accordingly, that SPC 2.9 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.706 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower was a private company. There was a personal guarantee from [REDACTED] in respect of the borrowings of this borrower. It was, however, dated 18 May 2006⁵⁶⁰, which is almost 14 months after the drawdown of this loan and therefore is not relevant in respect of this allegation.

4.707 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED] and [REDACTED] at the time the loan was approved and offered.

⁵⁵⁸ Commercial Mortgage Offer, dated 22 March 2005 (Doc ID: 0.7.120.25777).

⁵⁵⁹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760691).

⁵⁶⁰ Guarantee between [REDACTED] and INBS, dated 18 May 2006 (Doc ID: 0.7.120.935769).

There was no CLA in respect of this loan and the CMO made no reference to a personal guarantee from any of the identified directors of the borrowing company.

- 4.708 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.**

Loan 3

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Three years' audited accounts.**
- (b) **Business plan/proposals.**
- (c) **Forecast cash flow analysis.**

- 4.709 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 2.5: Loans advanced prior to quorate Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with INBS's urgent credit decision approval procedures.

- 4.710 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedure were set out in the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

- 4.711 The CMO⁵⁶¹ for this loan was dated 11 May 2006 and the date of first drawdown was 18 May 2006.⁵⁶² The Credit Committee recommended the loan for approval on 9 June 2006⁵⁶³ and the Board approved the loan on 14 June 2006.⁵⁶⁴

⁵⁶¹ Additional Commercial Mortgage Offer, dated 11 May 2006 (Doc ID: 0.7.120.24861).

⁵⁶² Society Advance Detail (Doc ID: 0.7.120.14138).

⁵⁶³ Minutes of Credit Committee meeting, dated 9 June 2006 (Doc ID: 0.7.120.36880).

⁵⁶⁴ Minutes of Board meeting, dated 14 June 2006 (Doc ID: 0.7.120.8258).

From an examination of the consolidated loan file, Credit Committee meeting minutes and Board meeting minutes, there is no evidence that the urgent credit decision approval procedures as set out in policy were complied with in respect to this additional facility.

- 4.712 **The Inquiry finds that the allegation that this loan was advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedures is supported by the documentation. Accordingly, the Inquiry finds that SPC 2.5 is proven as against INBS.**

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

- 4.713 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. Urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

- 4.714 The date of first drawdown⁵⁶⁵ was 18 May 2006. The facility was recommended for approval at a Credit Committee meeting⁵⁶⁶ on 9 June 2006 and was approved at a Board Meeting⁵⁶⁷ on 14 June 2006.

From an examination of the consolidated loan file, Credit Committee meeting minutes and Board meeting minutes and packs, there is no evidence that the urgent credit decision approval procedures as set out in policy were complied with in respect to this additional facility.

- 4.715 **The Inquiry finds that the allegation that this loan was advanced prior to Board approval and not in compliance with urgent credit decision approval procedures is supported by the documentation. Accordingly, the Inquiry finds that SPC 2.6 is proven as against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

- 4.716 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the Moratoria Policy October 2003. (See Table included at Appendix 12).

⁵⁶⁵ Society Advance Detail (Doc ID: 0.7.120.14138).

⁵⁶⁶ Minutes of Credit Committee meeting, dated 9 June 2006 (Doc ID: 0.7.120.36880).

⁵⁶⁷ Minutes of Board meeting, dated 14 June 2006 (Doc ID: 0.7.120.8258).

Under the 28 February 2007 Commercial Mortgage Lending Policy, any variation to a loan was to be considered, approved and minuted by the Credit Committee and then submitted to the Managing Director for approval. The Moratoria Policy October 2003⁵⁶⁸ also applied to this loan. Under that policy variations to moratorium accounts could only be amended with the written approval of either the Managing Director, all members of the Credit Committee, or any two of the following: commercial lending manager; mortgage administration manager; or senior commercial lender.

- 4.717 The CLA⁵⁶⁹ and CMO⁵⁷⁰ for this loan identified a 12 month term, with a capital and interest moratorium for the term. The Summit account showed that this loan continued to accrue interest beyond the expected expiry date of May 2007. As of 19 February 2010 this account was still active and there was an outstanding balance of £6,336,135.68.⁵⁷¹

There is no evidence from the consolidated loan file, the Credit Committee meeting minutes or the Board meeting minutes and packs that any approval was sought or acquired for this extension.

- 4.718 The Inquiry finds that the allegation that the term of this loan was extended without appropriate approval is supported by the documentation. Accordingly, the Inquiry finds that SPC 2.9 is proven as against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

- 4.719 The relevant policy was the April 2003 Credit Risk Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

⁵⁶⁸ The Moratoria Policy 2003 was incorporated into the Commercial Mortgage Lending Policy approved by the Board on 28 February 2007.

⁵⁶⁹ Commercial Loan Application, dated 17 May 2006 (Doc ID: 0.7.120.28958).

⁵⁷⁰ Additional Commercial Mortgage Offer, dated 11 May 2006 (Doc ID: 0.7.120.24861).

⁵⁷¹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760577).

4.720 The consolidated loan file shows that the CMO⁵⁷² in respect of this loan was issued on 11 May 2006. The first drawdown occurred on 18 May 2006.⁵⁷³ The Credit Committee considered this loan on 9 June 2006⁵⁷⁴ and the Board approved it on 14 June 2006.⁵⁷⁵

From an examination of the consolidated loan file, Credit Committee meeting minutes and Board meeting minutes, there is no evidence that the urgent credit decision approval procedures as set out in policy were complied with in respect to this additional facility.

4.721 The Inquiry finds that the allegation that the CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures is supported by the documentation. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.

Loan 4

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) Three years' audited accounts.**
- (b) Business plan/proposals.**
- (c) Forecast cash flow analysis.**

4.722 The relevant policy was the December 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.723 The internal memorandum dated 17 December 2007, from Mr McCollum to Mr Fingleton⁵⁷⁶, requested an additional facility of £3.55 million for a period of five months. The purpose of this loan was stated as: "██████ has requested a short term facility of £3,500,000.00 to provide deposit monies to purchase a 6 acre ██████████ ██████████ which is due to complete at the end of April 2008". Mr McCollum went on to say that the existing ██████████ funding "carries ██████████ personal guarantee which will be extended to cover this additional advance".

⁵⁷² Additional Commercial Mortgage Offer, dated 11 May 2006 (Doc ID: 0.7.120.24861).

⁵⁷³ Society Advance Detail (Doc ID: 0.7.120.14138).

⁵⁷⁴ Minutes of Credit Committee meeting, dated 9 June 2006 (Doc ID: 0.7.120.36880).

⁵⁷⁵ Minutes of Board meeting, dated 14 June 2006 (Doc ID: 0.7.120.8258).

⁵⁷⁶ Internal memorandum from Gary McCollum to Michael Fingleton, dated 17 December 2007 (Doc ID: 0.7.120.42484).

INBS was to be entitled to a 25% share of profits in the [REDACTED] site.⁵⁷⁷

- 4.724 This internal memorandum contained a handwritten note from Mr Fingleton to Mr McMenamin saying the loan has been “*approved by the Board subject to approval by Credit Committee*”. The SAD for this loan showed that it was drawn down in full on 20 December 2007.⁵⁷⁸

The CMO⁵⁷⁹ for this loan issued on 17 December 2007. It stated that the purpose of the loan was “*To provide additional borrowings in relation to the buildings at [REDACTED], [REDACTED], London, [REDACTED]*”. It made no reference to the actual purpose which was the purchasing of the site in [REDACTED] in France. The CLA, dated 18 December 2007, did refer to the purpose of the loan and described the facility as an “*equity release against the property...*”.⁵⁸⁰

- 4.725 Although this loan was for a five month term, it continued to accrue interest until 20 December 2009, at which time there was an outstanding balance of almost £4 million.⁵⁸¹

There is no information on the consolidated loan file in relation to this property in [REDACTED] and there is nothing that could be construed as a business plan or proposal. There is no evidence that three years’ audited accounts were sought or received and no evidence of a cash flow analysis both of which could and should have been obtained.

- 4.726 **The Inquiry finds that there was a failure to acquire required information from borrowers, namely three years’ audited accounts, a business plan or proposal and a forecast cash flow analysis. Accordingly, the Inquiry finds SPC 1.3 is proven as against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

- 4.727 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the Moratorium Policy October 2003. (See Table included at Appendix 12).

⁵⁷⁷ Internal memorandum from Gary McCollum to Michael Fingleton, dated 17 December 2007 (Doc ID: 0.7.120.42484).

⁵⁷⁸ Society Advance Detail, dated 20 December 2007 (Doc ID: 0.7.120.22429).

⁵⁷⁹ Additional Commercial Mortgage Offer, dated 17 December 2005 (0.7.120.922260).

⁵⁸⁰ Commercial Loan Application, dated 18 December 2007 (Doc ID: 0.7.120.483845).

⁵⁸¹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760576).

4.728 The CMO for this loan recorded that a full capital and interest moratorium applied. Although this loan was for a five month term, it continued to accrue interest until 20 December 2009 at which time there was an outstanding balance of almost £4 million.⁵⁸²

From an examination of the consolidated loan file, Credit Committee meeting minutes and Board meeting minutes and packs, there is no evidence that the appropriate approval policy was complied with in respect of an extension to this loan.

4.729 The Inquiry finds that the term of this loan was extended without appropriate approval. Accordingly, the Inquiry finds that SPC 2.9 is proven as against INBS.

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.730 The relevant policy was the December 2007 Credit Committee Terms of Reference. (See Table included at Appendix 12). This is also the relevant policy for urgent credit decision approval procedures.

4.731 The CMO was dated 17 December 2007.⁵⁸³ The Credit Committee approved this loan on 20 December 2007.⁵⁸⁴ It did not require Board approval as the December 2007 Credit Committee Terms of Reference applied.

From an examination of the consolidated loan file, Credit Committee meeting minutes and Board meeting minutes and packs, there is no evidence that the urgent credit decision approval procedures as set out in policy were complied with in respect to this additional facility.

4.732 The Inquiry finds that the CMO for this loan issued prior to appropriate approval and not in accordance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.

⁵⁸² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760576).

⁵⁸³ Additional Commercial Mortgage Offer, dated 17 December 2005 (0.7.120.922260).

⁵⁸⁴ Minutes of Credit Committee meeting, dated 20 December 2007 (Doc ID: 0.7.120.9121).

SPC 4.1: Commercial lenders did not monitor loans during the term of the loan to the end of the Review Period.

- 4.733 The relevant policies were the December 2007 Commercial Mortgage Lending Policy and the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 14).
- 4.734 In the Investigation Report it was explained that an allegation in respect of an absence of monitoring was only made where there was no evidence at all of any monitoring in respect of the loan.⁵⁸⁵
- 4.735 The Inquiry has noted a credit risk department due diligence account dated 27 June 2008.⁵⁸⁶ This purports to be a credit review of the [REDACTED] accounts but it only referred to the loans for £7.5 million and £5 million and did not refer to this fourth loan for £3.55 million and therefore is discounted by the Inquiry as evidence of any monitoring occurring in respect of this additional loan.
- 4.736 It is difficult and somewhat unrealistic to consider this loan in isolation from the other loans advanced to the borrower for this transaction. The Inquiry has seen correspondence from after the Review Period which they considered in the context of this allegation. The first was an email from Mr McCollum to Mr Daly dated 17 October 2008⁵⁸⁷, in which Mr McCollum provided an update on the planning application and valuation, and confirmed that the [REDACTED] borrowings were personally guaranteed by [REDACTED]. A further update was provided by Mr McCollum on 4 November 2008 in which he estimated that the revised planning permission would be obtained in quarter 1 2009.⁵⁸⁸

Both these correspondence would suggest that these loans were being monitored by Mr McCollum and that he was aware of developments as they were occurring.

- 4.737 Although there is no direct evidence of monitoring this loan during the Review Period, the context for this loan suggests that there was ongoing monitoring of the project by the commercial lender.

⁵⁸⁵ Investigation Report, Chapter 9, paragraph 9.12 (Doc ID: RDU_REL-000000033).

⁵⁸⁶ INBS Due Diligence Account Review March, dated 27 June 2008, page 99 (Doc ID: 0.7.120.146313-000001).

⁵⁸⁷ Email from Gary McCollum to Darragh Daly, dated 17 October 2008 (Doc ID: 0.7.120.15232).

⁵⁸⁸ Email from Gary McCollum to Darragh Daly, dated 4 November 2008 (Doc ID: 0.7.120.896206).

4.738 The Inquiry finds that commercial lenders did monitor this loan during the term of the loan to end of the Review Period. Accordingly, it finds that SPC 4.1 is not proven as against INBS.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.739 This was a loan of €5.025 million, which was to be the initial deposit on the acquisition of a property in Monaco. The internal memorandum from Mr McCollum to Mr Fingleton, dated 10 August 2007⁵⁸⁹, described the proposed purchase as comprising of two stages. The first was the initial deposit of €5 million and the second was a further €55.01 million payable upon commencement of construction works, at which time INBS would be granted a first legal charge over the property. The entire property was to cost €155 million with a resale value of €190 million. The loan was to be for 30 months and INBS was to be entitled to 25% of profits. Further staged payments would be made and these would be met by refinancing the project.

4.740 A CLA was prepared on these terms dated 13 August 2007.⁵⁹⁰ The total required was £60.5 million for a 30 month term. The LTV was 100%. The Credit Committee recommended the loan on 17 August 2007⁵⁹¹ and the Board approved it on 30 August 2007.⁵⁹² The CMO offering the initial £5,025,000 deposit was issued on 29 August 2007 and was signed by the borrower on the same day.⁵⁹³ The loan was for a six month term and the security was a first legal mortgage (when purchased) of the property the subject matter of the loan. There was a full capital moratorium for the term of the loan, but there did appear to be an ongoing liability for interest payment. The CLA referred to a full capital and interest moratorium.

4.741 On 6 March 2009, Mr McCollum wrote to the borrower saying that INBS would not be in a position to consider funding the project and as a result the purchase did not complete.⁵⁹⁴

⁵⁸⁹ Internal memorandum from Gary McCollum to Michael Fingleton, dated 10 August 2007 (Doc ID: 0.7.120.10263).

⁵⁹⁰ Commercial Loan Application, dated 13 August 2007 (Doc ID: 0.7.120.30937).

⁵⁹¹ Minutes of Credit Committee meeting, dated 17 August 2007 (Doc ID: 0.7.120.20598).

⁵⁹² Minutes of Board meeting, dated 30 August 2007 (Doc ID: 0.7.120.14027).

⁵⁹³ Commercial Mortgage Offer, dated 29 August 2007 (Doc ID: 0.7.120.18126).

⁵⁹⁴ Letter from Gary McCollum, INBS, to [REDACTED], dated 6 March 2009 (Doc ID: 0.7.120.157448-000001).

The Summit account⁵⁹⁵ showed that the account was incepted on 7 September 2007 on which date €5 million was drawn down. It continued to accrue interest until 7 December 2009 at which time there was an outstanding balance of over €5.65 million. This loan was transferred to NAMA.

4.742 There were five Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Statement of affairs (net worth).**
- (b) **Income details.**
- (c) **Bank statements (six months' current accounts).**
- (d) **Loan statements (personal & business).**
- (e) **Business plan/proposals.**

4.743 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.744 As referenced in other loans involving this borrower, INBS had a long-standing relationship with this borrower and it was possible that much of the information listed above was already known to INBS. Policy required that this information be recorded on each loan file and there is no evidence that this information was accessed either internally, or through the borrower, and no evidence of it on the consolidated loan file.

4.745 The initial proposal was described in a letter from the borrower to Mr McCollum dated 19 July 2007, with which he enclosed a valuation.⁵⁹⁶ That valuation estimated the full value of the property at €190.75 million.⁵⁹⁷ The borrower said that it was envisaged that either the individual apartments in the property, or the entire property would be disposed of within 12 months and "*most certainly at least 30% within the first six*

⁵⁹⁵ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760641).

⁵⁹⁶ Letter from [REDACTED] to Gary McCollum, INBS, dated 19 July 2007, page 49 of document bundle (Doc ID: 0.7.120.431391).

⁵⁹⁷ Valuation dated 19 July 2007 (Doc ID: 0.7.120.38196).

months". There was no indication of what would happen if this target was not met or how the loan would be repaid.

Whilst this loan was for an initial deposit, it clearly depended on the successful completion of the full transaction to secure a charge over the property and to secure repayment. In circumstances where this loan was unsecured, the commercial lender had an obligation to ensure all relevant information in relation to the borrower's capacity to repay the loan was on file.

4.746 The Inquiry finds that there was a failure to acquire required information from the borrower with respect to this loan, namely:

- (a) Statement of affairs (net worth).**
- (b) Income details.**
- (c) Bank statements (six months' current accounts).**
- (d) Loan statements (personal & business).**
- (e) Business plan/proposals.**

Accordingly, the Inquiry finds SPC 1.3 is proven as against INBS.

SPC 2.9: Term of the loan extended without appropriate approval.

4.747 The relevant policies were the December 2007 Commercial Mortgage Lending Policy and the Moratoria Policy December 2007. (See Table included at Appendix 12).

The December 2007 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation was to be considered, approved and minuted by the Credit Committee. The Moratoria Policy December 2007 stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

4.748 The CMO issued on 29 August 2007. It was for a six month term and was due to expire on 6 March 2008. The policies required that any change to a CMO, including any term extensions, had to be considered, approved and minuted by the Credit Committee.

The consolidated loan file contained a Term Report dated 17 April 2008.⁵⁹⁸ It stated: *“Spoke to Gary [in] Belfast. Properties should be sold within 3 months. Gary wants term extended for 3 months to allow for the sale”*. An extension was noted until July 2008. There was in fact a further extension on 4 December 2008 until 6 February 2009. The update on the Term Report stated: *“Spoke to Gary in Belfast. He asked for the term to be extended for a further three months as this will allow for the property to be sold and the loan cleared”*.⁵⁹⁹

4.749 The Inquiry has examined Credit Committee minutes and packs during the Review Period and there is no evidence that this term extension was considered, approved or minuted by the Credit Committee as required by policy or that it complied with moratoria policy.

4.750 **The Inquiry finds that the term of this loan was extended without appropriate approval and, accordingly, finds that SPC 2.9 is proven as against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS’s urgent credit decision approval procedures.

4.751 The relevant policy was the 28 February 2007 Commercial Mortgage Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002. (See Table included at Appendix 12).

4.752 The Credit Committee⁶⁰⁰ approved the facility on 17 August 2007. The CMO⁶⁰¹ was issued and signed by the borrower on 29 August 2007. The Board approved the loan on 30 August 2007.⁶⁰²

The Inquiry has examined the consolidated loan file and the Board meeting minutes and packs and there is no evidence that the urgent credit decision approval procedures were complied with in this case.

4.753 **The Inquiry finds that the CMO was issued prior to appropriate Board approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.**

⁵⁹⁸ Term Report, dated 17 April 2008, page 9 of document bundle (Doc ID: 0.7.120.566529).

⁵⁹⁹ Term Report, dated 4 December 2008, page 38 of document bundle (Doc ID: 0.7.120.566826).

⁶⁰⁰ Commercial Loan Application, dated 13 August 2007 (Doc ID: 0.7.120.30937).

⁶⁰¹ Commercial Mortgage Offer, dated 29 August 2007 (Doc ID: 0.7.120.18126).

⁶⁰² Board meeting notes, dated 30 August 2007 (Doc ID: 0.7.120.489233).

SPC 3.1: Loans were unsecured.

4.754 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

4.755 Both the CLA and the CMO provided that the deposit monies would be secured on the property the subject matter of the loan, but only when that purchase was completed. The CMO stated:

"The following security is to constitute a continuing security for all the obligations of the borrower to the Society. The nature of the title to the property and the form of the security is to be acceptable to the Society's Solicitor.

- (1) *A First Legal Mortgage (when purchased) over the [property the subject of the loan].*
- (2) *The deposit monies in the amount of £5,000,000.00 are to be held in escrow by the Notaire acting on the Society's behalf...*
- (3) *Such additional security as required by the Society".*⁶⁰³

This loan was ultimately transferred to NAMA, and the NAMA legal due diligence report dated 8 September 2010 stated:

*"The facility letter states that the security should be given for this facility by way of a first legal mortgage over certain property in Monaco. Additionally the facility letter states that deposit monies in the amount of £5,000,000.00 should be held in escrow (for Irish Nationwide Building Society) by a notaire in Monaco... This facility would therefore seem to be unsecured".*⁶⁰⁴

The due diligence report further noted that the borrower did not complete the purchase and that therefore the escrow was paid to the seller.

4.756 The Inquiry finds that this loan was unsecured and, accordingly, that SPC 3.1 is proven as against INBS.

⁶⁰³ Commercial Mortgage Offer, dated 29 August 2007 (Doc ID: 0.7.120.18126).

⁶⁰⁴ NAMA Due Diligence Report, dated 8 September 2010 (Doc ID: 0.7.120.673536).

SPC 4.1: Commercial lenders did not monitor loans during the term of the loan to the end of the Review Period.

- 4.757 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy, the December 2007 Commercial Mortgage Lending Policy and the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 14).
- 4.758 The Inquiry examined the consolidated loan file for any evidence of monitoring of this loan during the Review Period. The loan commenced in August 2007 and there was a credit review conducted on 8 November 2007 when it was awarded a credit grading of 3.
- 4.759 There was an email on file from a representative of the borrower⁶⁰⁵ dated 5 November 2007, stating that current prices on adjacent apartments were higher than the borrower was paying for these newly constructed apartments and these apartments would not be coming on stream for another four years. There was a further email on file dated 14 January 2008 from the lawyer who had acted for INBS in this transaction to Mr McCollum, informing him that a swap of land had been approved which had cleared the way for a building permit to be obtained.⁶⁰⁶ There was further correspondence regarding the security that INBS would require for the next step of the project.⁶⁰⁷

The Inquiry does not believe that there was no monitoring of this loan. There appears to have been regular contact with the borrower in relation to the project.

- 4.760 **The Inquiry finds that the allegation that commercial lenders did not monitor loans during the term of the loan to the end of the Review Period is not supported by the evidence in the loan files. Accordingly, the Inquiry finds that SPC 4.1 is not proven as against INBS.**

⁶⁰⁵ Email from [REDACTED] to INBS, dated 5 November 2007, page 17 of document bundle (Doc ID: 0.7.120.431391).

⁶⁰⁶ Email from Donald Manasse to Gary McCollum, INBS, dated 14 January 2008, page 15 of document bundle (Doc ID: 0.7.120.431391).

⁶⁰⁷ Email from Donald Manasse to Gary McCollum, INBS, dated 14 January 2008, page 7 et seq. of document bundle (Doc ID: 0.7.120.431391).

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.761 The borrower company wrote to Mr McCollum on 18 March 2005 stating that they had agreed with a joint venture partner to purchase a property consisting of a substantial warehouse and manufacturing facility in Wales.⁶⁰⁸ The purchase price was stated to be £5.05 million and a facility of £5.7 million was requested to cover the purchase price and additional costs. An independent valuation report, dated 23 May 2005, was obtained by INBS.⁶⁰⁹ This valuation was on the basis of various assumptions in relation to the existing tenant and the existing lease agreement. It gave valuations for both the rental income of the property and the market value. The market value was estimated at £5.15 million.

4.762 A CMO was issued to the directors of [REDACTED] on 11 August 2005.⁶¹⁰ It provided for a loan of £5.75 million for a 36 month term, with a capital moratorium for the term of the loan. Interest was to be paid on a quarterly basis. The security was a fixed and floating charge over the property the subject matter of the loan. This loan offer was accepted on 12 August 2005.

The SAD showed that the drawdown of the full amount occurred on 16 August 2005.⁶¹¹

Following the issuing of the CMO and the drawdown of the loan, an internal memorandum was sent from Mr McCollum to Mr Fingleton dated 22 August 2005. This memorandum outlined the proposal as already set out in the CMO and estimated the resale value of the property at £7.5 million.⁶¹² A CLA followed dated 23 August 2005. It showed a LTV of 100% of purchase price and 76% of resale valuation.⁶¹³

4.763 The loan was recommended by the Credit Committee on 29 August 2005⁶¹⁴ and approved by the Board on 6 September 2005.⁶¹⁵ By internal memorandum from Mr McCollum to Mr Purcell dated 26 July 2007, Mr McCollum stated that the mortgage

⁶⁰⁸ Letter from [REDACTED], to Gary McCollum, INBS, dated 18 March 2005 (Doc ID: 0.7.120.917144).

⁶⁰⁹ Atisreal Report and Valuation, dated 23 May 2005, page 16 (Doc ID: 0.7.120.895231-000002).

⁶¹⁰ Commercial Mortgage Offer, dated 11 August 2005 (Doc ID: 0.7.120.20813).

⁶¹¹ Security Advance Detail, dated 16 August 2005 (Doc ID: 0.7.120.10524).

⁶¹² Internal memorandum from Gary McCollum to Michael Fingleton, dated 22 August 2005 (Doc ID: 0.7.120.19372).

⁶¹³ Commercial Loan Application, dated 23 August 2008 (Doc ID: 0.7.120.10501).

⁶¹⁴ Minutes of Credit Committee meeting, dated 29 August 2005 (Doc ID: 0.7.120.36785).

⁶¹⁵ Minutes of Board meeting, dated 6 September 2005 (Doc ID: 0.7.120.6073).

account had been fully redeemed on 24 May 2007.⁶¹⁶ He enclosed a cheque for £295,162, being INBS's entitlement to 25% of the profit.

- 4.764 There were seven Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.2: CLA was not prepared in advance of funds being drawn down.

- 4.765 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Business plan/proposals.**
- (b) **Forecast cash flow analysis.**

- 4.766 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 2.4: Credit Committee not quorate when loans were approved or recommended and loans not in compliance with INBS's urgent credit decision approval procedures.

- 4.767 This allegation was advanced against INBS only and so it was not opened during the SPC 1 to 4 Loan Hearings. Accordingly, this allegation was not considered by the Inquiry.

⁶¹⁶ Internal memorandum from Gary McCollum to Stan Purcell, dated 26 July 2007 (Doc ID: 0.7.120.894123).

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

4.768 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.769 The date of the first drawdown, as shown by the Sterling Commercial Advance Static Sheet⁶¹⁷ and the mortgages advances cash sheet⁶¹⁸ was 16 August 2005. The date of Board approval for the loan was 6 September 2005.⁶¹⁹

4.770 The urgent credit decision approval procedures required that the loan be approved by the members of the Credit Committee and signed by two directors and later advised to the Board. Under the 16 October 2003 Commercial Credit Committee Terms of Reference, the approval had to be approved by the Managing Director and two members of the Credit Committee and signed off by the Credit Committee and the Board as soon as practicable thereafter.

There is no evidence that any urgent credit decision approval procedures were complied with in respect of this loan.

4.771 **The Inquiry finds that funds were advanced prior to Board approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.6 is proven as against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.772 The relevant policy was the April 2003 Credit Risk Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

⁶¹⁷ Sterling Commercial Advance Static Sheet, dated 16 August 2005 (Doc ID: 0.7.120.39072).

⁶¹⁸ Mortgage Advance Cash Sheet, dated 16 August 2005 (Doc ID: 0.7.120.15568).

⁶¹⁹ Minutes of Board meeting, dated 6 September 2005 (Doc ID: 0.7.120.6073).

4.773 The CMO issued on 11 August 2005.⁶²⁰ The facility was recommended for approval at the Credit Committee meeting⁶²¹ on 19 August 2005 and was approved at a Board meeting⁶²² on 6 September 2005.

The urgent credit decision approval procedures set out above in relation to SPC 2.6 applied and there is no evidence from the consolidated loan file or the Credit Committee and Board meeting minutes and packs that these procedures were followed.

4.774 The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.775 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower is a private company.

4.776 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA⁶²³ nor the CMO⁶²⁴ make any reference to a personal guarantee from any of the identified directors of the borrowing company. The identified security does not refer to a personal guarantee. The Credit Committee

⁶²⁰ Commercial Mortgage Offer, dated 11 August 2005 (Doc ID: 0.7.120.20813).

⁶²¹ Minutes of Credit Committee meeting, dated 29 August 2005 (Doc ID: 0.7.120.36785).

⁶²² Minutes of Board meeting, dated 6 September 2005 (Doc ID: 0.7.120.6073).

⁶²³ Commercial Loan Application, dated 23 August 2008 (Doc ID: 0.7.120.10501).

⁶²⁴ Commercial Mortgage Offer, dated 11 August 2005 (Doc ID: 0.7.120.20813).

or Board meeting minutes and packs similarly do not refer to a personal guarantee from directors.

- 4.777 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.**

Although Mr Purcell attended the Board meeting at which this loan was approved, no allegation of participation was made against him in the Investigation Report and therefore no finding is made in respect of this loan.

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

- 4.778 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

- 4.779 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

- 4.780 A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As no finding has been made against INBS, this loan specific participation allegation against Mr Purcell now falls away.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

- 4.781 In circumstances where the Inquiry makes no finding in respect of SPC 3.4, this allegation no longer arises.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.782 This was a loan for £5.3 million to purchase land and property and to develop planning for additional floor space at a premises in London. It was secured by a charge over the property and was for a term of 12 months. There was a 25% profit share in place.

4.783 A CLA was prepared dated 24 October 2007, which provided for a capital and interest moratorium for the one year term. The LTV was stated to be 96% based on current value and 73% of the value with planning. INBS was to be entitled to 25% of profits subject to a minimum of £200,000.⁶²⁵ A CMO issued on 18 September 2007.⁶²⁶ It was signed by the borrower on 24 October 2007. The Credit Committee recommended this loan for approval on 14 November 2007⁶²⁷ and the Board approved it on 27 November 2007.⁶²⁸

This loan was transferred to NAMA and it appears to have been redeemed in full (£5,978,376.76) on 08 September 2011.

4.784 There were five Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Business plan/proposals.**
- (b) **Forecast cash flow analysis.**

4.785 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

⁶²⁵ Commercial Loan Application, dated 24 October 2007 (Doc ID: 0.7.120.33615).

⁶²⁶ Commercial Mortgage Offer, dated 18 September 2007 (Doc ID: 0.7.120.16070).

⁶²⁷ Minutes of Credit Committee meeting, dated 14 November 2007 (Doc ID: 0.7.120.9055).

⁶²⁸ Minutes of Board meeting, dated 27 November 2007 (Doc ID: 0.7.120.33618).

4.786 In his internal memorandum to Mr Fingleton dated 18 September 2007⁶²⁹, Mr McCollum outlined a proposal to purchase the property and apply for planning permission to reconfigure it into six apartments. The resale value with such consent was estimated to be in excess of £7.25 million. The memorandum stated that the borrower could also decide to develop the properties itself upon obtaining planning permission.

4.787 There was a valuation on file dated 24 October 2007.⁶³⁰ This document stated that the valuer had been instructed to value the property at market value, the value with proposed planning permission, the gross development value of the proposed scheme and the reinstatement cost for reinsurance purposes.⁶³¹ The current market value was estimated at £5.5 million. The value with planning permission was estimated at £7 million. The gross development value was estimated at £11.5 million, a figure arrived at by valuing each of the proposed apartments individually.

This valuation consisted of a detailed assessment of the proposed transaction. It was 105 pages long and it included a consideration of matters such as location, condition of the property, town planning, market trends and comparable evidence. It also assessed acquisition costs, construction costs and the total costs of the project. In assessing the suitability of the property as security for a loan, the valuation stated that the exact terms of any consent could not be guaranteed, nor the time it might take to secure such consent.

4.788 The Inquiry notes that the loan advanced is just £200,000 less than the market value of the property and was a high risk venture. However, the valuation represented an adequate business plan. If the borrower decided to develop the site itself, a detailed appraisal would then be required, but for the initial 12 month term of this loan, a cash flow analysis would not have added any significant information to that already obtained.

4.789 The Inquiry finds that a business plan was acquired in respect of this loan and that a cash flow analysis was not required at this point in the transaction. Accordingly, the Inquiry finds that SPC 1.3 is not proven as against INBS.

⁶²⁹ Internal memorandum from Gary McCollum to Michael Fingleton, dated 18 September 2007 (Doc ID: 0.7.120.21299).

⁶³⁰ Savills Valuation, dated 24 October 2007 (Doc ID: 0.7.120.432041).

⁶³¹ Savills Valuation, dated 24 October 2007, at paragraph 1.0 (Doc ID: 0.7.120.432041).

SPC 2.5: Loans advanced prior to quorate Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with INBS's urgent credit decision approval procedures.

4.790 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.791 The CMO issued on 18 September 2007 and signed by the borrower on 24 October 2007.⁶³² The date of first drawdown⁶³³ was 30 October 2007 and was approved at a Credit Committee meeting on 14 November 2007.⁶³⁴

Urgent credit decision approval procedures required that the loan be approved by the Managing Director and two members of the Credit Committee and then signed off by the Credit Committee and the Board as soon as practicable thereafter.

There is no evidence from the consolidated loan file or from Credit Committee or Board minutes and packs of any urgent credit decision approval procedures having been applied in respect of this loan.

4.792 The Inquiry finds that this loan was advanced prior to a meeting of the Credit Committee and not in compliance with INBS's urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.5 is proven as against INBS.

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

4.793 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

⁶³² Commercial Mortgage Offer, dated 18 September 2007 (Doc ID: 0.7.120.16070).

⁶³³ Society Advance Detail, dated 30 October 2007 (Doc ID: 0.7.120.38905).

⁶³⁴ Minutes of Credit Committee meeting, dated 14 November 2007 (Doc ID: 0.7.120.9055).

4.794 The CMO⁶³⁵ issued on 18 September 2007 and was signed by the borrower on 24 October 2007. The first drawdown⁶³⁶ was 30 October 2007. The facility was recommended for approval at a Credit Committee meeting⁶³⁷ dated 14 November 2007 and was approved at a Board meeting⁶³⁸ on 27 November 2007. There was no reference in the Board meeting minutes of the funds having been already paid out.

Urgent credit decision approval procedures required that the loan be approved by the Credit Committee and two directors, and later advised to the Board in the normal way. Under the 19 July 2006 Commercial Credit Committee Terms of Reference, the procedure was that the loan must be approved by the Managing Director and two members of the Credit Committee and then signed off by the Credit Committee and the Board as soon as practicable thereafter.

4.795 There is no evidence from the consolidated loan file or from Credit Committee or Board meeting minutes and packs of any urgent credit decision approval procedures being applied in respect of this loan.

4.796 The Inquiry finds that funds were advanced prior to Board approval and not in compliance with urgent credit decision approval procedures and, accordingly, the Inquiry finds that SPC 2.6 is proven as against INBS.

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.797 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.798 The CMO⁶³⁹ for this loan was dated 18 September 2007 and was signed by the borrower on 24 October 2007. The date of first drawdown was 30 October 2007.⁶⁴⁰ The facility was recommended for approval at the Credit Committee meeting on 14

⁶³⁵ Commercial Mortgage Offer, dated 18 September 2007 (Doc ID: 0.7.120.16070).

⁶³⁶ Society Advance Detail, dated 30 October 2007 (Doc ID: 0.7.120.38905).

⁶³⁷ Minutes of Credit Committee meeting, dated 14 November 2007 (Doc ID: 0.7.120.9055).

⁶³⁸ Minutes of Board meeting, dated 27 November 2007 (Doc ID: 0.7.120.33618).

⁶³⁹ Commercial Mortgage Offer, dated 18 September 2007 (Doc ID: 0.7.120.16070).

⁶⁴⁰ Society Advance Detail, dated 30 October 2007 (Doc ID: 0.7.120.38905).

November 2007.⁶⁴¹ The facility was approved at a Board meeting held on 27 November 2007.⁶⁴²

The applicable urgent credit decision approval procedures set out above in relation to SPC 2.6 applied. Neither the Credit Committee meeting minutes nor the Board meeting minutes referred to the fact that the CMO had already been issued and the loan drawn down prior to approval.

4.799 There is no evidence from the consolidated loan file or from Credit Committee or Board meeting minutes and packs of any urgent credit decision approval procedures being applied in respect of this loan.

4.800 **The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.801 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 13).

These policies both stated that personal guarantees were to be acquired where the borrower was a private company.

4.802 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA⁶⁴³ nor the CMO⁶⁴⁴ make any reference to a personal guarantee from any of the identified directors of the borrowing company. The Credit Committee or Board meeting minutes and packs similarly do not refer to a personal guarantee from directors.

⁶⁴¹ Minutes of Credit Committee meeting, dated 14 November 2007 (Doc ID: 0.7.120.9055).

⁶⁴² Minutes of Board meeting, dated 27 November 2007 (Doc ID: 0.7.120.33618).

⁶⁴³ Commercial Loan Application, dated 24 October 2007 (Doc ID: 0.7.120.33615).

⁶⁴⁴ Commercial Mortgage Offer, dated 18 September 2007 (Doc ID: 0.7.120.16070).

4.803 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.804 This was a loan for €67 million to purchase a 66.6% share in a hotel under construction in Italy. In his internal memorandum to Mr Fingleton, dated 12 November 2007, Mr McCollum stated it was the borrower's intention to refinance INBS's facility upon the opening of the resort, with INBS remaining entitled to 25% share of the profits.⁶⁴⁵ The memorandum also detailed that the property was valued at €40.8 million and the completed project was valued at over €102 million. A resale of the resort was anticipated by the end of year one trading, in 2010.

4.805 The internal memorandum requested an initial loan of €37 million with a total requirement of €67 million. In a handwritten note on the internal memorandum, Mr Fingleton had written: "*Initial loan €21m. Balance in phases when planning achieved*".⁶⁴⁶

4.806 A Board meeting held on 27 November 2007 appointed special attorneys to act on behalf of INBS in order to complete the transaction in Italy.⁶⁴⁷ However, the loan was

⁶⁴⁵ Internal memorandum from Gary McCollum to Michael Fingleton, dated 12 November 2007 (Doc ID: 0.7.120.31096).

⁶⁴⁶ Internal memorandum from Gary McCollum to Michael Fingleton, dated 12 November 2007 (Doc ID: 0.7.120.31096).

⁶⁴⁷ Minutes of Board meeting, dated 27 November 2007, page 13 (Doc ID: 0.7.120.11889).

not formally approved by the Board until 17 December 2007.⁶⁴⁸ The loan was drawn down on 27 November 2007.⁶⁴⁹

4.807 The CLA was dated 13 November 2007.⁶⁵⁰ The loan was described as 100% of purchase price. In the CLA the purchase price was cited as €40.8 million and the loan was for €67 million. The CLA stated that DTZ had valued the completed property at €102.3 million. INBS was to be entitled to a 25% profit share upon resale.

4.808 There was a document drawn up in compliance with Italian law, entitled a development facility agreement. This document contained most of the terms that would be found in a CMO. It was dated 28 November 2007 and it also provided for a facility of €67 million.⁶⁵¹

4.809 The Summit account for this loan showed that an initial facility of €20,895,000 was advanced on 27 November 2007. It appears that only €31 million of this facility was paid out and on 27 February 2010, there was an outstanding balance of €34,339,569.⁶⁵² This loan was transferred to NAMA.

4.810 There were seven Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Business plan/proposals.

4.811 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.812 Mr McCollum's internal memorandum attached a number of documents that were relevant to this allegation. There was a business plan prepared by the company who managed the hotel that included a profit and loss account for the business, and a month by month breakdown of costs and revenue for the business.⁶⁵³

⁶⁴⁸ Commercial Loan Application, dated 13 November 2007, with Board approval of 17 December 2007 (Doc ID: 0.7.120.28200).

⁶⁴⁹ Society Advance Detail, dated 27 November 2007 (Doc ID: 0.7.120.894861).

⁶⁵⁰ Commercial Loan Application, dated 13 November 2007 (Doc ID: 0.7.120.28200).

⁶⁵¹ Development Facility Agreement, dated 28 November 2007 (Doc ID: 0.7.120.33646).

⁶⁵² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760602).

⁶⁵³ Business Plan [REDACTED] (Doc ID: 0.7.120.895747).

4.813 There was a document entitled "*Budget for completion of the Project*"⁶⁵⁴ that gave a high level estimate of the cost of refurbishment.

4.814 A valuation was prepared by an independent valuer dated 12 September 2007.⁶⁵⁵ This was opened to the Inquiry as part of a 104 page document. It was extremely comprehensive and was the first of a number of valuations and appraisals carried out on the property. This valuation included a consideration of the financial plan provided by the hotel management company and it valued the business with reference to rooms, food and beverage, other sources of income and the expenses of operating the hotel. The original valuation was dated September 2007 but it was updated in November 2007 and it provided the same estimate of value at the conclusion of the project of €102.3 million with a current value of €40.8 million.⁶⁵⁶

4.815 There was an email in the file from the lawyer acting for INBS in Italy which stated:

*"Business Plan. I am told that INBS already has the budget and information on the development. Can this be classed as a Business Plan, or do you need something else from the borrower?"*⁶⁵⁷

There was no record of any reply to this query.

4.816 The Inquiry has examined the extensive documentation on the file for this loan and is satisfied that an adequate business plan or proposal was obtained prior to the granting of this facility.

4.817 The Inquiry finds that the allegation of a failure to acquire required information from borrowers, namely a business plan or proposal, is not supported by the documentation. Accordingly, the Inquiry finds that SPC 1.3 is not proven as against INBS.

SPC 2.5: Loans advanced prior to quorate Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with INBS's urgent credit decision approval procedures.

4.818 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent

⁶⁵⁴ Budget for the Completion of the Project (Doc ID: 0.7.120.895521).

⁶⁵⁵ Bundle of documents, including DTZ Valuation Report, from page 56 (Doc ID: 0.7.120.432376).

⁶⁵⁶ DTZ Report and Valuation, dated November 2007 (Doc ID: 0.7.120.431517).

⁶⁵⁷ Email from Martin Pugsley to INBS, dated 26 November 2011 (Doc ID: 0.7.120.918285).

credit decision approval procedures were set out in the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.819 The development facility agreement (which, as explained above at paragraph 4.808) was similar to a CMO⁶⁵⁸ was dated 28 November 2007, which was also the date of first drawdown.⁶⁵⁹ The facility was recommended for approval at the Credit Committee meeting on 6 December 2007.⁶⁶⁰ The facility was approved at a Board meeting⁶⁶¹ on 17 December 2007.

Urgent credit decision approval procedures required that the loan be approved by the Managing Director and two members of the Credit Committee and then signed off by the Credit Committee and the Board as soon as practicable thereafter.

4.820 There is no evidence from the consolidated loan file or from Credit Committee or Board meeting minutes and packs of any urgent credit decision approval procedures being applied in respect of this loan.

4.821 The Inquiry finds that this loan was advanced prior to a meeting of the Credit Committee and not in compliance with INBS's urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.5 is proven as against INBS.

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

4.822 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.823 The equivalent of a CMO⁶⁶² issued for this loan on 28 November 2007. The date of first drawdown⁶⁶³ was 27 November 2007. The facility was recommended for approval at the Credit Committee⁶⁶⁴ meeting dated 6 December 2007. The facility was approved

⁶⁵⁸ Development Facility Agreement, dated 28 November 2007 (Doc ID: 0.7.120.33646).

⁶⁵⁹ Sterling Commercial Advance Static Sheet, dated 27 November 2007 (Doc ID: 0.7.120.12384).

⁶⁶⁰ Minutes of Credit Committee meeting, dated 6 December 2007 (Doc ID: 0.7.120.29881).

⁶⁶¹ Minutes of Board meeting, dated 17 December 2007 (Doc ID: 0.7.120.38856).

⁶⁶² Development Facility Agreement, dated 28 November 2007 (Doc ID: 0.7.120.33646).

⁶⁶³ Sterling Commercial Advance Static Sheet, dated 27 November 2007 (Doc ID: 0.7.120.12384).

⁶⁶⁴ Minutes of Credit Committee meeting, dated 6 December 2007 (Doc ID: 0.7.120.29881).

at a Board meeting⁶⁶⁵ dated 17 December 2007. There was no reference in the Board meeting minutes of the funds having been already paid out.

Urgent credit decision approval procedures required that the loan be approved by the Credit Committee and two directors, and later advised to the Board in the normal way. Under the 19 July 2006 Commercial Credit Committee Terms of Reference, the procedure was that the loan must be approved by the Managing Director and two members of the Credit Committee and then signed off by the Credit Committee and the Board as soon as practicable thereafter.

4.824 There is no evidence from the consolidated loan file or from Credit Committee or Board meeting minutes and packs of any urgent credit decision approval procedures being applied in respect of this loan.

4.825 **The Inquiry finds that funds were advanced prior to Board approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.6 is proven as against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.826 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.827 The CMO⁶⁶⁶ equivalent issued for this loan on 28 November 2007. The date of first drawdown⁶⁶⁷ was 27 November 2007. The facility was recommended for approval at the Credit Committee⁶⁶⁸ meeting dated 6 December 2007 and was approved at a Board meeting⁶⁶⁹ held on 17 December 2007.

4.828 The applicable urgent credit decision approval procedures as set out above in relation to SPC 2.6 applied. Neither the Credit Committee meeting minutes nor the Board

⁶⁶⁵ Minutes of Board meeting, dated 17 December 2007 (Doc ID: 0.7.120.38856).

⁶⁶⁶ Development Facility Agreement, dated 28 November 2007 (Doc ID: 0.7.120.33646).

⁶⁶⁷ Sterling Commercial Advance Static Sheet, dated 27 November 2007 (Doc ID: 0.7.120.12384).

⁶⁶⁸ Minutes of Credit Committee meeting, dated 6 December 2007 (Doc ID: 0.7.120.29881).

⁶⁶⁹ Minutes of Board meeting, dated 17 December 2007 (Doc ID: 0.7.120.38856).

meeting minutes referred to the fact that the CMO had already been issued and the loan drawn down prior to approval.

There is no evidence from the consolidated loan file or from Credit Committee or Board meeting minutes and packs of any urgent credit decision approval procedures being applied in respect of this loan.

- 4.829 **The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

- 4.830 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 13).

These policies both stated that personal guarantees should be acquired where the borrower is a private company.

- 4.831 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA⁶⁷⁰ nor the CMO equivalent document⁶⁷¹ made any reference to a personal guarantee from any of the identified directors of the borrowing company. The identified security did not refer to a personal guarantee. Similarly, neither the Credit Committee⁶⁷² nor Board⁶⁷³ meeting minutes referred to a personal guarantee from directors.

- 4.832 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.**

⁶⁷⁰ Commercial Loan Application, dated 13 November 2007 (Doc ID: 0.7.120.28200).

⁶⁷¹ Development Facility Agreement, dated 28 November 2007 (Doc ID: 0.7.120.33646).

⁶⁷² Minutes of Credit Committee meeting, dated 6 December 2007 (Doc ID: 0.7.120.29881).

⁶⁷³ Minutes of Board meeting, dated 17 December 2007 (Doc ID: 0.7.120.38856).

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.833 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13). The applicable reference document for sectoral codes was the 27 June 2007 Credit Risk Management Policy.⁶⁷⁴

4.834 The CLA recorded a sectoral code of H01, which relates to "*Business: Property Investors/Developers*". The purpose of the loan as set out in the CLA was to provide finance to enable the borrower, an existing customer, purchase a hotel resort in Italy.⁶⁷⁵

In circumstances where this property was being acquired for development, these loans were properly categorised as "*Development Finance*". This category of loan was not assigned a LTV limit in the 28 February 2007 Commercial Mortgage Lending Policy, but was to be assessed on a case by case basis. The Inquiry does not believe that, on the balance of probabilities, an adverse finding can be made.

4.835 The Inquiry finds that the internal policy provisions relating to LTV limits were not breached with in this loan and, accordingly, finds that SPC 3.4 is not proven against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. In light of the Inquiry's finding in respect of INBS, this loan specific participation allegation against Mr Purcell now falls away.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.836 In light of the finding at SPC 3.4 above, this allegation against INBS now falls away.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

⁶⁷⁴ 27 June 2007 Credit Risk Management Policy (Doc ID: 0.7.120.431329).

⁶⁷⁵ Commercial Loan Application, dated 13 November 2007 (Doc ID: 0.7.120.28200).

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

- 4.837 The internal memorandum dated 7 September 2006⁶⁷⁶, from Mr McCollum to Mr Fingleton, set out the request of the borrower for funding of £4.5 million to purchase an almost completed luxury 9,000 square foot detached residence in London. The owner/developer had run out of funds and the borrower intended to acquire the property at a market discount. The borrower intended to complete the works using her own funds and then sell the property. The current value was stated to be £5.75 million and the resale value was estimated to be £7 million.
- 4.838 The Credit Committee recommended this loan on 13 September 2006⁶⁷⁷ and it was approved by the Board on 27 September 2006.⁶⁷⁸ The CLA was dated 12 September 2006 and it provided for a loan of £4.5 million with a capital and interest moratorium for the term of the loan, which was for 18 months. The LTV was stated to be 78% of current value.⁶⁷⁹ A CMO on these terms issued on 3 October 2006 and was signed by the borrower on 5 October 2006.⁶⁸⁰ The loan was drawn down on 11 October 2006. The Summit account showed that this mortgage was redeemed on 27 March 2007.⁶⁸¹
- 4.839 There were four Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Statement of affairs (net worth).**
- (b) **Income details.**
- (c) **Bank statements (six months' current accounts).**

⁶⁷⁶ Internal Memorandum from Gary McCollum to Michael Fingleton, dated 7 September 2006 (Doc ID: 0.7.120.19351).

⁶⁷⁷ Minutes of Credit Committee meeting, dated 13 September 2006 (Doc ID: 0.7.120.550695).

⁶⁷⁸ Minutes of Board meeting, dated 27 September 2006 (Doc ID: 0.7.120.34149).

⁶⁷⁹ Commercial Loan Application, dated 12 September 2006 (Doc ID: 0.7.120.485833).

⁶⁸⁰ Commercial Mortgage Offer, dated 3 October 2006 (Doc ID: 0.7.120.18322).

⁶⁸¹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760613).

(d) Loan statements (personal and business).

(e) Business plan/proposals.

4.840 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.841 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.842 The relevant policy was the 19 July 2006 Commercial Credit Committee Terms of Reference.

4.843 In circumstances where the Inquiry makes no finding in respect of SPC 3.4, this allegation no longer arises.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

SPC 4.1: Commercial lenders did not monitor loans during the term of the loan to the end of the Review Period.

- 4.844 The relevant policies were the April 2003 Credit Risk Policy, the 28 February 2007 Commercial Mortgage Lending Policy, the December 2007 Commercial Mortgage Lending Policy and the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 14).
- 4.845 This loan was redeemed in full on 27 March 2007⁶⁸² and therefore at least two of the policies as set out in the Investigation Report cannot apply. This loan was repaid after six months so no reasonable expectation of monitoring could have arisen in that time.
- 4.846 **The Inquiry finds no grounds for the allegation that this loan was not monitored and, accordingly, finds that SPC 4.1 is not proven as against INBS.**

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

- 4.847 The internal memorandum for this loan, dated 28 June 2007, stated that the borrower had recently discharged a mortgage on a property in London.⁶⁸³ The borrower had contracted to purchase a mid-terraced luxury property in central London and intended to refurbish it out of her own funds and then resell it. The loan required was £4.25 million. The internal memorandum stated the current value was £4.5 million and the estimated resale value was £5.75 million. The loan was for 12 months on an interest only basis.
- 4.848 A valuation was obtained on 2 July 2007 for £4.5 million. A CLA was prepared dated 4 July 2007.⁶⁸⁴ Credit Committee recommendation for approval was dated 24 July 2007⁶⁸⁵, and Board approval was dated 26 July 2007.⁶⁸⁶ The initial drawdown occurred on 2 July 2007 for the full amount of the loan.⁶⁸⁷ A CMO issued on 29 June 2007.⁶⁸⁸

⁶⁸² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760613).

⁶⁸³ Internal Memorandum from Gary McCollum to Michael Fingleton, dated 28 June 2007 (Doc ID: 0.7.120.13575).

⁶⁸⁴ Commercial Loan Application, dated 4 July 2007 (Doc ID: 0.7.120.31472).

⁶⁸⁵ Minutes of Credit Committee meeting, dated 24 July 2007 (Doc ID: 0.7.120.44119).

⁶⁸⁶ Minutes of Board meeting, dated 26 July 2007 (Doc ID: 0.7.120.37698).

⁶⁸⁷ Society Advance Detail, dated 7 July 2007 (Doc ID: 0.7.120.19210).

⁶⁸⁸ Commercial Mortgage Offer, dated 29 June 2007 (Doc ID: 0.7.120.34010).

From an INBS internal email dated 15 January 2010, it appears that the account was redeemed in full with INBS receiving an exit fee of £42,500.⁶⁸⁹ This was also confirmed by the Summit account for this loan.⁶⁹⁰

4.849 There were six Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.2: CLA was not prepared in advance of funds being drawn down.

4.850 The relevant policy was the 28 February 2007 Commercial Lending Policy. (See Table included at Appendix 11).

4.851 The date of first drawdown was 2 July 2007⁶⁹¹ and the date of the CLA was 4 July 2007.⁶⁹² The documents showed that the CLA was dated two days after the first drawdown. There was no reference to the loan having already been drawn down in the CLA or at the Credit Committee⁶⁹³ or Board meetings⁶⁹⁴ that considered this loan.

4.852 **The Inquiry finds that the CLA was not prepared in advance of funds being drawn down and, accordingly, that SPC 1.2 is proven as against INBS.**

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Statement of Affairs (net worth).**
- (b) **Income details.**
- (c) **Bank statements (six months' current accounts).**
- (d) **Loan statements (personal and business).**
- (e) **Business plan/proposals.**

4.853 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

⁶⁸⁹ Email from Julie Byrnes, INBS, to Olena Lavryk, INBS, dated 15 January 2010 (Doc ID: 0.7.120.17899).

⁶⁹⁰ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760530).

⁶⁹¹ Sterling Commercial Advance Static Sheet, dated 2 July 2007 (Doc ID: 0.7.120.7851).

⁶⁹² Commercial Loan Application, dated 4 July 2007 (Doc ID: 0.7.120.31472).

⁶⁹³ Minutes of Credit Committee meeting, dated 24 July 2007 (Doc ID: 0.7.120.44119).

⁶⁹⁴ Minutes of Board meeting, dated 26 July 2007 (Doc ID: 0.7.120.37698).

4.854 An independent valuation was sought in respect of this loan and it was a comprehensive 123 page review of the property, the location, the condition of the property, the environment, planning and council tax issues and market commentary.⁶⁹⁵ In circumstances where the purpose of the loan was to purchase the property, refurbish it and sell on, this valuation was an adequate basis for a business plan or proposal. The valuation of £4.5 million was £250,000 more than the amount of the loan. This was not a Profit Share Loan, but there was an initial arrangement fee of £21,250 and an additional fee, presumably out of profits, of £42,500.⁶⁹⁶

4.855 There was no specific information on the borrower's capacity to meet the interest payments or to fund the refurbishment. Whilst the Inquiry recognises that this borrower was well known to INBS and had a good record in terms of successful transactions, there was an onus to acquire the information listed at the top of this allegation. There does not appear to have been any attempt made in that regard.

4.856 **The Inquiry finds that there was a failure to acquire required information, namely, a statement of Affairs (net worth), income details, bank statements (six months' current accounts) or loan statements (personal and business) in respect of this loan. Accordingly, the Inquiry finds that those elements of SPC 1.3 are proven as against INBS.**

The Inquiry finds that there was a business plan or proposal and, accordingly, finds that that element of the allegation is not proven as against INBS.

SPC 2.4: Credit Committee not quorate when loans were approved or recommended and loans not in compliance with INBS's urgent credit decision approval procedures.

4.857 This allegation was advanced against INBS only and so it was not opened during the SPC 1 to 4 Loan Hearings. Accordingly, this allegation was not considered by the Inquiry.

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

4.858 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent

⁶⁹⁵ DTZ Report and Valuation, dated 2 July 2007 (Doc ID: 0.7.120.432235).

⁶⁹⁶ Internal Memorandum from Gary McCollum to Michael Fingleton, dated 28 June 2007 (Doc ID: 0.7.120.13575).

credit decision approval procedures were set out in the Board Resolution September 2002 and in the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

- 4.859 The date of first drawdown was 2 July 2007.⁶⁹⁷ The facility was recommended for approval at the Credit Committee meeting⁶⁹⁸ on 24 July 2007 and was approved at a Board meeting⁶⁹⁹ held on 26 July 2007. There was no reference in the Board minutes to the fact that funds had been paid out prior to Board approval.
- 4.860 Urgent credit decision approval procedures required that the loan be approved by the Credit Committee and two directors and later advised to the Board in the normal way. Under the 19 July 2006 Commercial Credit Committee Terms of Reference, the procedure was that the loan must be approved by the Managing Director and two members of the Credit Committee and then signed off by the Credit Committee and the Board as soon as practicable thereafter.

There is no evidence from the consolidated loan file or from Credit Committee or Board meeting minutes and packs of any urgent credit decision approval procedures being applied in respect of this loan.

- 4.861 **The Inquiry finds that funds were advanced prior to Board approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.6 is proven as against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

- 4.862 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

The 21 April 2008 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation must be considered, approved and minuted by the Credit Committee.

As this loan had a capital moratorium, the Moratoria Policy 21 April 2008 applied and it stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following:

⁶⁹⁷ Society Advance Detail, dated 7 July 2007 (Doc ID: 0.7.120.19210).

⁶⁹⁸ Minutes of Credit Committee meeting, dated 24 July 2007 (Doc ID: 0.7.120.44119).

⁶⁹⁹ Minutes of Board meeting, dated 26 July 2007 (Doc ID: 0.7.120.37698).

managing director; commercial lending manager; or mortgage administration manager.

- 4.863 Both the CLA⁷⁰⁰ and the CMO set a 12 month term for this loan with interest only payments. The CMO was issued on 29 June 2007.⁷⁰¹ The Summit account⁷⁰² showed that interest continued to accrue until January 2010 at which point this loan was redeemed in full with an additional fee to INBS of £42,500.
- 4.864 From an examination of the loan files, Credit Committee meeting minutes⁷⁰³ and Board meeting minutes⁷⁰⁴, there is no evidence that the term extension approval process as set out in the two policies was complied with in respect to this additional facility.
- 4.865 **The Inquiry finds that this loan was extended without the appropriate approval policy being followed and, accordingly, finds that SPC 2.9 is proven as against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

- 4.866 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The relevant urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).
- 4.867 The date of the initial drawdown⁷⁰⁵ was 2 July 2007. The CMO⁷⁰⁶ for this loan was dated 29 June 2007. The CLA⁷⁰⁷ was dated 4 June 2007 and the facility was recommended for approval at the Credit Committee meeting⁷⁰⁸ on 24 July 2007. The facility was approved at a Board meeting⁷⁰⁹ held on 26 July 2007.

⁷⁰⁰ Commercial Loan Application, dated 4 July 2007 (Doc ID: 0.7.120.31472).

⁷⁰¹ Commercial Mortgage Offer, dated 29 June 2007 (Doc ID: 0.7.120.34010).

⁷⁰² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760530).

⁷⁰³ Minutes of Credit Committee meeting, dated 24 July 2007 (Doc ID: 0.7.120.44119).

⁷⁰⁴ Minutes of Board meeting, dated 26 July 2007 (Doc ID: 0.7.120.37698).

⁷⁰⁵ Sterling Commercial Advance Static Sheet, dated 2 July 2007 (Doc ID: 0.7.120.7851).

⁷⁰⁶ Commercial Mortgage Offer, dated 29 June 2007 (Doc ID: 0.7.120.34010).

⁷⁰⁷ Commercial Loan Application, dated 4 July 2007 (Doc ID: 0.7.120.31472).

⁷⁰⁸ Minutes of Credit Committee meeting, dated 24 July 2007 (Doc ID: 0.7.120.44119).

⁷⁰⁹ Minutes of Board meeting, dated 26 July 2007 (Doc ID: 0.7.120.37698).

From an examination of the loan files and Credit Committee and Board meeting minutes, there is no evidence that the urgent credit decision approval procedures as set out in internal policy were complied with.

- 4.868 **The Inquiry finds that the CMO for this loan was advanced prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.**

SPC 4.1: Commercial lenders did not monitor loans during the term of the loan to the end of the Review Period.

- 4.869 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy, the December 2007 Commercial Mortgage Lending Policy and the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 14).

- 4.870 The Inquiry has examined the consolidated loan file for this loan and there is no evidence of any monitoring by the commercial lender from June 2007 to the end of the Review Period in September 2008. The property was to have been refurbished and sold on for a substantial profit, but that did not occur within the term of the loan.

The Inquiry notes that interest was paid throughout the life of the loan and that it was incepted just sixteen months before the end of the Review Period. Whilst there is no evidence of monitoring on this file during that time, the Inquiry does not feel that this amounted to such a serious breach as to merit an adverse finding.

- 4.871 **The Inquiry finds that the conduct amounting to an allegation that this loan was not monitored during the term of the loan is not of sufficient seriousness to merit an adverse finding. Accordingly, the Inquiry finds that SPC 4.1 is not proven against INBS.**

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

- 4.872 The borrower wrote to Mr McCollum on 10 May 2005⁷¹⁰ advising he had agreed to acquire a property in Lancashire at an agreed price of £2 million and sought

⁷¹⁰ Letter from [REDACTED] to Gary McCollum, INBS, dated 10 May 2005 (Doc ID: 0.7.120.5092).

confirmation that INBS would provide the funding for this acquisition. A valuation was received on 22 June 2005 which estimated the market value of the property as £2.2 million with a current rental income of £170,000.⁷¹¹

- 4.873 A CMO was issued and accepted on 27 June 2005.⁷¹² This was for a sum of £2.15 million for 36 months with a capital moratorium but with interest payable quarterly. The initial drawdown of £210,000 was on 27 June 2005 with the balance on 22 July 2005.⁷¹³ The CMO referred to a fee agreement but there were no details on file in respect of this. On 21 June 2007⁷¹⁴ Mr McCollum wrote to the customer seeking an update on a range of [REDACTED] loans including this one, and on 20 August 2007 he was informed that the property was now the subject of an exchange of contracts with a major property company, on a "subject to planning" basis at a price of £3 million.⁷¹⁵

By the end of 2009, this property remained unsold with an outstanding balance of £2,163,645.⁷¹⁶ This loan was transferred to NAMA.

- 4.874 There were six Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.1: No CLA was prepared at all.

- 4.875 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Business plan/proposals.

⁷¹¹ DTZ Report and Valuation, dated 22 June 2005, page 3 to 4, (Doc ID: 0.7.120.16737).

⁷¹² Commercial Mortgage Offer, dated 27 June 2005 (Doc ID: 0.7.120.26221).

⁷¹³ Society Advance Detail, dated 27 June 2005 (Doc ID: 0.7.120.26740); Mortgage Advances Cash Sheet, dated 22 July 2005 (Doc ID: 0.7.120.35132).

⁷¹⁴ Letter from Gary McCollum to [REDACTED], dated 21 June 2007, page 1 (Doc ID: 0.7.120.24910).

⁷¹⁵ Letter from [REDACTED] to Gary McCollum, dated 20 August 2007, pages 2 to 8 (Doc ID: 0.7.120.24910).

⁷¹⁶ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760541).

(b) Forecast cash flow analysis.

- 4.876 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.4: Credit grades were not assigned to commercial loans.

- 4.877 The relevant policy was the 8 April 2003 Credit Grading System for Commercial Lending. (See Table included at Appendix 11).

- 4.878 In his submissions to the Inquiry, Mr Purcell stated that the 8 April 2003 Credit Grading System for Commercial Lending did not require that a CLA should have a credit grade when presented to the Credit Committee or the Board. The Inquiry agrees with this assertion and therefore no finding is made in respect of this allegation. The assigning of credit grades during the loan approval process is dealt with at Chapter 5 of this Findings Report (see paragraph 5.197 et seq.). That part of the Findings Report outlines Mr Purcell's submissions on this point and the reasoning for the Inquiry's finding that a failure to assign a credit grade at the loan approval stage was not a breach of INBS internal policy.

SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval (as required) and not in compliance with INBS's urgent credit decision approval procedures.

- 4.879 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

Both policies stated that all commercial loan proposals in excess of the branch manager's discretion must be recommended for approval or approved by the Credit Committee.

The 2003 Commercial Credit Committee Terms of Reference outlined the urgent credit decision approval procedures.

4.880 The CMO for this facility issued on 27 June 2005.⁷¹⁷ The initial drawdown occurred on 27 June 2005.⁷¹⁸

4.881 The Inquiry has examined all of the Credit Committee meeting minutes during the Review Period and it appears that no consideration of this loan took place at any of these meetings. The Inquiry has examined the Board meeting minutes and the Board packs during the Review Period and this facility was not raised at any of these meetings.

From an examination of the consolidated loan file there is no evidence that any urgent credit decision approval procedures were followed in this case.

4.882 **The Inquiry finds that the allegation of no Credit Committee approval or recommendation and no Board approval and not in compliance with urgent credit decision approval procedures is adequately supported by the documentation and, accordingly, finds that SPC 2.2 is proven as against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

4.883 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

These policies outlined the approval procedures that needed to be followed in order to vary the terms of a loan approved by the Board.

4.884 The 21 April 2008 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation must be considered, approved and minuted by the Credit Committee. The Moratoria Policy 21 April 2008 stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

4.885 The CMO for this loan dated 27 June 2005 stated that this loan would be the subject of a capital moratorium.⁷¹⁹ A review of the Summit history⁷²⁰ for this account shows

⁷¹⁷ Commercial Mortgage Offer, dated 27 June 2005 (Doc ID: 0.7.120.26221).

⁷¹⁸ Society Advance Detail, dated 27 June 2005 (Doc ID: 0.7.120.26740).

⁷¹⁹ Commercial Mortgage Offer, dated 27 June 2005 (Doc ID: 0.7.120.26221).

⁷²⁰ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760541).

that interest continued to be applied until the end of December 2009, with no recorded capital repayments.

The term and moratorium of the loan appear to have been extended beyond the termination date of 27 June 2008 (three years from the issuing of the CMO), but there is no document on file nor evidence from Credit Committee meetings during the relevant period to indicate such an extension, or to indicate that any of the procedures set out in the policies had been followed.

The Inquiry noted a commercial loan amendment form setting out an extension on this loan for one year from 21 November 2009, which is outside the Review Period.⁷²¹

- 4.886 **The Inquiry finds that the allegation that the term of the loan was extended without appropriate approval is adequately supported by the documentation and, accordingly, finds that SPC 2.9 is proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

- 4.887 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy and the 9 November 2004 Commercial Lending Criteria. (See Table included at Appendix 13).

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower was a private company.

- 4.888 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. The CMO does not make any reference to a personal guarantee from the directors of [REDACTED] nor does the identified security as listed on the CMO refer to a personal guarantee.⁷²²

⁷²¹ Account Amendment Request Form, dated 27 August 2010 (Doc ID: 0.7.120.17954).

⁷²² Commercial Mortgage Offer, dated 27 June 2005 (Doc ID: 0.7.120.26221).

4.889 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.**

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.890 This involved a loan facility of £3.8 million for three years to purchase a property in Middlesex. The date of the CMO was 5 December 2005, and it was signed by directors of the borrowing company on 19 December 2005.⁷²³ The security for the loan was a mortgage debenture over assets of the borrower company, which was a SPV, and a first legal mortgage over the land and property being purchased.⁷²⁴ A valuation dated 28 November 2005 valued the properties at £3.8 million and reported favourably on the property generally. It advised that the properties were let at an annual rent of £287,500 under a 14 year lease expiring on 29 July 2018.⁷²⁵

4.891 A CMO was issued on 5 December 2005 in the amount of £3.8 million for three years on a capital moratorium basis with interest payable quarterly.⁷²⁶ The CMO referred to a fee agreement but there were no details of this on file. The first drawdown on this loan as evidenced by the SAD was made on 20 December 2005 in the sum of £379,000 to Howard Kennedy.⁷²⁷

4.892 Credit reviews carried out during the Review Period indicated that interest was paid on a quarterly basis.⁷²⁸ The Summit balance on 21 December 2009 was £3.739million.⁷²⁹ This loan was transferred to NAMA.

4.893 There were six Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

⁷²³ Commercial Mortgage Offer, dated 5 December 2005 (Doc ID: 0.7.120.11450).

⁷²⁴ Commercial Mortgage Offer, dated 5 December 2005, page 2 (Doc ID: 0.7.120.11450).

⁷²⁵ Grimley Valuation Report, dated November 2005 (Doc ID: 0.7.120.6092).

⁷²⁶ Commercial Mortgage Offer, dated 5 December 2005 (Doc ID: 0.7.120.11450).

⁷²⁷ Society Advance Detail, dated 20 December 2005 (Doc ID: 0.7.120.14232).

⁷²⁸ Credit Review Pro-Forma, dates of review: 18 May 2005 and 23 November 2006 (Doc ID: 0.7.120.472021).

⁷²⁹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760695).

SPC 1.1: No CLA was prepared at all.

4.894 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

4.895 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Business plan/proposals.

(b) Forecast cash flow analysis.

4.896 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.4: Credit grades were not assigned to commercial loans.

4.897 The relevant policy was the 8 April 2003 Credit Grading System for Commercial Lending. (See Table included at Appendix 11).

4.898 In his submissions to the Inquiry, Mr Purcell stated that the 8 April 2003 Credit Grading System for Commercial Lending did not require that a CLA should have a credit grade when presented to the Credit Committee or the Board. The Inquiry agrees with this assertion and therefore no finding is made in respect of this allegation. The assigning of credit grades during the loan approval process is dealt with at Chapter 5 of this Findings Report (see paragraph 5.197 et seq.). That part of the Findings Report outlines Mr Purcell's submissions on this point and the reasoning for the Inquiry's finding that a failure to assign a credit grade at the loan approval stage was not a breach of INBS internal policy.

SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval (as required) and not in compliance with INBS's urgent credit decision approval procedures.

4.899 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

Both policies made it clear that all commercial loan proposals in excess of the branch manager's discretion must be recommended for approval or approved by the Credit Committee. The 16 October 2003 Commercial Credit Committee Terms of Reference outlined the urgent credit decision approval procedures.

4.900 The CMO for this facility issued on 5 December 2005.⁷³⁰ The initial drawdown occurred on 20 December 2005.⁷³¹

4.901 The Inquiry has examined all of the Credit Committee meeting minutes during the Review Period. It appears that no consideration of this loan took place at any of these meetings.

The Inquiry has examined the Board meeting minutes and the Board packs during the Review Period. This facility was not raised at any of these meetings.

From an examination of the consolidated loan file there is no evidence that any urgent credit decision approval procedures were followed in this case.

4.902 **The Inquiry finds that the allegation of no Credit Committee approval or recommendation and no Board approval and not in compliance with urgent credit decision approval procedures is adequately supported by the documentation. Accordingly, the Inquiry finds that SPC 2.2 is proven as against INBS.**

⁷³⁰ Commercial Mortgage Offer, dated 5 December 2005 (Doc ID: 0.7.120.11450).

⁷³¹ Society Advance Detail, dated 20 December 2005 (Doc ID: 0.7.120.14232).

SPC 3.2: Personal guarantees from owner/controller of Borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.903 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy and the 9 November 2004 Commercial Lending Criteria. (See Table included at Appendix 13).

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower is a private company.

4.904 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. The CMO did not make any reference to a personal guarantee from the directors of [REDACTED], nor did the identified security as listed on the CMO refer to a personal guarantee.⁷³²

4.905 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.**

SPC 4.1: Commercial lenders did not monitor loans during the term of the loan to the end of the Review Period.

4.906 The relevant policies were the April 2003 Credit Risk Policy, the 28 February 2007 Commercial Mortgage Lending Policy, the December 2007 Commercial Mortgage Lending Policy, and the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 14).

4.907 There were Credit Review Reports on file in relation to this loan which noted that interest continued to be paid. Whilst this may not have represented adequate monitoring, the allegation is that there was no monitoring, and this would not appear to be the case.

⁷³² Commercial Mortgage Offer, dated 5 December 2005 (Doc ID: 0.7.120.11450).

4.908 **The Inquiry finds that the allegation that commercial lenders did not monitor this loan during the term of the loan to end of Review Period is not supported by the documentation. Accordingly, the Inquiry finds that SPC 4.1 is not proven as against INBS.**

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.909 This was a loan for £12.25 million to purchase three separate properties in London, Essex and Oxfordshire in England. The CMO for this loan was issued on 22 March 2005⁷³³ in the amount of £12.25 million for a term of three years on a capital moratorium but with interest payable quarterly. The loan was to facilitate the purchase of property in London, Essex and Oxfordshire. The CMO referred to a fee agreement but there were no details on file.⁷³⁴

4.910 A valuation of the Oxfordshire property was received on 29 March 2005.⁷³⁵ Valuations for the other two properties were dated December 2004.⁷³⁶ The valuation stated that the Oxfordshire property had a net income of £392,653 per annum, and a current market value of £7.5 million. At the time of valuation four of the ten units were vacant. If all units were let at market rent, the rental income potential would rise to £717,500 per annum, and market value to £9 million.⁷³⁷

The other two properties showed a net income of £412,000 per annum with potential to achieve £488,000 per annum. The reported value with current tenancies was £5.35 million and value with vacant possession put at £4.21 million.⁷³⁸

4.911 There was a first drawdown in the amount of £5,624,087 on 8 April 2005⁷³⁹, with the balance being drawn down on 29 April.⁷⁴⁰ In October 2006, £5.065 million was received and applied to the loan in respect of the sale of the first two properties in London and Essex. The remaining balance on the loan continued to be secured by the Oxfordshire

⁷³³ Commercial Mortgage Offer, dated 22 March 2005 (Doc ID: 0.7.120.16278).

⁷³⁴ Commercial Mortgage Offer, dated 22 March 2005, page 3 (Doc ID: 0.7.120.16278).

⁷³⁵ Atisreal Report and Valuation, dated March 2005 (Doc ID: 0.7.120.17936).

⁷³⁶ Atisreal Report and Valuation, dated March 2005, page 3 (Doc ID: 0.7.120.17936).

⁷³⁷ Atisreal Report and Valuation, dated March 2005, page 2 (Doc ID: 0.7.120.17936).

⁷³⁸ Atisreal Report and Valuation, dated March 2005, page 8 (Doc ID: 0.7.120.17936).

⁷³⁹ Society Advance Detail, dated 8 April 2005 (Doc ID: 0.7.120.15818).

⁷⁴⁰ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760725).

property.⁷⁴¹ In January 2010 the balance on this loan remained outstanding at just under £7.233 million.⁷⁴² This loan was transferred to NAMA.

4.912 There were six Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.1: No CLA was prepared at all.

4.913 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

4.914 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) **Business plan/proposals.**

(b) **Forecast cash flow analysis.**

4.915 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.4: Credit grades were not assigned to commercial loans.

4.916 The relevant policy was the 8 April 2003 Credit Grading System for Commercial Lending. (See Table included at Appendix 11).

4.917 In his submissions to the Inquiry, Mr Purcell stated that the 8 April 2003 Credit Grading System for Commercial Lending did not require that a CLA should have a credit grade when presented to the Credit Committee or the Board. The Inquiry agrees with this assertion and therefore no finding is made in respect of this allegation. The assigning

⁷⁴¹ Credit Review Pro-Forma, review date: 18 May 2005 (Doc ID: 0.7.120.472021).

⁷⁴² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760725).

of credit grades during the loan approval process is dealt with at Chapter 5 of this Findings Report (see paragraph 5.197 et seq.). That part of the Findings Report outlines Mr Purcell's submissions on this point and the reasoning for the Inquiry's finding that a failure to assign a credit grade at the loan approval stage was not a breach of INBS internal policy.

SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval (as required) and not in compliance with INBS's urgent credit decision approval procedures.

4.918 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

Both policies made it clear that all commercial loan proposals in excess of the branch manager's discretion must be recommended for approval or approved by the Credit Committee. The 16 October 2003 Commercial Credit Committee Terms of Reference outlined the urgent credit decision approval procedures.

4.919 The Inquiry has examined all the minutes of the Credit Committee meetings since this loan was made available, and it appears that no consideration of this loan took place at any of these meetings. The CMO for this facility issued on 22 March 2005.⁷⁴³ The initial drawdown occurred on 8 April 2005.⁷⁴⁴

The Inquiry has examined the Board meeting minutes and the Board packs during the Review Period and this facility was not raised at any of those meetings.

From an examination of the consolidated loan file there is no evidence that any urgent credit decision approval procedures were followed in this case.

4.920 **The Inquiry finds that the allegation of no Credit Committee approval or recommendation and no Board approval and not in compliance with urgent credit decision approval procedures is adequately supported by the documentation and, accordingly, the Inquiry finds that SPC 2.2 is proven as against INBS.**

⁷⁴³ Commercial Mortgage Offer, dated 22 March 2005 (Doc ID: 0.7.120.16278).

⁷⁴⁴ Society Advance Detail, dated 8 April 2005 (Doc ID: 0.7.120.15818).

SPC 2.9: Term of the loan extended without appropriate approval.

- 4.921 The relevant policies were the December 2007 Commercial Mortgage Lending Policy and the Moratoria Policy December 2007 which includes an updated moratoria policy. (See Table included at Appendix 12).

The December 2007 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation was to be considered, approved and minuted by the Credit Committee. The Moratoria Policy December 2007 stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

- 4.922 The CMO for this loan, dated 22 March 2005, stated that this loan would be the subject of a capital moratorium.⁷⁴⁵

The Summit history⁷⁴⁶ for this account showed that interest continued to be applied until the end January 2010 with a single repayment as detailed above. The term and moratorium of the loan appears to have been extended beyond the termination date of 22 March 2008 (three years from the issuing of the CMO). There is no evidence from the consolidated loan file or from the Credit Committee meeting minutes that this extension was approved in compliance with policy.

- 4.923 **The Inquiry finds that the term of the loan was extended without appropriate approval and, accordingly, finds that SPC 2.9 is proven against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

- 4.924 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy and the 9 November 2004 Commercial Lending Criteria. (See Table included at Appendix 13).

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and

⁷⁴⁵ Commercial Mortgage Offer, dated 22 March 2005 (Doc ID: 0.7.120.16278).

⁷⁴⁶ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760725).

February 2007.

The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower is a private company.

4.925 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. The CMO does not make any reference to a personal guarantee from the directors of [REDACTED]⁷⁴⁷, nor does the identified security as listed on the CMO refer to any personal guarantee.

4.926 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven against INBS.**

Borrower: [REDACTED]

Loan Account: [REDACTED]

Loan 1 and Loan 2 - background to loans

4.927 In an internal memorandum from Mr McCollum to Mr Fingleton dated 10 April 2006, Mr McCollum requested a loan of £4 million on behalf of the borrower.⁷⁴⁸ This represented a deposit for the purchase of 32 petrol stations located in the south of England and Wales, which the borrower had agreed to purchase for £32.7 million.

4.928 The borrower had residential/retail schemes for each site and intended to apply for planning permission upon exchange of contracts. They intended to market sites for sale once contracts were exchanged and expected a total sale price in excess of £40 million. INBS was to be entitled to 25% of profits limited to £500,000 if no further funds were required other than the £4 million to cover the initial deposit monies and planning costs. Mr Fingleton wrote an instruction to Mr McMenamin on the internal memorandum to process the application.⁷⁴⁹

⁷⁴⁷ Commercial Mortgage Offer, dated 22 March 2005 (Doc ID: 0.7.120.16278).

⁷⁴⁸ Internal memorandum from Gary McCollum to Michael Fingleton, dated 10 April 2006 (Doc ID: 0.7.120.35378).

⁷⁴⁹ Internal Memorandum from Gary McCollum to Michael Fingleton, dated 10 April 2006 (Doc ID: 0.7.120.35378).

4.929 A CLA was prepared, dated 19 April 2006.⁷⁵⁰ This was for a facility of £4 million for one year for the purpose of facilitating the purchase and resale of a portfolio of 32 petrol stations. It was unsigned. An extract from the Board meeting minutes dated 26 April 2006 recorded Board approval for the sum of £4 million.⁷⁵¹

A further internal memorandum was sent to Mr Fingleton by Mr McCollum dated 15 November 2006.⁷⁵² This requested a loan of £23.6 million plus VAT for a 12 month term with a capital and interest moratorium. The number of properties it was proposed to purchase had reduced from 32 to 23 and INBS was now required to provide purchase monies rather than deposit monies.

A CMO dated 6 December 2006⁷⁵³ in the sum of £27.4 million was then issued and accepted by the borrowing company on 11 December 2006. The first drawdown occurred on 19 December 2006 in the sum of over £15 million.⁷⁵⁴

4.930 An internal email dated 30 July 2008 from Daniel Dempsey⁷⁵⁵ to Patricia McChesney⁷⁵⁶ stated that there was a problem with regard to the funds released in late May, as there had only been Board approval sanction for £4m, whereas the actual offer related to a sanction of £27.4 million (of which £24.8m has been released to date).

The email stated:

"The payout in late May was signed off as an exception, with the understanding that the updated facility (Stg£27.4m) was to be put through Credit Committee prior to any further release. Unfortunately, this does not appear to have been done.

Could you please forward me a copy of any/all relevant application/approval memos, CLA etc by fax... as a matter of urgency.

I will revert upon receipt of these as to whether or not we can proceed with disbursement of funds".⁷⁵⁷

⁷⁵⁰ Commercial Loan Application, dated 19 April 2006 (Doc ID: 0.7.120.12903).

⁷⁵¹ Minutes of Board meeting, dated 26 April 2006 (Doc ID: 0.7.120.41714).

⁷⁵² Internal memorandum from Gary McCollum to Michael Fingleton, dated 15 November 2006 (Doc ID: 0.7.120.8717).

⁷⁵³ Commercial Mortgage Offer, dated 6 December 2006 (Doc ID: 0.7.120.22402).

⁷⁵⁴ Society Advance Detail, dated 18 December 2006 (Doc ID: 0.7.120.13380).

⁷⁵⁵ Mr Dempsey appears to have worked as a quality controller in the drawdown and payments section of INBS.

⁷⁵⁶ During the Review Period, Ms McChesney held the position of office supervisor and UK money laundering reporting officer, reporting directly to Mr McCollum.

⁷⁵⁷ Email from Daniel Dempsey to Patricia McChesney, dated 30 July 2008 (Doc ID: 0.7.120.42300).

4.931 Mr McCollum replied to this email on 30 July 2008 enclosing a copy of his memorandum of 15 November 2006 to Mr. Fingleton. He stated "*It was understood that Board Approval was obtained at that time*". He went on to say:

"You will be aware that we have now purchased all but two of the Filling Stations that were originally contracted as purchase only takes place upon vacation and decontamination by BP.

This is one of the remaining Filling Stations.

The borrower has in the mean time either achieved planning or is in the process of achieving planning of the vast majority of the Filling Stations already purchased and indeed a number of these are being marketed for sale".⁷⁵⁸

4.932 Loan 2 was an additional facility of £650,000 offered to the borrower to purchase a site in [REDACTED] on 7 August 2007. The CMO was signed by the directors on 7 August 2007.⁷⁵⁹

These loans were transferred to NAMA. The Summit account dated 19 December 2009 showed an outstanding balance at that date of £29,476,642 for Loan 1.⁷⁶⁰ Loan 2 had an outstanding balance of £732,797.08 on 11 February 2010.⁷⁶¹

4.933 There were 11 Loan Specific Allegations advanced in respect of the three loans to this borrower. Full details of these Loan Specific Allegations are set out below under each loan, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Loan 1

SPC 1.1: No CLA was prepared at all.

4.934 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

⁷⁵⁸ Internal memorandum from Gary McCollum to Daniel Dempsey, INBS, dated 30 July 2008 (Doc ID: 0.7.120.6780).

⁷⁵⁹ Commercial Mortgage Offer, dated 7 August 2007 (Doc ID: 0.7.120.11072).

⁷⁶⁰ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760713).

⁷⁶¹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760560).

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Business plan/proposals.

4.935 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.4: Credit grades were not assigned to commercial loans.

4.936 The relevant policies were the 2006 Impairment Provisioning Policy and the 2006 Notes on the Implementation of Impairment Provisioning Policy. (See Table included at Appendix 11).

4.937 In his submissions to the Inquiry, Mr Purcell stated that the Impairment Provisioning Policy did not create new policy with regard to credit grades. The Inquiry agrees with this assertion and therefore no finding is made in respect of this allegation. The assigning of credit grades during the loan approval process is dealt with at Chapter 5 of this Findings Report (see paragraph 5.197 et seq.). That part of the Findings Report outlines Mr Purcell's submissions on this point and the reasoning for the Inquiry's finding that a failure to assign a credit grade at the loan approval stage was not a breach of INBS internal policy.

SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval (as required) and not in compliance with INBS's urgent credit decision approval procedures.

4.938 The relevant policies were the UK Version of the April 2003 Credit Risk Policy, the 19 July 2006 Commercial Credit Committee Terms of References and the Board Resolution September 2002. (See Table included at Appendix 12).

These policies stated that all commercial loan proposals in excess of the branch manager's discretion must be recommended for approval or approved by the Credit

Committee. The 19 July 2006 Commercial Credit Committee Terms of Reference outlined the urgent credit decision approval procedures.

- 4.939 The CMO for this facility issued on 6 December 2006 and was signed by the borrower on 11 December 2006.⁷⁶² The initial drawdown occurred on 19 December 2006.⁷⁶³
- 4.940 The Inquiry has examined all of the minutes of the relevant Credit Committee meetings during the Review Period and found no evidence that consideration of this loan took place.

The Inquiry has examined the relevant Board meeting minutes and the Board packs during the Review Period and noted other than in respect of £4 million considered at the Board meeting on 26 April 2006⁷⁶⁴, there was no further evidence that these facilities were considered and approved.

From an examination of the consolidated loan file there is no evidence that any urgent credit decision approval procedures were followed in this case.

- 4.941 **The Inquiry finds that the allegation of no Credit Committee approval or recommendation and no Board approval, other than as set out, and not in compliance with urgent credit decision approval procedures is adequately supported by the documentation and, accordingly, that SPC 2.2 is proven as against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

- 4.942 The relevant policies were the December 2007 Commercial Mortgage Lending Policy and the Moratoria Policy December 2007. (See Table included at Appendix 12).

The December 2007 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation was to be considered, approved and minuted by the Credit Committee. The Moratoria Policy December 2007 stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

⁷⁶² Commercial Mortgage Offer, dated 6 December 2006 (Doc ID: 0.7.120.22402).

⁷⁶³ Society Advance Detail, dated 18 December 2006 (Doc ID: 0.7.120.13380).

⁷⁶⁴ Minutes of Board meeting, dated 26 April 2006 (Doc ID: 0.7.120.41714).

4.943 The CMO dated 6 December 2006 stated that this 12 month loan would be the subject of a capital and interest moratorium.⁷⁶⁵ The Summit history⁷⁶⁶ for this account showed that the balance remained outstanding in December 2009 with no recorded repayments.

4.944 The term and moratorium of the loan appear to have been extended beyond the termination date of 11 December 2007 (one year from the issuing of the CMO) but there was no document on file nor evidence from Credit Committee meetings during the relevant period to indicate such an extension, or that any of the procedures set out in the policies had been followed.

4.945 The Inquiry finds that the allegation that the term of the loan was extended without appropriate approval is adequately supported by the documentation and, accordingly, finds that SPC 2.9 is proven as against INBS.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.946 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (see Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The UK Version of the April 2003 Credit Risk Policy did apply to this allegation.

4.947 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED] & [REDACTED]. The CMO does not make any reference to a personal guarantee from the directors.⁷⁶⁷

4.948 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.

⁷⁶⁵ Commercial Mortgage Offer, dated 6 December 2006 (Doc ID: 0.7.120.22402).

⁷⁶⁶ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760713).

⁷⁶⁷ Commercial Mortgage Offer, dated 6 December 2006 (Doc ID: 0.7.120.22402).

Loan 2

SPC 1.1: No CLA was prepared at all.

4.949 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

That policy provided that a CLA must be in place before a loan could be advanced.

4.950 This loan was for £650,000 for a 12 month term. It was to purchase an additional property to add to the original portfolio of properties.⁷⁶⁸ A CMO issued on 7 August 2007 and was accepted by the borrowing company on the same date.⁷⁶⁹ Although the term of the loan was for 12 months, the Summit account shows that it continued to accrue interest until 10 February 2010 when it showed an outstanding balance of £732,797.08.⁷⁷⁰

4.951 Having analysed the consolidated loan file for this borrower, the Credit Committee meeting minutes and the Board meeting minutes and packs for any evidence that this loan may have been considered in an authorisation process, the Inquiry is satisfied that no CLA was prepared in respect of this loan.

4.952 **The Inquiry finds that the allegation that no CLA was prepared in respect of this additional facility is supported by the absence of any such document in the consolidated loan file. Accordingly, the Inquiry finds that SPC 1.1 is proven as against INBS.**

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Business plan/proposals.

4.953 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.954 INBS received a valuation for the property the subject matter of this loan from Savills in July 2007 summarising the current market value (of £600,000) together with estimated value after planning having regard to the borrowers' plans to obtain planning and sell (of £1.5 million).⁷⁷¹ The proposal was to obtain planning permission and resell,

⁷⁶⁸ Commercial Mortgage Offer, dated 7 August 2007 (Doc ID: 0.7.120.11072).

⁷⁶⁹ Commercial Mortgage Offer, dated 7 August 2007 (Doc ID: 0.7.120.11072).

⁷⁷⁰ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760560).

⁷⁷¹ Extract from Savills Report, dated 6 July 2009 (Doc ID: 0.7.120.28321).

and an independent valuation from an independent valuer would have constituted an adequate business plan. The valuation was less than the loan advanced by some £50,000, but in the circumstances of INBS's dealings with this borrower, the Inquiry does not believe that a proposal outlining how the additional monies would be repaid in the event that planning permission was not obtained was necessary in this case.

4.955 The Inquiry finds that a business plan was acquired in respect of this loan and that, accordingly, SPC 1.3 is not proven as against INBS.

SPC 1.4: Credit grades were not assigned to commercial loans.

4.956 The relevant policies were the 27 June 2007 Credit Risk Management Policy, the 2006 Impairment Provisioning Policy and the 2006 Notes on the Implementation of Impairment Provisioning Policy. (See Table included at Appendix 11).

4.957 Mr Purcell, in his submissions to the Inquiry, stated that the Impairment Provisioning Policy did not create new policy with regard to credit grades. The Inquiry agrees with this assertion, however the 27 June 2007 Credit Risk Management Policy does continue to apply.

No CLA was prepared for the additional loan of £650,000 and none was found from a review of the loan file. This was an additional loan some 16 months after the initial £4 million CLA assigned a grade, and an updated assessment of the grade would be expected.⁷⁷²

4.958 The Inquiry finds that the allegation that no credit grade was assigned to this loan is supported by the documentation and, accordingly, finds that SPC 1.4 is proven against INBS.

SPC 2.1: Funds advanced without Credit Committee approval or recommendation and not in compliance with INBS's urgent credit decision approval procedures.

4.959 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference.

4.960 The 19 July 2006 Commercial Credit Committee Terms of Reference outlined the urgent credit decision approval procedures. The CMO for this facility issued on 7

⁷⁷² Extract from Savills Report, dated 6 July 2009 (Doc ID: 0.7.120.28321).

August 2007.⁷⁷³ The initial drawdown occurred on 10 August 2006.⁷⁷⁴ The Inquiry has examined the minutes of the relevant Credit Committee meetings during the Review Period and found no evidence that consideration of this loan took place.

From an examination of the consolidated loan file and Credit Committee and Board meeting minutes and packs, there is no evidence that any urgent credit decision approval procedures were followed in this case.

- 4.961 **The Inquiry finds that the allegation of no Credit Committee approval or recommendation and not in compliance with urgent credit decision approval procedures, is adequately supported by the documentation. Accordingly, the Inquiry finds that SPC 2.1 is proven against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

- 4.962 The relevant policy is the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 13).

- 4.963 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED] & [REDACTED]. The CMO does not make any reference to a personal guarantee from the directors.⁷⁷⁵

- 4.964 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.**

Borrower: [REDACTED]

Loan Account: [REDACTED]

Loan 1 and Loan 2 - background to loans

- 4.965 In an internal memorandum dated 7 August 2007, Mr McCollum sought approval to proceed with a proposal to advance €10 million to [REDACTED] and [REDACTED]

⁷⁷³ Commercial Mortgage Offer, dated 7 August 2007 (Doc ID: 0.7.120.11072).

⁷⁷⁴ Society Advance Detail, dated 10 August 2007 (Doc ID: 0.7.120.25313).

⁷⁷⁵ Commercial Mortgage Offer, dated 7 August 2007 (Doc ID: 0.7.120.11072).

██████████ to purchase 53 ski chalets and 62 car park spaces at a ski resort in the Alps in France. It was proposed that 33% of the properties would be sold off plan before construction.⁷⁷⁶

- 4.966 It was intended that INBS would provide only the purchase monies, with funding of the construction works being financed by another lender but with INBS remaining entitled to 25% of profits. The purchase monies were to be paid in stages in September 2007 and January 2008 with construction due to commence in March 2008 for completion in December 2009.⁷⁷⁷

INBS had a valuation dated 16 April 2007 that confirmed a valuation of €10 million.⁷⁷⁸ It also had a Development Appraisal that included a timescale, revenue and cost analysis, which showed a profit of €9.7 million together with a cash flow analysis.⁷⁷⁹

- 4.967 A CLA was prepared on 8 August 2007.⁷⁸⁰ It was recommended for approval at the Credit Committee meeting on 17 August 2007⁷⁸¹ and was approved at a Board meeting on 30 August 2007.⁷⁸² On 25 October 2007, INBS's solicitor in France indicated a change in the structure of the transaction⁷⁸³, and this revised structure was reflected in the CMO dated 12 November 2007.⁷⁸⁴ The loan was for 12 months on a capital and interest moratorium. Initial drawdown occurred on 9 November 2007 with the balance on 25 January 2008.⁷⁸⁵

The loan remained outstanding on February 2010 with a balance of just over €11 million.⁷⁸⁶

- 4.968 Mr McCollum sent a further internal memorandum on 22 January 2008 in relation to Loan 2 seeking approval for an additional amount of €1.1 million, relating to VAT payable on the transaction and refundable within six months.⁷⁸⁷ A CLA was prepared on 4 March 2008⁷⁸⁸ and was approved at a Credit Committee meeting on 13 March

⁷⁷⁶ Internal memorandum from Gary McCollum to Michael Fingleton, dated 7 August 2007 (Doc ID: 0.7.120.16138).

⁷⁷⁷ Commercial Loan Application, dated 8 August 2007 (Doc ID: 0.7.120.16828).

⁷⁷⁸ Francois Odet Report and Valuation, dated 16 April 2007 (Doc ID: 0.7.120.13577).

⁷⁷⁹ Development Appraisal dated 29 June 2007 (Doc ID: 0.7.120.935726).

⁷⁸⁰ Commercial Loan Application, dated 8 August 2007 (Doc ID: 0.7.120.16828).

⁷⁸¹ Minutes of Credit Committee meeting, dated 17 August 2007 (Doc ID: 0.7.120.20598).

⁷⁸² Minutes of Board meeting, dated 30 August 2007 (Doc ID: 0.7.120.14027).

⁷⁸³ Email from Anne Dabezies to Gary McCollum, dated 25 October 2007 (Doc ID: 0.7.120.918876).

⁷⁸⁴ Commercial Mortgage Offer, dated 12 November 2007 (Doc ID: 0.7.120.29529).

⁷⁸⁵ Society Advance Detail, dated 9 November 2007 (Doc ID: 0.7.120.24822); Society Advance Detail, dated 25 January 2008 (Doc ID: 0.7.120.924018).

⁷⁸⁶ Extract from Summit Account No ██████████ (Doc ID: 0.7.120.760535).

⁷⁸⁷ Internal memorandum from Gary McCollum to Michael Fingleton, dated 22 January 2008 (Doc ID: 0.7.120.21135).

⁷⁸⁸ Commercial Loan Application, dated 4 March 2008 (Doc ID: 0.7.120.7861).

2008.⁷⁸⁹ The loan was stated as being for 12 months on a capital and interest moratorium basis. The CMO was dated 21 April 2008 and was stated as being for six months.⁷⁹⁰

Drawdown occurred on 21 April 2008.⁷⁹¹ This loan remained outstanding as at January 2010 with a balance of just under €1.2 million.⁷⁹²

4.969 Both loans were transferred to NAMA.

4.970 There were six Loan Specific Allegations advanced in respect of the two loans to this borrower. Full details of these Loan Specific Allegations are set out below under each loan, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Loan 1

SPC 2.12: Terms outlined in the CLA and approved by the Board differed to the terms outlined in the CMO.

4.971 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 12).

These policies stated that no individual member of staff was authorised to vary the conditions of a loan approved by the Board. Any such variation had to be considered, approved and minuted by the Credit Committee and submitted to the Managing Director for approval.

4.972 The CLA stated the purpose of the loan was to enable the purchase and development of a site at [REDACTED]⁷⁹³ and this was approved by the Credit Committee and the Board.⁷⁹⁴ The CMO stated the purpose of the loan was to enable the purchase and development of the site at [REDACTED], to facilitate repayment of a former shareholder account and the accrued interest in this account, and to pay notarial and legal fees and expenses arising in connection with the loan facility.⁷⁹⁵

⁷⁸⁹ Minutes of Credit Committee meeting, dated 13 March 2008 (Doc ID: 0.7.120.27827).

⁷⁹⁰ Commercial Mortgage Offer, dated 21 April 2008 (Doc ID: 0.7.120.13171).

⁷⁹¹ Drawdown document, dated 21 April 2008 (Doc ID: 0.7.120.923101).

⁷⁹² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760572).

⁷⁹³ Commercial Loan Application, dated 8 August 2007 (Doc ID: 0.7.120.16828).

⁷⁹⁴ Minutes of Credit Committee meeting, dated 17 August 2007 (Doc ID: 0.7.120.20598); Minutes of Board meeting, dated 30 August 2007 (Doc ID: 0.7.120.14027).

⁷⁹⁵ Commercial Mortgage Offer, dated 12 November 2007 Doc ID: 0.7.120.29529).

Where the purpose of the loan as stated in the CMO went further than what was originally stated in the CLA and approved by the Credit Committee and Board, an updated approval ought to have been sought to reflect the CMO's changes. There is no evidence that these changes were appropriately regularised as required by policy.

4.973 The Inquiry finds that the terms of the CMO differed from the CLA as approved by the Board and, accordingly, that SPC 2.12 is proven against INBS.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.974 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 13).

These policies both stated that personal guarantees should be acquired where the borrower was a private company.

4.975 The Inquiry has examined the consolidated loan files for these loans and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO⁷⁹⁶ nor the CLA⁷⁹⁷ made any reference to a personal guarantee from any of the identified directors. The security listed in the loan documentation did not refer to a personal guarantee.⁷⁹⁸

4.976 The Inquiry finds no evidence that personal guarantees were sought or received in relation to these two loans and, accordingly, finds that SPC 3.2 is proven as against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding

⁷⁹⁶ Commercial Mortgage Offer, dated 12 November 2007 Doc ID: 0.7.120.29529).

⁷⁹⁷ Commercial Loan Application, dated 8 August 2007 (Doc ID: 0.7.120.16828).

⁷⁹⁸ Credit Review Summit Account Information, dated 19 December 2007 (Doc ID: 0.7.120.10117).

against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

SPC 4.1: Commercial lenders did not monitor loans during the term of the loan to the end of the Review Period.

4.977 The relevant policies were the December 2007 Commercial Mortgage Lending Policy, the 28 February 2007 Commercial Mortgage Lending Policy and the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 14).

4.978 There is a Credit Review Report on file in relation to this loan dated 19 December 2007.⁷⁹⁹ However it merely set out details of the loan and security and contained no evidence of further update. There is no documentation or internal memorandum of any description in the consolidated loan file that would indicate that this loan had been monitored by the commercial lender.

4.979 **The Inquiry finds that the allegation that commercial lenders did not monitor this loan during the term of the loan to the end of Review Period is supported by the documentation. Accordingly, the Inquiry finds that SPC 4.1 is proven as against INBS.**

Loan 2

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Business plan/proposals.

4.980 The relevant policy was the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.981 INBS received a valuation in April 2007⁸⁰⁰ and a Development Appraisal in June 2007.⁸⁰¹ That appraisal incorporated a timeline, a revenue and cost analysis and a cash flow forecast.

This loan was to cover VAT payable on the acquisition and, accordingly, the business plan already furnished remained relevant.

⁷⁹⁹ Credit Review Summit Account Information, dated 19 December 2007 (Doc ID: 0.7.120.10117).

⁸⁰⁰ Francois Odet Report and Valuation, dated 16 April 2007 (Doc ID: 0.7.120.13577).

⁸⁰¹ Development Appraisal, dated 29 June 2007 (Doc ID: 0.7.120.935726).

4.982 **The Inquiry finds that a business plan was acquired in respect of this loan and that, accordingly, SPC 1.3 is not proven against INBS.**

SPC 2.12: Terms outlined in the CLA and approved by the Board differed to the terms outlined in the CMO.

4.983 The relevant policy was the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 12).

This policy stated that no individual member of staff was authorised to vary the conditions of a loan approved by the Board. Any such variation had to be considered, approved and minuted by the Credit Committee.

4.984 The CLA stated the purpose of the facility was to fund VAT on the site at [REDACTED] and this was approved by the Credit Committee. The CMO stated the purpose was to fund VAT on the site and the payment of notarial and legal fees and expenses in connection with the loan facility.

There was a difference in the terms indicated in both documents. The CLA was for 12 months and the CMO was for six months, but this was not alleged in Consolidated Table C2.1.12 in respect of this loan.

Whilst there was a difference in the stated purpose of the loan, the non-VAT content of the drawdown was unlikely to have been material and does not merit an adverse finding.

4.985 **The Inquiry finds that although the terms of the CMO differed from the CLA as approved by the Credit Committee, the contravention is not of such a serious nature as to merit an adverse finding and, accordingly, the Inquiry finds that SPC 2.12 is not proven against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.986 The relevant policies were the 21 April Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 13).

These policies both stated that personal guarantees should be acquired where the borrower was a private company.

4.987 The Inquiry has examined the consolidated loan files for these loans and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CMO⁸⁰² nor the CLA⁸⁰³ make any reference to a personal guarantee from any of the identified directors. The security listed in the loan documentation does not refer to a personal guarantee.

4.988 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to these two loans and, accordingly, finds that SPC 3.2 is proven as against INBS.**

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.989 The director of the borrower company wrote to Mr McCollum on 29 June 2007, advising that he had been successful in his bid to purchase two hotels located in [REDACTED] France for €26 million plus costs of €2 million.⁸⁰⁴ He attached an appraisal including a profit appraisal showing a profit of over €13 million together with a cash flow forecast.⁸⁰⁵ A valuation dated 24 July 2007 put the value of the properties at €32.85 million.⁸⁰⁶

4.990 The internal memorandum from Mr McCollum to Mr Fingleton dated 19 October 2007 requested a facility of €28 million for 12 months with a capital and interest moratorium and a 25% profit share.⁸⁰⁷ The borrower had already been provided with a deposit by INBS and had exchanged contracts for the two properties. It now wished to complete the deal. Mr McCollum described the properties as being quite run down but with great development potential and they had planning consent.⁸⁰⁸ He enclosed the appraisal for the development showing a profit of over €13 million.⁸⁰⁹ The CMO which issued on 12 December 2007 offered €28 million for 12 months.⁸¹⁰

⁸⁰² Commercial Mortgage Offer, dated 21 April 2008 (Doc ID: 0.7.120.13171).

⁸⁰³ Commercial Loan Application, dated 4 March 2008 (Doc ID: 0.7.120.7861).

⁸⁰⁴ Letter from [REDACTED] to Gary McCollum, dated 29 June 2007 (Doc ID: 0.7.120.922631).

⁸⁰⁵ [REDACTED] Development Appraisal, dated 29 June 2006 (Doc ID: 0.7.120.916444).

⁸⁰⁶ Estimation Study/Valuation, dated 24 July 2007 (Doc ID: 0.7.120.15732).

⁸⁰⁷ Internal memorandum from Gary McCollum to Michael Fingleton, dated 19 October 2007 (Doc ID: 0.7.120.919845).

⁸⁰⁸ Internal memorandum from Gary McCollum to Michael Fingleton, dated 19 October 2007 (Doc ID: 0.7.120.919845).

⁸⁰⁹ [REDACTED] Development Appraisal, dated 29 June 2006, page 2 (Doc ID: 0.7.120.916444).

⁸¹⁰ Commercial Mortgage Offer, dated 5 December 2007 (Doc ID: 0.7.120.921149).

4.991 The CLA is undated although the signatures from the Credit Committee are dated 17 January 2008. The Credit Committee sanctioned the loan on 17 January 2008⁸¹¹, and the loan was noted at a Board meeting on 21 January 2008.⁸¹² The balance outstanding as at 12 February 2010 was over €30.5 million.⁸¹³ This loan was transferred to NAMA.

4.992 There were three Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.2: CLA not prepared in advance of funds being drawn down.

4.993 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

The date of the CLA for this loan was 17 January 2008⁸¹⁴, while the date of the first drawdown was a month previously, on 11 December 2007.⁸¹⁵

4.994 **The Inquiry finds that the CLA was not prepared in advance of funds being drawn down and, accordingly, finds that SPC 1.2 is proven against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.995 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The urgent credit decision approval procedures were in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.996 Although this loan was presented for approval after 17 December 2007 (and therefore after the coming into effect of the December 2007 Credit Committee Terms of Reference) given that drawdown occurred prior to 17 December 2007 and the CMO

⁸¹¹ Minutes of Credit Committee meeting, dated 17 January 2008 (Doc ID: 0.7.120.31125).

⁸¹² Minutes of Board meeting, dated 21 January 2008 (Doc ID: 0.7.120.17427).

⁸¹³ Extract from Summit Account No [REDACTED] (0.7.120.760581).

⁸¹⁴ Commercial Loan Application, dated 17 January 2008 (Doc ID: 0.7.120.31991).

⁸¹⁵ Payout Calculation Sheet, dated 11 December 2007 (Doc ID: 0.7.120.917838).

issued prior to that date, it is the Inquiry's view that both the Credit Committee and the Board should have considered this loan.⁸¹⁶

The CMO for this loan issued on 12 December 2007.⁸¹⁷ The facility was approved at the Credit Committee meeting held on 17 January 2008⁸¹⁸ and the approval was noted at a Board meeting on 21 January 2008.⁸¹⁹

The urgent credit decision approval procedures would have required the signatures of two members of the Credit Committee, sign off by the Managing Director and presentation to the Credit Committee as soon as practicable thereafter. The December 2007 Credit Committee Terms of Reference, which was approved by the Board on 17 December 2007, was not policy at the time the CMO was issued and, accordingly, both Credit Committee and Board approval was required.

4.997 The Inquiry has examined the consolidated loan file, the Credit Committee meeting minutes and packs, and the Board meeting minutes and packs for the Review Period and can see no evidence that urgent credit decision approval procedures were complied with.

4.998 The Inquiry finds that the CMO for this loan issued prior to appropriate approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven against INBS.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.999 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 13).

4.1000 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA⁸²⁰ nor the CMO⁸²¹ made any reference to a

⁸¹⁶ The relevant policy provisions concerning the approval process and approval thresholds are set out in Appendix 12.

⁸¹⁷ Commercial Mortgage Offer, dated 12 December 2007 (Doc ID: 0.7.120.18677).

⁸¹⁸ Minutes of Credit Committee meeting, dated 17 January 2008 (Doc ID: 0.7.120.31125).

⁸¹⁹ Minutes of Board meeting, dated 21 January 2008 (Doc ID: 0.7.120.17427).

⁸²⁰ Commercial Loan Application, dated 17 January 2008 (Doc ID: 0.7.120.31991).

⁸²¹ Commercial Mortgage Offer, dated 12 December 2007 (Doc ID: 0.7.120.18677).

personal guarantee from the directors, and the security identified did not include any such guarantees.

4.1001 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, SPC 3.2 is proven as against INBS.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1002 A letter dated 8 August 2007 from the borrower detailed a number of sites in the UK which it hoped to acquire and develop, and in respect of which it was seeking finance support from INBS.⁸²² One of these sites was a public house in north London, in respect of which it required a loan of £2.37 million. It proposed to redevelop the site with a mixture of retail, restaurant and residential units.

It attached an appraisal which showed a net profit after redevelopment of just under £4 million.⁸²³ A valuation showed a market value of £2.31 million and a value after planning of £3.3 million.⁸²⁴

4.1003 A CMO was issued on 7 September 2007 offering a loan of €2,795,000, and was signed by the borrower on 10 and 11 September 2007. It specified that the loan would have a 12 month maturity and would be on a full capital and interest moratorium.⁸²⁵

An internal memorandum from Mr McCollum to Mr Fingleton, dated 14 September 2007, set out details of the proposal.⁸²⁶ The CLA was dated 26 September 2007 and this was initialled by Mr Purcell indicating approval by the Board.⁸²⁷ The CLA provided for a 25% profit share subject to a minimum of £100,000. The LTV was 100% based on current value and was 65% with planning. The initial drawdown occurred on 27 September 2007.⁸²⁸ This drawdown exceeded the amount of the loan set out in the

⁸²² Letter from [REDACTED] to Gary McCollum, INBS, dated 8 August 2007 (Doc ID: 0.7.120.917351).

⁸²³ [REDACTED] Development Appraisal, dated 31 July 2007 (Doc ID: 0.7.120.894244).

⁸²⁴ Letter from Gary McCollum to [REDACTED], dated 8 August 2007 (Doc ID: 0.7.120.917351); GVA Grimley Valuation Report, dated 4 September 2007 (Doc ID: 0.7.120.894619).

⁸²⁵ Commercial Mortgage Offer, dated 7 September 2007 (Doc ID: 0.7.120.924378).

⁸²⁶ Internal memorandum from Gary McCollum to Michael Fingleton, dated 14 September 2007 (Doc ID: 0.7.120.935739).

⁸²⁷ Commercial Loan Application, dated 26 September 2007 (Doc ID: 0.7.120.39948).

⁸²⁸ Society Advance Detail, dated 27 September 2007, page 4 of document bundle (Doc ID: 0.7.120.431414).

CLA and subsequently approved by the Board by £420,000, being the VAT payable on the transaction.

The loan was recommended for approval at a Credit Committee meeting on 17 October 2007⁸²⁹ and was approved at a Board meeting on 23 October 2007.⁸³⁰

4.1004 This loan remained outstanding in December 2009 with a balance of just under £3.2 million.⁸³¹ This loan was transferred to NAMA.

4.1005 There were five Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 2.5: Loans advanced prior to quorate Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with INBS's urgent credit decision approval procedures.

4.1006 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1007 The CMO for this loan was dated 7 September 2007.⁸³² The date of first drawdown was 27 September 2007.⁸³³ The facility was recommended for approval at the Credit Committee meeting on 17 October 2007⁸³⁴, and was approved at a Board meeting held on 23 October 2007.⁸³⁵

From an examination of the consolidated loan file, Credit Committee meeting minutes and Board meeting minutes and packs, there is no evidence that the urgent credit decision approval procedures as set out in policy were complied with in respect to this additional facility.

4.1008 The Inquiry finds that the allegation that this loan was advanced prior to the Credit Committee meeting and not in compliance with urgent credit decision

⁸²⁹ Minutes of Credit Committee meeting, dated 17 October 2007 (Doc ID: 0.7.120.30273).

⁸³⁰ Minutes of Board meeting, dated 23 October 2007 (Doc ID: 0.7.120.25005).

⁸³¹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760629).

⁸³² Commercial Mortgage Offer, dated 7 September 2007 (Doc ID: 0.7.120.924378).

⁸³³ Society Advance Detail, dated 27 September 2007 (Doc ID: 0.7.120.431414).

⁸³⁴ Minutes of Credit Committee meeting, dated 17 October 2007 (Doc ID: 0.7.120.30273).

⁸³⁵ Minutes of Board meeting, dated 23 October 2007 (Doc ID: 0.7.120.25005).

approval procedures is supported by the documentation. Accordingly, the Inquiry finds that SPC 2.5 is proven against INBS.

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1009 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1010 The Board approved this loan at a meeting held on 23 October 2007. The date of the first drawdown was 27 September 2007⁸³⁶, some 26 days prior to Board approval. The Board meeting minutes approving the loan made no reference to the fact that funds had already been drawn down.⁸³⁷

The Inquiry has examined the consolidated loan file and there is no evidence of any urgent credit decision approval procedures being complied with in respect of this loan.

4.1011 The Inquiry finds that funds were advanced prior to Board approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.6 is proven against INBS.

SPC 2.9: Term of the loan extended without appropriate approval.

4.1012 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

The 21 April 2008 Commercial Mortgage Lending Policy, stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation was to be considered, approved and minuted by the Credit Committee.

As this loan had an interest and capital moratorium, the Moratoria Policy 21 April 2008 applied, and it stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of

⁸³⁶ Society Advance Detail, dated 27 September 2007 (Doc ID: 0.7.120.431414); Drawdown documents, dated 27 September 2007 (Doc ID: 0.7.120.431414).

⁸³⁷ Minutes of Board meeting, dated 23 October 2007 (Doc ID: 0.7.120.25005).

the following: managing director; commercial lending manager; or mortgage administration manager.

4.1013 The CLA⁸³⁸ and CMO⁸³⁹ for this loan identified a 12 month term with a capital and interest moratorium for the term of the facility. The Summit account showed that this loan continued to accrue interest beyond the expected expiry date of 7 September 2008. As of December 2010, this account was still active and there was an outstanding balance of just under £3.2 million.⁸⁴⁰

There is no evidence from the consolidated loan file, the Credit Committee meeting minutes or the Board meeting minutes and packs that any approval was sought or acquired for this extension.

4.1014 The Inquiry finds that the allegation that the term of this loan was extended without appropriate approval is supported by the documentation. Accordingly, the Inquiry finds that SPC 2.9 is proven as against INBS.

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1015 The relevant policy was the 28 February 2007 Commercial Lending Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1016 The CMO for this loan was dated 7 September 2007.⁸⁴¹ However, the facility was recommended for approval at the Credit Committee meeting on 17 October 2007⁸⁴², and was approved at a Board meeting held on 23 October 2007.⁸⁴³

The Inquiry has examined the consolidated loan file and the Credit Committee and Board meeting minutes and packs and there is no evidence of any urgent credit decision approval procedures being complied with in respect to this loan.

4.1017 The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision

⁸³⁸ Commercial Loan Application, dated 26 September 2007 (Doc ID: 0.7.120.39948).

⁸³⁹ Commercial Mortgage Offer, dated 7 September 2007 (Doc ID: 0.7.120.924378).

⁸⁴⁰ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760629).

⁸⁴¹ Commercial Mortgage Offer, dated 7 September 2007 (Doc ID: 0.7.120.924378).

⁸⁴² Minutes of Credit Committee meeting, dated 17 October 2007 (Doc ID: 0.7.120.30273).

⁸⁴³ Minutes of Board meeting, dated 23 October 2007 (Doc ID: 0.7.120.25005).

approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven against INBS.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.1018 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 13).

These policies both stated that personal guarantees should be acquired where the borrower was a private company.

4.1019 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED].

Neither the CLA⁸⁴⁴ nor the CMO⁸⁴⁵ made any reference to a personal guarantee from any of the identified directors of the borrowing company. The security identified in both documents did not include a personal guarantee, nor did the Credit Committee meeting minutes or Board meeting minutes make any reference to personal guarantees being either requested or received.⁸⁴⁶

4.1020 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding

⁸⁴⁴ Commercial Loan Application, dated 26 September 2007 (Doc ID: 0.7.120.39948).

⁸⁴⁵ Commercial Mortgage Offer, dated 7 September 2007 (Doc ID: 0.7.120.924378).

⁸⁴⁶ Minutes of Credit Committee meeting, dated 17 October 2007 (Doc ID: 0.7.120.30273); Minutes of Board meeting, dated 23 October 2007 (Doc ID: 0.7.120.25005).

against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1021 This loan was linked to loan account [REDACTED], and was also in the name of [REDACTED]. That loan was for the acquisition of a vacant pub in north London and this loan was in respect of an adjoining site which contained four cottages. The borrower wrote to Mr McCollum on 15 November 2007 advising that the planning potential of the vacant pub site was being hampered by the adjoining site. They had the opportunity of acquiring this adjoining site for £1.025 million and the combined site should present enhanced development opportunities.⁸⁴⁷

A valuation looked at the site from a purely residential use and also from a mix of retail and residential use. It valued the site assuming purely residential at £1.05 million, and assuming both retail and residential at £1.3 million. The valuation also contained a more detailed financial appraisal of the residential/retail option.⁸⁴⁸

4.1022 On 23 January 2008 Mr McCollum sent an internal memorandum to Mr Fingleton summarising the proposal and seeking permission to proceed. Mr Fingleton instructed Mr McMenamin to process the application.⁸⁴⁹

A CLA was prepared on the same day.⁸⁵⁰ It provided for a loan of £1.05 million for a term of eight months with a full capital and interest moratorium. The LTV was 100% based on current valuation and INBS was to be entitled to a 25% profit share, subject to a minimum of £100,000.

4.1023 The CMO was issued on 29 January 2008 and was signed by the borrower on 29 and 30 January 2008.⁸⁵¹ The Credit Committee approved the loan on 31 January 2008⁸⁵²

⁸⁴⁷ Letter from [REDACTED], to Gary McCollum, INBS, dated 15 November 2007 (Doc ID: 0.7.120.920414).

⁸⁴⁸ GVA Grimley Valuation Report, dated December 2007 (Doc ID: 0.7.120.431035).

⁸⁴⁹ Internal Memorandum from Gary McCollum to Michael Fingleton, dated 23 January 2008 (Doc ID: 0.7.120.39421).

⁸⁵⁰ Commercial Loan Application, dated 23 January 2008 (Doc ID: 0.7.120.22407).

⁸⁵¹ Commercial Mortgage Offer, dated 29 January 2008 (Doc ID: 0.7.120.29168).

⁸⁵² Minutes of Credit Committee meeting, dated 31 January 2008 (Doc ID: 0.7.120.314100-000005).

and the Board noted this at its meeting on 18 February 2008.⁸⁵³ Drawdown occurred on 4 February 2008.⁸⁵⁴

This loan remained outstanding in February 2010 with a balance of £1.17 million.⁸⁵⁵ This loan was transferred to NAMA.

4.1024 There were three Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Business plan/proposals.

4.1025 The relevant policy was the December 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1026 This loan and loan account [REDACTED] also to [REDACTED], were financing two adjoining sites and need to be viewed together. Loan account [REDACTED], secured on a pub site, was supported by a valuation and an appraisal.⁸⁵⁶ This loan, secured on the adjoining site with four cottages, was supported by a valuation which included a financial appraisal of the residential/retail planning option.⁸⁵⁷ Taken together these can be viewed as representing a business plan.

4.1027 **The Inquiry finds that a business plan was acquired in respect of this loan and that, accordingly, SPC 1.3 is not proven as against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1028 The relevant policy was the December 2007 Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the December 2007 Credit Committee Terms of Reference. (See Table included at Appendix 12).

⁸⁵³ Minutes of Board meeting, dated 18 February 2008 (Doc ID: 0.7.120.5941).

⁸⁵⁴ Drawdown documents, dated 4 February 2008 (Doc ID: 0.7.120.430967).

⁸⁵⁵ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760627).

⁸⁵⁶ GVA Grimley Valuation Report, dated 4 September 2007 (Doc ID: 0.7.120.894619); [REDACTED] Development Appraisal, dated 31 July 2007 (Doc ID: 0.7.120.894244).

⁸⁵⁷ GVA Grimley Valuation Report, dated December 2007 (Doc ID: 0.7.120.431035).

4.1029 The CMO for this loan is dated 29 January 2008 and was signed by the borrower on 29 and 30 January 2008.⁸⁵⁸ The facility was approved at the Credit Committee meeting on 31 January 2008.⁸⁵⁹

The Inquiry has examined the consolidated loan file and there is no evidence of any urgent credit decision approval procedures being complied with in this loan.

4.1030 The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven against INBS.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.1031 The relevant policies were the December 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 13).

These policies both stated that personal guarantees should be acquired where the borrower was a private company.

4.1032 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED].

Neither the CLA⁸⁶⁰ nor the CMO⁸⁶¹ made any reference to a personal guarantee from any of the identified directors of the borrowing company. The security listed did not include a personal guarantee.

4.1033 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.

⁸⁵⁸ Commercial Mortgage Offer, dated 29 January 2008 (Doc ID: 0.7.120.29168).

⁸⁵⁹ Minutes of Credit Committee meeting, dated 31 January 2008 (Doc ID: 0.7.120.314100-000005).

⁸⁶⁰ Commercial Loan Application, dated 23 January 2008 (Doc ID: 0.7.120.22407).

⁸⁶¹ Commercial Mortgage Offer, dated 29 January 2008 (Doc ID: 0.7.120.29168).

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1034 On 29 August 2007, Mr McCollum sent an internal memorandum to Mr Fingleton seeking approval for a loan of £2.225 million plus refundable VAT of £340,000.⁸⁶² The site in question was in the UK and the intention was to seek permission for a 100 bed hotel and 120 unit residential scheme. Mr McCollum confirmed in that memorandum that he had a valuation which valued a completed hotel at £8.6 million, the site with planning for the hotel and residential units at £3.85 million, and the site with just residential use at £2.75 million. INBS had also been in receipt of an appraisal of the project from an associated customer company which covered timescale, financial appraisal and cash flow forecast.

4.1035 A CLA was prepared on 29 August 2007 and this was signed by Mr Purcell signifying approval by the Board on 30 August 2007.⁸⁶³ It provided for a 12 month term on the facility of £2,225,000 plus VAT, with a full capital and interest moratorium. The LTV was 93% including VAT and 67% upon receipt of planning. INBS was entitled to a 25% profit share subject to a minimum of £100,000. A CMO was issued on 29 August 2007 on the terms set out in the CLA.⁸⁶⁴ Drawdown occurred on 30 August 2007.⁸⁶⁵

It should be noted that a Credit Committee meeting recommending approval of this loan was held on 17 August 2007, which predated the internal memorandum, the CLA and the CMO.⁸⁶⁶

4.1036 This loan remained outstanding as of November 2009 with a balance of just under £2.368 million.⁸⁶⁷ This loan was transferred to NAMA.

4.1037 There were three Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

⁸⁶² Internal memorandum from Gary McCollum to Michael Fingleton, dated 29 August 2007 (Doc ID: 0.7.120.43579).

⁸⁶³ Commercial Loan Application, dated 29 August 2007 (Doc ID: 0.7.120.486806).

⁸⁶⁴ Commercial Mortgage Offer, dated 29 August 2007 (Doc ID: 0.7.120.31381).

⁸⁶⁵ Society Advance Detail, dated 30 August 2007 (Doc ID: 0.7.120.39107).

⁸⁶⁶ Minutes of Credit Committee meeting, dated 17 August 2007 (Doc ID: 0.7.120.20598).

⁸⁶⁷ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760639).

SPC 2.9: Term of the loan extended without appropriate approval.

4.1038 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

The 21 April 2008 Commercial Mortgage Lending Policy stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation was to be considered, approved and minuted by the Credit Committee.

As this loan had an interest and capital moratorium, the Moratoria Policy 21 April 2008 applied and it stated that variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

4.1039 The CLA and CMO for this loan identified a 12 month term with a capital and interest moratorium for the term.⁸⁶⁸ The Summit account showed that this loan continued to accrue interest beyond the expected expiry date of August 2008. As of November 2009 this account was still active and there was an outstanding balance of just under £2.368 million.⁸⁶⁹

There is no evidence from the consolidated loan file, the Credit Committee meeting minutes and packs or the Board meeting minutes and packs that any approval was sought or acquired for this extension.

4.1040 The Inquiry finds that the allegation that the term of this loan was extended without appropriate approval is supported by the documentation and, accordingly, that SPC 2.9 is proven as against INBS.

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1041 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 12).

⁸⁶⁸ Commercial Loan Application, dated 29 August 2007 (Doc ID: 0.7.120.486806); Commercial Mortgage Offer, dated 29 August 2007 (Doc ID: 0.7.120.31381).

⁸⁶⁹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760639).

4.1042 The CMO for this loan was dated 29 August 2007.⁸⁷⁰ The facility was recommended for approval at the Credit Committee meeting on 17 August 2007⁸⁷¹, and was approved at a Board meeting held on 30 August 2007.⁸⁷²

Although the Credit Committee meeting was held prior to the issue of the CMO, it could only recommend approval of the loan. This loan required Board approval and this did not occur until the meeting on 30 August 2007, which was after the CMO had been issued.

The Inquiry has examined the consolidated loan file and there is no evidence of any urgent credit decision approval procedures being complied with in this loan.

4.1043 The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven against INBS.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.1044 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 13).

These policies both stated that personal guarantees should be acquired where the borrower was a private company.

4.1045 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]

Neither the CLA nor the CMO made any reference to a personal guarantee from any of the identified directors of the borrowing company.⁸⁷³ The identified security in both documents did not include a personal guarantee.

⁸⁷⁰ Commercial Mortgage Offer, dated 29 August 2007 (Doc ID: 0.7.120.31381).

⁸⁷¹ Minutes of Credit Committee meeting, dated 17 August 2007 (Doc ID: 0.7.120.20598).

⁸⁷² Minutes of Board meeting, dated 30 August 2007 (Doc ID: 0.7.120.14027).

⁸⁷³ Commercial Loan Application, dated 29 August 2007 (Doc ID: 0.7.120.486806); Commercial Mortgage Offer, dated 29 August 2007 (Doc ID: 0.7.120.31381).

4.1046 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1047 Mr McCollum sent an internal memorandum to Mr Fingleton dated 27 July 2007 seeking approval to proceed with a facility of €5 million to the borrower.⁸⁷⁴ The purpose was to enable the borrower to place deposits on a number of property transactions which he was progressing and specifically five named properties in [REDACTED], Antibes, Nice and [REDACTED]. The borrower had either exchanged or was to exchange contracts on the projects. Mr McCollum confirmed he had received Development Appraisals in respect of the projects, all of which were satisfactory. Mr Fingleton instructed Mr McMenamin to process the applications.

4.1048 A CMO was issued on 30 July 2007 and was signed by the borrower on 31 July 2007.⁸⁷⁵ It offered a loan of €5 million for a three month term. On 1 August 2007, the CLA was prepared.⁸⁷⁶ Security was a charge over the borrower's interest in contracts to purchase properties in France. There was a capital and interest moratorium for the

⁸⁷⁴ Internal memorandum from Gary McCollum to Michael Fingleton, dated 27 July 2007 (Doc ID: 0.7.120.632366).

⁸⁷⁵ Commercial Mortgage Offer, dated 30 July 2007 (Doc ID: 0.7.120.632355).

⁸⁷⁶ Commercial Loan Application, dated 1 August 2007 (Doc ID: 0.7.120.43594).

full term and INBS was to receive 25% from resales. The LTV was 100%. Initial drawdown, as evidenced by the Summit account, occurred on 8 August 2007.⁸⁷⁷

4.1049 The Credit Committee meeting on 17 August 2007 recommended the facility for approval⁸⁷⁸, and it was duly approved at a Board meeting on 30 August 2007.⁸⁷⁹ In December 2007 and in April 2008 a three month term extension was signed by Mr McMenamin.⁸⁸⁰

4.1050 This loan was still outstanding in February 2010 with a balance of just under €3.2 million.⁸⁸¹ This loan was transferred to NAMA.

4.1051 There were seven Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Statement of affairs (net worth).**
- (b) **Income details.**
- (c) **Bank statements (six months' current accounts).**
- (d) **Loan statements (personal & business).**
- (e) **Business plan/proposals.**

4.1052 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1053 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that any of the documents listed above were sought or obtained from the borrower. The purpose of this facility was to enable the borrower to place deposits on a range of properties and sites in France and, although Mr McCollum advised that he had received appraisals in respect of each of these properties and that they were

⁸⁷⁷ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760616).

⁸⁷⁸ Minutes of Credit Committee meeting, dated 17 August 2007 (Doc ID: 0.7.120.20598).

⁸⁷⁹ Minutes of Board meeting, dated 30 August 2008 (Doc ID: 0.7.120.14027).

⁸⁸⁰ Term Report, signed 3 December 2007 (Doc ID: 0.7.120.11349); Term Report, signed 17 April 2008 (Doc ID: 0.7.120.34052).

⁸⁸¹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760616).

satisfactory, none of these were on the file. The security for the loan was unclear and although there was a note of the borrower's net worth, there was no assessment nor documentation supporting the net worth in his personal name.

4.1054 The Inquiry finds that there was a failure to acquire required information from the borrower with respect to this loan, namely:

- (a) Statement of affairs (net worth).**
- (b) Income details.**
- (c) Bank statements (six months' current accounts).**
- (d) Loan statements (personal & business).**
- (e) Business plan/proposals.**

Accordingly, the Inquiry finds that SPC 1.3 is proven against INBS.

SPC 2.5: Loans advanced prior to quorate Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with INBS's urgent credit decision approval procedures.

4.1055 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1056 The CMO for this loan was dated 30 July 2007.⁸⁸² The date of first drawdown was 8 August 2007.⁸⁸³ The facility was recommended for approval at the Credit Committee meeting on 17 August 2007.⁸⁸⁴ The facility was approved at a Board meeting held on 30 August 2007.⁸⁸⁵

From an examination of the consolidated loan file, Credit Committee meeting minutes and Board meeting minutes, there is no evidence that the urgent credit decision approval procedures as set out in policy were complied with in respect to this additional facility.

⁸⁸² Commercial Mortgage Offer, dated 30 July 2007 (Doc ID: 0.7.120.632355).

⁸⁸³ Society Advance Detail, dated 8 August 2007 (Doc ID: 0.7.120.26124).

⁸⁸⁴ Minutes of Credit Committee meeting, dated 17 August 2007 (Doc ID: 0.7.120.20598).

⁸⁸⁵ Minutes of Board meeting, dated 30 August 2007 (Doc ID: 0.7.120.14027).

4.1057 **The Inquiry finds that the allegation that this loan was advanced prior to the Credit Committee meeting and not in compliance with urgent credit decision approval procedures is supported by the documentation. Accordingly, the Inquiry finds that SPC 2.5 is proven against INBS.**

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1058 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1059 The Board approved this loan at a meeting held on 30 August 2007. The date of the first drawdown was 8 August 2007 some 22 days prior to Board approval.⁸⁸⁶

The Inquiry has examined the consolidated loan file and the Credit Committee and Board meeting minutes and packs. There is no evidence of any urgent credit decision approval procedures being complied with in respect of this loan.

4.1060 **The Inquiry finds that funds were advanced prior to Board approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds SPC 2.6 is proven against INBS.**

SPC 2.9: Term of the loan extended without appropriate approval.

4.1061 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy, the 27 June 2007 Credit Risk Management Policy and the Moratoria Policy October 2003. (See Table included at Appendix 12).

The 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy applied to this allegation. These internal policies required that any variation to a loan had to be considered, approved and minuted by the Credit Committee and then submitted to the Managing Director for approval. This loan involved a capital and interest moratorium, and so the Moratoria Policy October 2003⁸⁸⁷ also applied. Under this policy variations to moratorium accounts could only

⁸⁸⁶ Society Advance Detail, dated 8 August 2007 (Doc ID: 0.7.120.26124).

⁸⁸⁷ The Moratoria Policy October 2003 was incorporated in the Commercial Mortgage Lending Policy approved by the Board on 28 February 2007.

be amended with the written approval of either the Managing Director, all members of the Credit Committee, or any two of the following: commercial lending manager; mortgage administration manager; or senior commercial lender.

4.1062 The CLA and CMO for this loan identified a three month term with a capital and interest moratorium for the term.⁸⁸⁸ The Summit account showed that this loan continued beyond the expected expiry date of 31 October 2007.⁸⁸⁹ As of February 2010 this account was still active and there was an outstanding balance of just under £3.2 million.

In addition, Term Reports signed by the senior commercial lender in Dublin extended the loan in December 2007 and April 2008.⁸⁹⁰

There is no evidence from the consolidated loan file, the Credit Committee meeting minutes and packs or the Board meeting minutes and packs that any approval was sought or acquired for this extension.

4.1063 The Inquiry finds that the allegation that the term of this loan was extended without appropriate approval is supported by the documentation. Accordingly, the Inquiry finds that SPC 2.9 is proven as against INBS.

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1064 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1065 The CMO for this loan was dated 30 July 2007 and was signed on 31 July 2007.⁸⁹¹ The facility was recommended for approval at the Credit Committee meeting on 17 August 2007.⁸⁹² The facility was approved at a Board meeting held on 30 August 2007.⁸⁹³

⁸⁸⁸ Commercial Loan Application, dated 1 August 2007 (Doc ID: 0.7.120.43594); Commercial Mortgage Offer, dated 30 July 2007 (Doc ID: 0.7.120.632355).

⁸⁸⁹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760616).

⁸⁹⁰ Term Report, dated 3 December 2007 (Doc ID: 0.7.120.11349); Term Report, dated 17 April 2008 (Doc ID: 0.7.120.34052).

⁸⁹¹ Commercial Mortgage Offer, dated 30 July 2007 (Doc ID: 0.7.120.632355).

⁸⁹² Minutes of Credit Committee meeting, dated 17 August 2007 (Doc ID: 0.7.120.20598).

⁸⁹³ Minutes of Board meeting, dated 30 August 2007 (Doc ID: 0.7.120.14027).

The Inquiry has examined the consolidated loan file and the Credit Committee and Board meeting minutes and packs. There is no evidence of any urgent credit decision approval procedures being complied with in respect to this loan.

4.1066 The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven against INBS.

SPC 3.1: Loans were unsecured.

4.1067 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

4.1068 The security specified in the CMO was a first legal mortgage over all the properties when purchased and such other security as INBS may require.⁸⁹⁴ The security in the CLA was worded differently. It referred to a charge over the borrower's interest in the contract to purchase the properties.⁸⁹⁵

The CMO was the form of words that bound both the borrower and INBS. As that document specified that the loan was to be secured on property that had yet to be secured, it follows that the loan was unsecured at drawdown.

4.1069 The Inquiry finds that this loan was unsecured and, accordingly, that SPC 3.1 is proven as against INBS.

SPC 4.1: Commercial lenders did not monitor loans during the term of the loan to the end of the Review Period.

4.1070 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy, the December 2007 Commercial Mortgage Lending Policy and the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 14).

4.1071 The Inquiry examined the activity on file in respect of this facility. Deposits were disbursed by the borrower in respect of three of the five properties and these loans were repaid and a specific loan account was set up for each of these transactions. One transaction did not proceed and the deposit monies remained outstanding.

⁸⁹⁴ Commercial Mortgage Offer, dated 30 July 2007 (Doc ID: 0.7.120.632355).

⁸⁹⁵ Commercial Loan Application, dated 1 August 2007 (Doc ID: 0.7.120.43594).

In addition to the above, an additional €1.5 million (which was the subject of an internal memorandum between Mr McCollum and Mr Fingleton) was advanced to the borrower to meet urgent creditor payments in respect of the loan account for [REDACTED] [REDACTED] (addressed at paragraph 4.1107 et seq. below). This remained outstanding as at February 2010.⁸⁹⁶

The Inquiry does not believe that there was no monitoring of this loan. The activity on the account would suggest that there was regular contact with the borrower in relation to the various projects.

4.1072 The Inquiry finds that the allegation that commercial lenders did not monitor loans during the term of the loan to the end of the Review Period is not supported by the evidence in the loan file. Accordingly, the Inquiry finds SPC 4.1 is not proven as against INBS.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1073 By letter dated 10 January 2008, the borrower requested a loan of €2.75 million to finance the acquisition of a site near [REDACTED], France.⁸⁹⁷ He already owned the adjoining site that he had purchased with loan support from INBS. He intended to apply for planning for a hotel, casino and residential units on the site. He needed to acquire this adjoining site as it now appeared that the original site could not be properly developed without it.

4.1074 The two sites need to be viewed together. The original site was valued at €7 million and the subject adjoining site was valued at €4.5 million. By internal memorandum dated 20 February 2008 from Mr McCollum to Mr Fingleton, approval to proceed was requested.⁸⁹⁸ Mr McCollum confirmed that it was not the intention to develop the site but to progress the planning and sell it on. Mr Fingleton instructed Mr McMenemy to process the application noting that *"we have no option but to acquire this land for the completion of the site for planning and development"*.⁸⁹⁹

⁸⁹⁶ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760616).

⁸⁹⁷ Letter from [REDACTED] to Gary McCollum, dated 10 January 2008 (Doc ID: 0.7.120.42133).

⁸⁹⁸ Internal memorandum from Gary McCollum to Michael Fingleton, dated 20 February 2008 (Doc ID: 0.7.120.27404).

⁸⁹⁹ Internal memorandum from Gary McCollum to Michael Fingleton, dated 20 February 2008, in handwriting (Doc ID: 0.7.120.27404).

4.1075 A CLA was prepared on 22 February 2008.⁹⁰⁰ It provided for a 12 month term with a full capital and interest moratorium. The LTV was 61% and INBS were entitled to a 25% profit share upon resale. It was approved by the Credit Committee on 21 February 2008⁹⁰¹, the day before the CLA was apparently drawn up. A CMO was issued on 25 February 2008 on terms set out in the CLA.⁹⁰²

Drawdown also occurred on 25 February 2008.⁹⁰³ The loan was noted at the Board meeting on 10 March 2008.⁹⁰⁴ This loan remained outstanding in February 2010 with a balance of almost €2.582 million.⁹⁰⁵ This loan was transferred to NAMA.

4.1076 There were two Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) **Business plan/proposals.**

(b) **Forecast cash flow analysis.**

4.1077 The relevant policy was the December 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1078 The two sites underpinning the [REDACTED] loans need to be viewed together. The plan was to apply for permission for a hotel, casino and residential units on the combined site and then sell them on, and it was envisaged that it would be achieved within 12 months. That was the proposition that INBS accepted. In those circumstances, a valuation that offered INBS a degree of comfort in terms of LTV, which was stated in the CLA to be 61%, was adequate in terms of ascertaining the borrower's capacity to repay the loan.⁹⁰⁶ There was no cash flow analysis on file but the Inquiry believes that such an analysis would not have added to the information required by INBS to advance this facility.

⁹⁰⁰ Commercial Loan Application, dated 22 February 2008 (Doc ID: 0.7.120.35317).

⁹⁰¹ Minutes of Credit Committee meeting, dated 21 February 2008 (Doc ID: 0.7.120.36169).

⁹⁰² Commercial Mortgage Offer, dated 25 February 2008 (Doc ID: 0.7.120.895047).

⁹⁰³ Sterling Commercial Advance Static Sheet, dated 25 February 2008 (Doc ID: 0.7.120.41677).

⁹⁰⁴ Minutes of Board meeting, dated 10 March 2008 (Doc ID: 0.7.120.40486).

⁹⁰⁵ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760630).

⁹⁰⁶ Valuation of Property, dated October 2007, page 4 et seq. of bundle of documents (Doc ID: 0.7.120.431804).

4.1079 **The Inquiry finds that a business plan was acquired in respect of this loan and that, accordingly, SPC 1.3 is not proven as against INBS. The Inquiry finds that a forecast cash flow analysis was not required in respect of this loan and that, accordingly, SPC 1.3 is not proven as against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.1080 The relevant policies were the 27 June 2007 Credit Risk Management Policy and the December 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

4.1081 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA⁹⁰⁷ nor the CMO⁹⁰⁸ make any reference to a personal guarantee from the directors of [REDACTED]. The security identified in these documents make no reference to personal guarantees.

4.1082 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.**

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1083 On 28 June 2007, the borrower wrote to Mr McCollum seeking support for the purchase of a 9,000 square metre site in [REDACTED] for €7 million including fees and costs. The site was close to [REDACTED] and the cities of Nice and Cannes. The plan was to seek planning permission for a top quality 160 room hotel and to sell on with planning, rather than develop.⁹⁰⁹ INBS was provided with a valuation of €7 million dated 28 June 2007 together with a sketch plan of the hotel.⁹¹⁰

⁹⁰⁷ Commercial Loan Application, dated 22 February 2008 (Doc ID: 0.7.120.35317).

⁹⁰⁸ Commercial Mortgage Offer, dated 25 February 2008 (Doc ID: 0.7.120.895047).

⁹⁰⁹ Letter from [REDACTED] to Gary McCollum, INBS, dated 28 June 2007 (Doc ID: 0.7.120.921900).

⁹¹⁰ Francois Odet Valuation Report, dated 28 June 2007 (Doc ID: 0.7.120.5125); Development Plan, undated (Doc ID: 0.7.120.44594).

On 11 December 2007, the full amount of €7 million was remitted to INBS's French lawyer.⁹¹¹ On 12 December 2007, the CMO for €7 million was issued for a 12 month term on a capital and interest moratorium basis.⁹¹²

4.1084 An internal memorandum setting out details of the proposal and seeking approval to proceed was sent by Mr McCollum to Mr Fingleton on 23 January 2008.⁹¹³ The CLA, dated 24 January 2008, provided for a loan of €7 million for a 12 month term and a full capital and interest moratorium. The LTV was 100% of current value and INBS was entitled to 25% of profits. The CLA was signed by Mr McMenamin and Mr Fingleton.⁹¹⁴

The loan was noted at a Board meeting on 18 February 2008⁹¹⁵, and was approved at a Credit Committee meeting on 24 February 2008.⁹¹⁶

4.1085 This loan remained outstanding as at 11 December 2009 with a balance of over €7.78 million.⁹¹⁷ This loan was transferred to NAMA.

4.1086 There were seven Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.2: CLA not prepared in advance of funds being drawn down.

4.1087 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1088 The date of the CLA was 24 January 2008⁹¹⁸, while the date of the first drawdown was over a month prior to that, on 11 December 2007.⁹¹⁹

4.1089 The Inquiry finds that the CLA was not prepared in advance of funds being drawn down and, accordingly, finds that SPC 1.2 is proven as against INBS.

⁹¹¹ Drawdown documents and Sterling Commercial Advance Static Sheet, dated 11 December 2007 (Doc ID: 0.7.120.432655).

⁹¹² Commercial Mortgage Offer, dated 12 December 2007 (Doc ID: 0.7.120.431729).

⁹¹³ Internal memorandum from Gary McCollum to Michael Fingleton, dated 23 January 2008 (Doc ID: 0.7.120.22428).

⁹¹⁴ Commercial Loan Application, dated 24 January 2008 (Doc ID: 0.7.120.28730).

⁹¹⁵ Minutes of Board meeting, dated 18 February 2008 (Doc ID: 0.7.120.5941).

⁹¹⁶ Minutes of Credit Committee meeting, dated 24 January 2008 (Doc ID: 0.7.120.44255).

⁹¹⁷ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760589).

⁹¹⁸ Commercial Loan Application, dated 24 January 2008 (Doc ID: 0.7.120.28730).

⁹¹⁹ Drawdown documents and Sterling Commercial Advance Static Sheet, dated 11 December 2007 (Doc ID: 0.7.120.432655).

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) Three years' audited accounts.**
- (b) Business plan/proposals.**
- (c) Forecast cash flow analysis.**

4.1090 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1091 [REDACTED] was a SPV set up for this transaction and therefore, while a review of the file did not reveal a document evidencing its date of incorporation, it would not be unreasonable to assume that three years' accounts would not have been available. A search should have been carried out to ensure that no unreported liabilities existed against the company and to establish whether one or more years' accounts were available. In the absence of a definite incorporation date, the Inquiry does not believe an adverse finding would be merited in this case.

4.1092 The proposal put forward by the borrower was that it intended to apply for planning permission for a 160 room top quality hotel on the site, that it felt this would be forthcoming and that it could be turned over in 12 months. INBS accepted this proposition and approved the loan. In these circumstances, a valuation confirming the value of the site that allows for a margin of comfort to the lender can be regarded as an adequate business plan. In this case the valuation was the same as the amount of the loan: €7 million.⁹²⁰ There was a capital and interest moratorium on this loan and any profit was speculative and based on achieving planning permission. The Inquiry does not believe that the valuation constituted a business plan or cash flow analysis with respect to this advance.

4.1093 The Inquiry finds that three years' audited accounts or less may not have been available. Accordingly, it finds that SPC 1.3 is not proven as against INBS.

The Inquiry finds that the allegation in respect of a business plan or proposal and cash flow analysis is supported by the documentation. Accordingly, the Inquiry finds that both of those aspects of SPC 1.3 are proven as against INBS.

⁹²⁰ Valuation Report, dated 28 June 2007 (Doc ID: 0.7.120.5125); Development Plan, undated (Doc ID: 0.7.120.44594).

SPC 2.3: Funds advanced without Board approval (as required) and without compliance with INBS's urgent credit decision approval procedures.

4.1094 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1095 The drawdown on this loan was on 11 December 2007⁹²¹, which predated the new Credit Committee Terms of Reference which were approved by the Board on 17 December 2007. Therefore at that date the loan would have required Board approval. The Board approval in respect of this loan issued in February 2008.⁹²² There was a failure to adhere to urgent credit decision approval procedures and this is dealt with in the context of the Credit Committee below.

4.1096 **The Inquiry finds that funds were advanced where Board approval was not obtained and without compliance with INBS's urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.3 is proven as against INBS.**

SPC 2.5: Loans advanced prior to quorate Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with INBS's urgent credit decision approval procedures.

4.1097 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1098 The CMO for this loan was dated 12 December 2007.⁹²³ The date of first drawdown was 11 December 2007⁹²⁴, and was approved by the Credit Committee on 24 January 2008.⁹²⁵

⁹²¹ Drawdown documents and Sterling Commercial Advance Static Sheet, dated 11 December 2007 (Doc ID: 0.7.120.432655).

⁹²² Minutes of Board meeting, dated 18 February 2008 (Doc ID: 0.7.120.5941).

⁹²³ Commercial Mortgage Offer, dated 12 December 2007 (Doc ID: 0.7.120.431729).

⁹²⁴ Drawdown documents and Sterling Commercial Advance Static Sheet, dated 11 December 2007 (Doc ID: 0.7.120.432655).

⁹²⁵ Minutes of Credit Committee meeting, dated 24 January 2008 (Doc ID: 0.7.120.44255).

From an examination of the consolidated loan file and Credit Committee meeting minutes, there is no evidence that the urgent credit decision approval procedures as set out in policy were complied with in respect to this additional facility.

4.1099 The Inquiry finds that the allegation that this loan was advanced prior to the Credit Committee meeting and not in compliance with urgent credit decision approval procedures is supported by the documentation. Accordingly, the Inquiry finds that SPC 2.5 is proven as against INBS.

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1100 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1101 The CMO for this loan was dated 12 December 2007⁹²⁶, and the loan was approved at a Credit Committee meeting on 24 January 2008.⁹²⁷

The Inquiry has examined the consolidated loan file and there is no evidence of any urgent credit decision approval procedures being complied with in respect of this loan.

4.1102 The Inquiry finds that the CMO was issued prior to appropriate approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.

SPC 2.15: Funds were advanced prior to CMO being signed and issued by INBS and signed by borrower.

4.1103 This allegation was against INBS only and so it was not opened during the SPC 1 to 4 Loan Hearings. Accordingly, this allegation was not considered by the Inquiry.

⁹²⁶ Commercial Mortgage Offer, dated 12 December 2007 (Doc ID: 0.7.120.431729).

⁹²⁷ Minutes of Credit Committee meeting, dated 24 January 2008 (Doc ID: 0.7.120.44255).

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.1104 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 13).

These policies both stated that personal guarantees should be acquired where the borrower was a private company.

4.1105 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED].

Neither the CLA nor the CMO made any reference to a personal guarantee from any of the identified directors of the borrowing company.⁹²⁸ The identified security in both documents did not include any reference to a personal guarantee.

4.1106 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.

Borrower: [REDACTED]

[REDACTED] ***Loans 1, 2 and 3***

Loan 1, 2 and 3 - background to loans

4.1107 These three loans relate to the purchase of a property in [REDACTED], France. The first loan was for €25 million and according to the CLA was to enable the purchase of the land and the construction of apartments. The second loan was also for €25 million for the same purpose. The third loan was for €1.25 million and was to pay construction and other costs.

4.1108 In a letter to Mr McCollum dated 4 December 2006⁹²⁹, the borrower outlined the proposed purchase of a site in [REDACTED] in France. He requested a loan of €50

⁹²⁸ Commercial Loan Application, dated 24 January 2008 (Doc ID: 0.7.120.28730); Commercial Mortgage Offer, dated 12 December 2007 (Doc ID: 0.7.120.431729).

⁹²⁹ Letter from [REDACTED] to Gary McCollum, dated 4 December 2006 (Doc ID: 0.7.120.27557).

million and enclosed a valuation and an appraisal. He required €25 million in the next few weeks and he set out a schedule of when further monies would be required.

4.1109 In an internal memorandum from Mr McCollum to Mr Fingleton dated 14 September 2006⁹³⁰, Mr McCollum outlined the proposal to purchase the site and to apply for amended planning permission to build apartments and a hotel. It was proposed that off-plans sales could commence immediately, and that the apartments would be completed by December 2008 and the hotel by December 2009. It was proposed to finance initial construction costs from the deposit monies and then to refinance with another lender, with INBS remaining entitled to its profit share of 25%. The loan requested was €50 million and this was later divided into Loan 1 and Loan 2 for revenue purposes. Mr McCollum confirmed that he had a satisfactory valuation.

The valuation dated November 2006 estimated the current value of the property at €80 million.⁹³¹

Mr Fingleton signed his approval of the loan on the internal memorandum, and a CLA was prepared dated 9 January 2007.⁹³² The loan was for €50 million and the term was 36 months with a capital and interest moratorium. The LTV was 63% and the security was a fixed and floating charge over the property the subject matter of the loan. The loan was recommended by the Credit Committee on 17 January 2007⁹³³, and was approved by the Board on 23 January 2007.⁹³⁴

4.1110 The CMO that issued on 22 January 2007 was for €25 million and was signed by the borrower on that date.⁹³⁵ The second half of this facility was dealt with in a separate CMO dated 24 July 2007 and was also for €25 million.⁹³⁶

The stated purpose of each CMO was different. The first loan was to provide funds to repay the former shareholder current account in [REDACTED], held by another bank to a total of over €12.5 million. It was also to repay a loan and repay a guarantee deposit of over €7.5 million held by the borrower in a different bank. It was also to provide funds to pay fees and expenses incurred by the borrower in connection with the loan facilities. Finally, the CMO stated that the purpose of the loan was "...to

⁹³⁰ Internal Memorandum from Gary McCollum to Michael Fingleton, dated 14 September 2006 (Doc ID: 0.7.120.36307).

⁹³¹ Property Valuation, dated 24 November 2006 (Doc ID: 0.7.120.925198).

⁹³² Commercial Loan Application, dated 9 January 2007 (Doc ID: 0.7.120.19615).

⁹³³ Minutes of Credit Committee meeting, dated 17 January 2007 (Doc ID: 0.7.120.14704).

⁹³⁴ Minutes of Board meeting, dated 23 January 2007 (Doc ID: 0.7.120.29587).

⁹³⁵ Commercial Mortgage Offer, dated 22 January 2007 (Doc ID: 0.7.120.894845).

⁹³⁶ Additional Commercial Mortgage Offer, dated 24 July 2007 (Doc ID: 0.7.120.894816).

*facilitate certain construction work to be performed on properties owned by the Borrower”.*⁹³⁷

The property in [REDACTED] was not mentioned at all in the first CMO.

4.1111 The purpose of the second CMO was stated to be to provide funds for the purchase of the [REDACTED] property and to provide for construction and related costs.⁹³⁸

4.1112 The background to the third loan was set out in an internal memorandum from Mr McCollum to Mr Fingleton dated 2 September 2008. He said that the site had been cleared and a number of apartments pre-sold. He added, “*The Contractor is now considering moving off-site unless a payment of €2,500,000 is received... [REDACTED] has requested that the Society fund 50% of these costs with the balance being funded by himself*”.⁹³⁹

That led to a CLA for €1.25 million dated 10 September 2008.⁹⁴⁰ It was for a 22 month term and it had a capital and interest moratorium. The purpose of the loan was stated to be to fund construction works on a short term basis until an insurance company guarantee was in place. The CMO was issued on 17 September 2008 and was signed by the borrower on the same date.⁹⁴¹

4.1113 There were seven Loan Specific Allegations advanced in respect of the three loans to this borrower. Full details of these Loan Specific Allegations are set out below under each loan, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Loan 1

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers’ repayment capacity:

(a) Business plan/proposal.

4.1114 The relevant policy identified in the Investigation Report was the 9 November 2004

⁹³⁷ Commercial Mortgage Offer, dated 22 January 2007 (Doc ID: 0.7.120.894845).

⁹³⁸ Additional Commercial Mortgage Offer, dated 24 July 2007 (Doc ID: 0.7.120.894816).

⁹³⁹ Internal memorandum from Gary McCollum to Michael Fingleton, dated 2 September 2008 (Doc ID: 0.7.120.33820).

⁹⁴⁰ Additional Commercial Loan Application, dated 10 September 2008 (Doc ID: 0.7.120.5679).

⁹⁴¹ Additional Commercial Mortgage Offer, dated 17 September (Doc ID: 0.7.120.149016-000002).

Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1115 The relevant policy was the April 2003 Credit Risk Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002. (See Table included at Appendix 12).

4.1116 The Credit Committee recommended this loan on 17 January 2007⁹⁴², and it received Board approval on 23 January 2007.⁹⁴³ The CMO was dated 22 January 2007⁹⁴⁴, and the initial drawdown of the loan occurred on 19 January 2007.⁹⁴⁵

From an examination of the loan files and Credit Committee and Board meeting minutes, there is no evidence that the urgent credit decision approval procedures as set out in internal policy were complied with.

4.1117 The Inquiry finds that the CMO for this loan was advanced prior to appropriate approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.1118 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (see Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

⁹⁴² Minutes of Credit Committee meeting, dated 17 January 2007 (Doc ID: 0.7.120.14704).

⁹⁴³ Minutes of Board meeting, dated 23 January 2007 (Doc ID: 0.7.120.29587).

⁹⁴⁴ Commercial Mortgage Offer, dated 22 January 2007 (Doc ID: 0.7.120.894845).

⁹⁴⁵ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760568); Internal Memorandum from Gary McCollum to David Murray, dated 19 January 2007 (Doc ID: 0.7.120.894589).

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower was a private company.

4.1119 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA nor the CMO make any reference to a personal guarantee from any of the identified directors of the borrowing company.⁹⁴⁶ The identified security does not refer to a personal guarantee. The Credit Committee or Board meeting minutes similarly do not refer to a personal guarantee from directors.

4.1120 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

Loan 2

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Business plan/proposals.

⁹⁴⁶ Commercial Loan Application, dated 9 January 2007 (Doc ID: 0.7.120.19615); Commercial Mortgage Offer, dated 22 January 2007 (Doc ID: 0.7.120.894845).

4.1121 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1122 This loan was the second part of the €50 million facility outlined in Loan 1, and the relevant CMO was dated 24 July 2007.⁹⁴⁷ As already stated, the purpose of this loan was stated to be the purchase of the property in [REDACTED]. The documents referred to and included with the borrower's letter of 4 December 2006 were examined by the Inquiry to see if they could constitute a business plan or proposal for this loan.⁹⁴⁸ It was intended that this development would ultimately be sold but that would not occur for at least three years.

4.1123 The valuation was dated 24 November 2006⁹⁴⁹ and it provided a floor space analysis of each of the various sections of the property. It outlined prices achieved for other properties in the area and valued the property in its current state at €80 million.

The other document enclosed with the letter of 4 December 2006, was a Development Appraisal prepared by DTZ.⁹⁵⁰ This also analysed the square footage and the costs of acquiring the site and completing the construction work. Although it does not contain all of the detail that would be expected of a business plan or proposal, given the complexity of the proposed construction, the Inquiry is of the view that, on balance, these documents constitute an adequate business plan or proposal.

4.1124 The Inquiry finds that the allegation that there was a failure to acquire required information, namely a business plan or proposal, is not supported by the documentation. Accordingly, the Inquiry finds that SPC 1.3 is not proven against INBS.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.1125 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 13).

⁹⁴⁷ Additional Commercial Mortgage Offer, dated 24 July 2007 (Doc ID: 0.7.120.894816).

⁹⁴⁸ Letter from [REDACTED] to Gary McCollum, dated 4 December 2006 (Doc ID: 0.7.120.27557).

⁹⁴⁹ Property Valuation, dated 24 November 2006 (Doc ID: 0.7.120.925198).

⁹⁵⁰ DTZ Development Appraisal (Doc ID: 0.7.120.919446).

These policies both stated that personal guarantees should be acquired where the borrower was a private company.

4.1126 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA nor the CMO make any reference to a personal guarantee from any of the identified directors of the borrowing company.⁹⁵¹ The identified security does not refer to a personal guarantee. The Credit Committee or Board meeting minutes similarly do not refer to a personal guarantee from directors.⁹⁵²

4.1127 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. In relation to Mr Purcell's participation, it is noted that the allegation was not put to Mr Purcell during the oral hearings. He was informed of it by letter dated 2 March 2021⁹⁵³ and given an opportunity to respond. No response was received from Mr Purcell and, in circumstances where Mr Purcell was informed of the allegation, the Inquiry is of the view that it is appropriate to make a finding in respect of Mr Purcell's participation.

The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

⁹⁵¹ Additional Commercial Mortgage Offer, dated 24 July 2007 (Doc ID: 0.7.120.894816); Commercial Loan Application, dated 9 January 2007 (Doc ID: 0.7.120.19615).

⁹⁵² Minutes of Credit Committee meeting, dated 17 January 2007 (Doc ID: 0.7.120.14704); Minutes of Board meeting, dated 23 January 2007 (Doc ID: 0.7.120.29587).

⁹⁵³ Letter from RDU to Mr Purcell, dated 2 March 2021 (Doc ID: RDU_REL561-000000001).

Loan 3

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Three years' audited accounts.

4.1128 The relevant policy was the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1129 This loan for €1.25 million is outlined above. The CMO was issued on 17 September 2008.⁹⁵⁴ [REDACTED] became involved with the [REDACTED] project in January 2007 so there would not have been three years' audited accounts in relation to that transaction. The Consolidated Table in respect of this allegation stated in a footnote:

"Or, for newly incorporated companies where three years audited accounts were not available at the time of loan application, the number of years of audited accounts that would have been available at the time of loan application (ie one or two years)".⁹⁵⁵

On this basis, SPC 1.3 was advanced in respect of borrower companies that were less than three years old. However, the Inquiry has seen no basis in policy for this approach. The relevant policies all refer to "*Three years audited accounts*" and there is no provision for requiring accounts for a shorter period.

4.1130 The Inquiry finds that the allegation that there was a failure to acquire required information, namely three years' audited accounts is not supported by the documentation. Accordingly, the Inquiry finds that SPC 1.3 is not proven against INBS.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.1131 The relevant policies were the 27 June 2007 Credit Risk Management Policy and the 21 April 2008 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

⁹⁵⁴ Additional Commercial Mortgage Offer, dated 17 September 2008 (Doc ID: 0.7.120.149016-000002).

⁹⁵⁵ Consolidated Table C1.3 page vii, footnote 2 (Doc ID: RDU_REL1600-0000041).

These policies both stated that personal guarantees should be acquired where the borrower was a private company.

4.1132 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA nor the CMO made any reference to a personal guarantee from any of the identified directors of the borrowing company.⁹⁵⁶ The identified security did not refer to a personal guarantee. The Credit Committee or Board meeting minutes similarly did not refer to a personal guarantee from the directors.⁹⁵⁷

4.1133 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.

Although Mr Purcell attended the Board meeting at which this loan was referred to, no Loan Specific Allegation of participation was made against him in the Investigation Report and, therefore, no finding is made in respect of this loan

CUSTOMER 3: [REDACTED]

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1134 As outlined in an internal memorandum from Mr McCollum to Michael Fingleton dated 23 May 2007⁹⁵⁸, this loan was made available by INBS in 2007 in the amount of £245 million for a term of one year. The CLA was signed by the INBS commercial lending team on 23 May 2007.⁹⁵⁹ The purpose of the loan was to provide finance to assist with the purchase and development of planning for 150,000 square feet of residential accommodation at [REDACTED] London. The CLA provided for a one year term with a capital and interest moratorium for the term. The LTV was stated

⁹⁵⁶ Commercial Loan Application, dated 10 September 2008 (Doc ID: 0.7.120.5679); Additional Commercial Mortgage Offer, dated 17 September 2008 (Doc ID: 0.7.120.149016-000002).

⁹⁵⁷ Minutes of Credit Committee meeting, dated 15 September 2008 (Doc ID: 0.7.120.20327); Minutes of Board meeting, dated 15 September 2008 (Doc ID: 0.7.120.8227).

⁹⁵⁸ Internal memorandum from Gary McCollum to Michael Fingleton, dated 23 May 2007 (Doc ID: 0.7.120.26417).

⁹⁵⁹ Commercial Loan Application, dated 23 May 2007 (Doc ID: 0.7.120.15882).

to be 92% based on the current market value and INBS was to be entitled to a 30% share in profits.

4.1135 A certificate of value for the property was provided to Mr McCollum by Savills on 21 April 2007, confirming the value of the leasehold interest in the property as £265 million.⁹⁶⁰ The facility was recommended for approval at the Credit Committee meeting on 22 May 2007⁹⁶¹ and was duly approved at the Board meeting on 24 May 2007.⁹⁶²

The CMO dated 30 May 2007 was signed by Mr McCollum on behalf of INBS and by the borrower on the same day.⁹⁶³ The loan was first drawn down on 4 June 2007.⁹⁶⁴

4.1136 The Summit account for this loan shows that it was still accruing interest as of 4 December 2009, at which time there was an outstanding balance of just under £285.3 million.⁹⁶⁵

This loan was transferred to NAMA.

4.1137 There were seven Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Forecast cash flow analysis.

4.1138 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1139 The Inquiry has examined the valuation in this case and it does provide an estimated value of £265 million. It does not, however, offer any information on how or when the proposed development would take place. There is nothing resembling a forecast cash flow analysis in the loan file for this loan and no evidence that one was ever sought by the commercial lenders.

⁹⁶⁰ Savills Valuation, dated 21 April 2007 (Doc ID: 0.7.120.6991).

⁹⁶¹ Minutes of Credit Committee meeting, dated 22 May 2007 (Doc ID: 0.7.120.17262).

⁹⁶² Minutes of Board meeting, dated 24 May 2007 (Doc ID: 0.7.120.35711).

⁹⁶³ Commercial Mortgage Offer, dated 30 May 2007 (Doc ID: 0.7.120.37467).

⁹⁶⁴ Society Advance Detail, dated 4 June 2007 (Doc ID: 0.7.120.10729).

⁹⁶⁵ Summit Account No. [REDACTED] (Doc ID: 0.7.120.760565).

4.1140 **The Inquiry finds that the allegation that there was a failure to acquire required information from the borrower, namely a forecast cash flow analysis, is supported by the documentation and, accordingly, finds that SPC 1.3 is proven against INBS.**

SPC 1.4: Credit grades were not assigned to commercial loans.

4.1141 The relevant policies were the 2006 Impairment Provisioning Policy and the 2006 Notes on the Implementation of Impairment Provisioning Policy. (See Table included at Appendix 11).

4.1142 In his submissions to the Inquiry, Mr Purcell stated that the Impairment Provisioning Policy did not create new policy with regard to credit grades. The Inquiry agrees with this assertion and therefore no finding is made against INBS in respect of this allegation. The assigning of credit grades during the loan approval process is dealt with at Chapter 5 of this Findings Report (see paragraph 5.197 et seq.). That part of the Findings Report outlines Mr Purcell's submissions on this point and the reasoning for the Inquiry's finding that a failure to assign a credit grade at the loan approval stage was not a breach of INBS internal policy.

4.1143 A loan specific participation allegation in respect of this loan was advanced against Mr Purcell. He was alleged to have participated in this contravention as the loan had been presented to the Board for approval and the absence of the credit grade would have been obvious from the CLA presented. However, as no finding is made against INBS in respect of this allegation, it follows that no finding of participation can be made against Mr Purcell.

SPC 2.9: Term of the loan extended without appropriate approval.

4.1144 The relevant policies were the 21 April 2008 Commercial Mortgage Lending Policy and the Moratoria Policy 21 April 2008. (See Table included at Appendix 12).

4.1145 The CLA provided for a one year term which terminated on 3 June 2008.⁹⁶⁶ The Summit account showed that this loan was still accruing interest in December 2009.⁹⁶⁷

There is a document on the loan file entitled "*Term Extension Subject to Interest being Serviced by Borrower*",⁹⁶⁸ which was undated but which referred to a valuation of

⁹⁶⁶ Commercial Loan Application, dated 23 May 2007 (Doc ID: 0.7.120.15882).

⁹⁶⁷ Summit Account No [REDACTED] (Doc ID: 0.7.120.760565).

⁹⁶⁸ Term Extension document, undated (Doc ID: AD-0.7.120.765798).

February 2009, so the document had to postdate that date. That document sought a twelve month extension on this facility.

The 21 April 2008 Commercial Mortgage Lending Policy applied and it stated that no individual staff member was authorised to vary conditions of a loan approved by the Credit Committee. Any variation was to be considered, approved and minuted by the Credit Committee. As this loan had an interest and capital moratorium, the Moratoria Policy 21 April 2008 also applied and it stated variations to moratorium accounts could only be amended with the written approval of either all members of the Credit Committee, or any two of the following: managing director; commercial lending manager; or mortgage administration manager.

4.1146 The Inquiry has examined the Credit Committee meeting minutes and can see no evidence that the term extension for this loan was approved by the Credit Committee. There is no term extension approval in the consolidated loan file for this loan.

4.1147 The Inquiry finds that the term of this loan was extended without appropriate approval. Accordingly, it finds that SPC 2.9 is proven against INBS.

SPC 2.16: CMO not appropriately signed by INBS.

4.1148 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 12).

4.1149 The CMO dated 30 May 2007 was signed by Mr McCollum and by two directors of the borrowing company.⁹⁶⁹ The relevant INBS policy, however, stated: "*All commercial loan offers are to be signed by two members of the commercial lending department one of whom must be either the Commercial Lending Manager or Senior Commercial Lender*".⁹⁷⁰

4.1150 The underwriting commercial lender and the commercial lending manager were both Mr McCollum but the CMO should have been signed by another commercial lender in compliance with policy.

4.1151 The Inquiry finds that the CMO was not appropriately signed by INBS and, accordingly, that SPC 2.16 is proven against INBS.

⁹⁶⁹ Commercial Mortgage Offer, dated 30 May 2007 (Doc ID: 0.7.120.37467).

⁹⁷⁰ 28 February 2007 Commercial Mortgage Lending Policy, page 10 (Doc ID: 0.7.120.27792).

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.1152 The relevant policy was the 28 February 2007 Commercial Mortgage Lending. (See Table included at Appendix 13).

This policy stated that personal guarantees should be acquired where the borrower was a private company.

4.1153 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA nor the CMO made any reference to a personal guarantee from any of the identified directors of the borrowing company, and the identified security did not refer to such a guarantee. Similarly, neither the Credit Committee nor Board meeting minutes⁹⁷¹ referred to a personal guarantee from directors.

4.1154 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

⁹⁷¹ Minutes of Credit Committee meeting, dated 22 May 2007 (Doc ID: 0.7.120.17262); Minutes of Board meeting, dated 24 May 2007 (Doc ID: 0.7.120.35711).

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.1155 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13). The applicable reference document for sectoral codes was the 2006 Notes on the Implementation of Impairment Provisioning Policy.⁹⁷²

4.1156 The CLA left the section for the sectoral code blank, but the SAD dated 4 June 2007⁹⁷³ identified a sectoral code of K1, which represented residential development. The relevant LTV identified in the policy for a new borrower was 85% and the LTV as stated in the CLA was 92%.⁹⁷⁴ On reviewing the file, the Inquiry is of the view that this project could properly be described as development finance and therefore was not subject to any LTV upper limit but was assessed on a case by case basis.

4.1157 The Inquiry finds that the LTV for this loan was not greater than the LTV set out in INBS's internal policy and, accordingly, that SPC 3.4 is not proven against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. In light of the Inquiry's finding in respect of INBS, this loan specific participation allegation against Mr Purcell now falls away.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.1158 In light of the finding at SPC 3.4 above, this allegation must now fall away.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

⁹⁷² 2006 Notes on the Implementation of Impairment Provisioning Policy (Doc ID: 0.7.120.449946).

⁹⁷³ Society Advance Detail, dated 4 June 2007 (Doc ID: 0.7.120.18472).

⁹⁷⁴ Commercial Loan Application, dated 23 May 2007 (Doc ID: 0.7.120.15882).

CUSTOMER 4: [REDACTED]

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1159 This loan was made available by INBS in 2007 in the amount of £37 million for a term of 36 months. An internal memorandum setting out details of the proposed transaction was sent by Michael Fingleton (Jnr) to Mr McCollum on 10 July 2007.⁹⁷⁵ The CLA was dated 22 October 2007⁹⁷⁶, and described the purpose of the loan as being to enable the borrower to refinance its existing loan (in the amount of £24 million), and use the remainder of the facility (£13 million) to build out the development. At completion, the properties would be refinanced through RBS and an exit fee of £4 million paid to INBS. The borrower projected an annual income from the site of £3.3 million based on current operational levels of their other sites. It was estimated that the offices would be worth an additional £5.25 million of value when completed.

4.1160 A valuation report for the property was carried out on behalf of INBS in October 2007 confirming the market value of the leasehold and proposed freehold interests as £53.5 million.⁹⁷⁷ The facility was recommended for approval at the Credit Committee meeting on 17 October 2007⁹⁷⁸ and was duly approved at the Board meeting on 23 October 2007.⁹⁷⁹

4.1161 The CMO dated 21 November 2007 was signed by Mr McCollum on behalf of INBS and by the borrower on 21 November 2007.⁹⁸⁰ The loan was first drawn down on 26 November 2007.⁹⁸¹ This loan remained outstanding as at 26 February 2010 with a balance of just over £40 million.⁹⁸² This loan was transferred to NAMA.

4.1162 There was one Loan Specific Allegation advanced in respect of the loan to this borrower. Full details of this Loan Specific Allegation is set out below, and is also

⁹⁷⁵ Internal memorandum from Michael Fingleton (Jnr) to Gary McCollum, dated 10 July 2007 (Doc ID: 0.7.120.6788).

⁹⁷⁶ Commercial Loan Application, dated 22 October 2007 (Doc ID: 0.7.120.19447).

⁹⁷⁷ Colliers CRE Valuation Report, dated 8 October 2007, page 32 (Doc ID: 0.7.120.894505).

⁹⁷⁸ Minutes of the Credit Committee meeting, dated 17 October 2007 (Doc ID: 0.7.120.30273).

⁹⁷⁹ Minutes of the Board meeting, dated 23 October 2007 (Doc ID: 0.7.120.25005).

⁹⁸⁰ Commercial Mortgage Offer, dated 21 November 2007 (Doc ID: 0.7.120.41602).

⁹⁸¹ Society Advance Detail, dated 26 November 2007 (Doc ID: 0.7.120.12558).

⁹⁸² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760714).

included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Three years' audited accounts.

4.1163 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1164 This borrower was a SPV⁹⁸³ and was incorporated on 4 March 2005.⁹⁸⁴ The subject loan was approved in October 2007.⁹⁸⁵ The Consolidated Table in respect of this allegation stated in a footnote:

"Or, for newly incorporated companies where three years audited accounts were not available at the time of loan application, the number of years of audited accounts that would have been available at the time of loan application (ie one or two years)".⁹⁸⁶

On this basis SPC 1.3 was brought in respect of borrower companies that were less than three years old. However, the Inquiry has seen no basis in policy for this approach. The relevant policies all refer to "*Three years audited accounts*" and there is no provision for requiring accounts for a shorter period.

4.1165 The Inquiry finds that there was not a failure to acquire required information, namely three years' audited accounts. Accordingly, the Inquiry finds SPC 1.3 is not proven against INBS.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1166 This loan was made available by INBS in 2007 in the amount of £23.75 million for a term of 36 months. The CLA was dated 12 June 2007.⁹⁸⁷ The purpose of the loan was

⁹⁸³ The SPV was wholly owned by [REDACTED], as per the CLA (Doc ID: 0.7.120.19447).

⁹⁸⁴ Certificate of Incorporation, dated 4 March 2005 (Doc ID: 0.7.120.895315-000001).

⁹⁸⁵ Minutes of Board meeting, dated 23 October 2007 (Doc ID: 0.7.120.25005).

⁹⁸⁶ Consolidated Table C1.3 page vii, footnote 2 (Doc ID: RDU_REL1600-00000041).

⁹⁸⁷ Commercial Loan Application, dated 12 June 2007 (Doc ID: 0.7.120.40104).

to refinance the borrower's existing Anglo Irish Loan (in the amount £14 million) and use the remainder of the facility (£9.75 million) to build out the development, a 104 bed aparthotel and serviced office space in London.⁹⁸⁸ Upon completion, the aim was for the properties to be refinanced through RBS and an exit fee of £2.5 million paid to INBS. The projected annual income from the site was £2.2 million based on the operational levels of the borrower's other sites at the time. If this was capitalised at 6% it gave a resale value for the apartments of £36.5 million. It was estimated that the offices would be worth an additional £2.5 million when completed.

A valuation of the property was carried out on behalf of INBS in October 2007 confirming the value of the freehold and proposed long leasehold interests in the property at £35.6 million⁹⁸⁹ or, assuming bulk discounting, at £32.5 million. The facility was recommended for approval at the Credit Committee meeting on 17 October 2007⁹⁹⁰ and was duly approved at the Board meeting on 23 October 2007.⁹⁹¹

4.1167 The CMO dated 24 October 2007 was issued by Mr McCollum on behalf of INBS, and signed by the borrower on 26 October 2007.⁹⁹² The loan was first drawn down on 31 October 2007.⁹⁹³ The loan remained outstanding as at February 2010 with a balance of almost £25.8 million.⁹⁹⁴ This loan was transferred to NAMA.

4.1168 There were two Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Forecast cash flow analysis.**
- (b) **Three years' audited accounts.**

4.1169 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

⁹⁸⁸ Internal memorandum from Michael Fingleton (Jnr) to Gary McCollum dated 10 July 2007 (Doc ID: 0.7.120.23374).

⁹⁸⁹ Colliers CRE Valuation Report, dated October 2007 (Doc ID: 0.7.120.16794).

⁹⁹⁰ Minutes of the Credit Committee meeting, dated 17 October 2007 (Doc ID: 0.7.120.30273).

⁹⁹¹ Minutes of Board meeting, dated 23 October 2007 (Doc ID: 0.7.120.25005).

⁹⁹² Commercial Mortgage Offer dated 24 October 2007 (Doc ID: 0.7.120.43461).

⁹⁹³ Society Advance Detail, dated 31 October 2007 (Doc ID: 0.7.120.13844).

⁹⁹⁴ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760699).

4.1170 The borrower was incorporated on 11 December 2004, and therefore three years' accounts would not have been available at the time of the loan. As outlined at paragraph 4.1164 above, there was no requirement in policy for accounts to be provided for a shorter period.

An Equifax Report was obtained which did provide details of existing liabilities but not financial data in the detail that would be relevant.⁹⁹⁵ A valuation⁹⁹⁶ was obtained but this did not provide cash flow analysis.

4.1171 The Inquiry finds that the allegation that there was a failure to acquire required information is not supported by the documentation in respect of three years' audited accounts, but the Inquiry finds that a forecast cash flow analysis was not obtained contrary to policy. Accordingly, the Inquiry finds that SPC 1.3 is proven as against INBS in respect of a failure to acquire a cash flow analysis.

SPC 2.12: Terms outlined in the CLA and approved by the Board differed to the terms outlined in the CMO.

4.1172 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy. (See Table included at Appendix 12).

4.1173 The issue in respect of this allegation was that the CLA specified an arrangement fee of £185,000⁹⁹⁷ (and the Credit Committee and Board recommended and approved the loan on this basis), whereas the CMO specified a different arrangement fee of £118,750.⁹⁹⁸ The CLA actually specified the arrangement fee as "0.5% (£185,000)". 0.5% of the loan amount of £23.75 million is in fact £118,750 and, therefore, the amount on the CMO was the correct amount. This was simply a mistake on the CLA.

The Inquiry accepts that this is a technical contravention but does not believe it is sufficiently serious to justify an adverse finding.

4.1174 The Inquiry finds that the allegation is not sufficiently supported by the documentation. Accordingly, the Inquiry finds that SPC 2.12 is not proven as against INBS.

⁹⁹⁵ Equifax Report, dated 7 November 2007 (Doc ID: 0.7.120.925789).

⁹⁹⁶ Colliers CRE Valuation Report, dated October 2007 (Doc ID: 0.7.120.16794).

⁹⁹⁷ Commercial Loan Application, dated 12 June 2007 (Doc ID: 0.7.120.40104).

⁹⁹⁸ Commercial Mortgage Offer dated 24 October 2007 (Doc ID: 0.7.120.43461).

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1175 The borrower wrote to INBS on 27 February 2007 seeking funding support for a project in south east London.⁹⁹⁹ An internal memorandum dated 26 March 2007 from Mr Fingleton (Jnr) to Mr McCollum details this proposal.¹⁰⁰⁰ It was also forwarded to Mr Fingleton.¹⁰⁰¹ The requirement was for £24.5 million, being £11.5 million to refinance existing debt and £13 million for development. The CLA was dated 26 March 2007.¹⁰⁰² The purpose of the loan, as stated in the CLA, was to enable the borrower to refinance the current bank debt of £11.5 million for the purchase of the site in south east London, and the construction of 102 apartments thereon.

4.1176 The facility was recommended for approval at the Credit Committee meeting on 13 June 2007¹⁰⁰³ and was duly approved at the Board meeting on 27 June 2007.¹⁰⁰⁴ The CMO dated 26 June 2007 was signed by Mr McCollum on behalf of INBS, and was signed by the borrower on 27 June 2007.¹⁰⁰⁵ The loan was on a capital and interest moratorium basis for a term of 36 months. The loan was first drawn down on 29 June 2007. The balance outstanding as at December 2009 was £27,441,658.¹⁰⁰⁶ This loan was transferred to NAMA.

4.1177 There were two Loan Specific Allegations advanced in respect the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Forecast cash flow analysis.

⁹⁹⁹ Email from [REDACTED] to Michael Fingleton (Jnr), dated 27 February 2007 (Doc ID: 0.7.120.917212).

¹⁰⁰⁰ Internal memorandum from Michael Fingleton (Jnr) to Gary McCollum, dated 26 March 2007 (Doc ID: 0.7.120.281575-000001).

¹⁰⁰¹ Fax copy of Internal Memorandum dated 24 March 2007 with Mr Fingleton's note (Doc ID: 0.7.120.35746).

¹⁰⁰² Commercial Loan Application, dated 26 March 2007 (Doc ID: 0.7.120.21772).

¹⁰⁰³ Minutes of the Credit Committee meeting, dated 13 June 2007 (Doc ID: 0.7.120.38329).

¹⁰⁰⁴ Minutes of the Board meeting, dated 27 June 2007 (Doc ID: 0.7.120.6693).

¹⁰⁰⁵ Commercial Mortgage Offer, dated 26 June 2007 (Doc ID: 0.7.120.41263).

¹⁰⁰⁶ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760590).

(b) Three years' audited accounts.

4.1178 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1179 A technical due diligence report dated July 2007 was received by INBS, however this post-dated drawdown.¹⁰⁰⁷ An appraisal summary was also available but it lacked the detail to be considered a forecast cash flow analysis.¹⁰⁰⁸

An Equifax Report was received by INBS which gave details of the borrower company, including its liabilities, and also showed that a set of one year's accounts would have been available.¹⁰⁰⁹ However, as outlined at paragraph 4.1164 above, there was no policy provision requiring audited accounts for a period of less than three years.

4.1180 The Inquiry finds that the allegation in respect of cash flow analysis is supported by the absence of documentation in the loan file. The requirement for three years' audited accounts does not apply to this borrower. Accordingly, the Inquiry finds that SPC 1.3 is proven as against INBS in relation to the failure to acquire a cash flow analysis.

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1181 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The relevant urgent credit decision approval procedures were set out in the Board Resolution September 2002. (See Table included at Appendix 12).

4.1182 On 26 June 2007, Mr McCollum wrote to the borrower attaching the CMO and instructing him to sign and return it together with other relevant documents. No mention was made in this letter that the offer was contingent on confirmation of approval.¹⁰¹⁰ The Board approved the loan on 27 June 2007.¹⁰¹¹

The Inquiry has examined the consolidated loan file and there is no evidence of any urgent credit decision approval procedures being complied with in this loan.

¹⁰⁰⁷ Technical Due Diligence Report, dated July 2007 (Doc ID: 0.7.120.920199).

¹⁰⁰⁸ Appraisal Summary, dated 21 February 2007 (Doc ID: 0.7.120.926806).

¹⁰⁰⁹ Equifax Report, dated 3 July 2007 (Doc ID: 0.7.120.925023).

¹⁰¹⁰ Letter from Gary McCollum to [REDACTED] dated 26 June 2007 (Doc ID: 0.7.120.918232).

¹⁰¹¹ Minutes of Board meeting, dated 27 June 2007 (Doc ID: 0.7.120.6693).

4.1183 The Inquiry finds that the CMO was issued prior to appropriate approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds SPC 2.13 is proven as against INBS.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1184 The loan was initially made available by INBS in 2007 in the amount of £76.25 million for a term of 36 months on a capital and interest moratorium basis and with an arrangement fee of £381,250. An internal memorandum seeking approval to proceed was sent by Mr McCollum to Mr Fingleton on 21 December 2006.¹⁰¹² The original CLA was signed on 6 January 2007.¹⁰¹³ The purpose of the loan was to enable the borrower to refinance their existing loan and to finance the construction of 368 serviced apartments on the site they had purchased.

4.1185 A valuation report for the property was carried out on behalf of INBS in April 2007 confirming the market value of the freehold and proposed long leasehold interests as £120 million.¹⁰¹⁴ The facility was recommended for approval at the Credit Committee meeting on 17 January 2007¹⁰¹⁵ and was duly approved at the Board meeting on 23 January 2007.¹⁰¹⁶

4.1186 An amended CLA that was countersigned by Mr Fingleton was dated 21 February 2007.¹⁰¹⁷ The amended CLA amended the name of the borrower, included the addition of 5,000 square feet of commercial accommodation in the loan's purpose and, significantly, reduced the amount of the loan to £68.5 million. This resulted in a consequent reduction in the arrangement fee to £342,500. This amended CLA was recommended for approval at the Credit Committee meeting on 21 February 2007¹⁰¹⁸ but was not subsequently ratified at a Board meeting. The CMO dated 27 February 2007 was signed by Mr McCollum on behalf of INBS, and was signed by the borrower on 2 March 2007.¹⁰¹⁹ It reflected the amended facility amount.

¹⁰¹² Internal Memorandum from Gary McCollum to Michael Fingleton, dated 21 December 2006 (Doc ID: 0.7.120.29025).

¹⁰¹³ Commercial Loan Application, dated 6 January 2007 (Doc ID: 0.7.120.42102).

¹⁰¹⁴ Colliers CRE Valuation Report, dated April 2007, page 5 (Doc ID: 0.7.120.25910).

¹⁰¹⁵ Minutes of Credit Committee meeting, dated 17 January 2007 (Doc ID: 0.7.120.10210).

¹⁰¹⁶ Minutes of Board meeting, dated 23 January 2007 (Doc ID: 0.7.120.29587).

¹⁰¹⁷ Amended Commercial Loan Application, dated 21 February 2007 (Doc ID: 0.7.120.6789).

¹⁰¹⁸ Minutes of Credit Committee meeting, dated 21 February 2007 (Doc ID: 0.7.120.23339).

¹⁰¹⁹ Commercial Mortgage Offer, dated 27 February 2007 (Doc ID: 0.7.120.28062).

4.1187 The loan was first drawn down on 9 March 2007.¹⁰²⁰ This loan remained outstanding as at 10 December 2009 with a balance of just over £77.44 million.¹⁰²¹ This loan was transferred to NAMA.

4.1188 There was one Loan Specific Allegation advanced in respect of the loan to this borrower. Full details of this Loan Specific Allegation is set out below, and is also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 2.12: Terms outlined in the CLA and approved by the Board differed to the terms outlined in CMO.

4.1189 The relevant policy was the 9 October 2006 Board Directive. (See Table included at Appendix 12).

4.1190 The original CLA specified a loan of £76.25 million and an arrangement fee of £381,250.¹⁰²² This was recommended for approval by the Credit Committee and approved by the Board. Subsequently, an amended CLA reducing the facility required to £68.5 million and, as a consequence the arrangement fee to £342,500, was presented to a Credit Committee meeting which recommended it for approval.¹⁰²³ These changes were not ratified by the Board as they should have been.

However, it is noted that the revised loan amount was less than that already approved by the Board and the amendment was countersigned by Mr Fingleton.

The Inquiry does not believe that this matter warrants an adverse finding.

4.1191 The Inquiry finds that the allegation is not supported by the documentation. Accordingly, it finds that SPC 2.12 is not proven as against INBS.

¹⁰²⁰ Society Advance Detail, dated 9 March 2007 (Doc ID: 0.7.120.5891).

¹⁰²¹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760647).

¹⁰²² Commercial Loan Application, dated 6 January 2007 (Doc ID: 0.7.120.42102).

¹⁰²³ Minutes of Credit Committee meeting, dated 21 February 2007 (Doc ID: 0.7.120.23339).

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1192 The borrower wrote to INBS on 11 January 2007¹⁰²⁴ requesting a facility of €28 million in respect of property in the south of France. The facility was to be used to refinance existing debt (in the amount of €25 million) together with €3 million development finance to build out the development.

4.1193 A valuation report¹⁰²⁵ for the property, which was carried out on behalf of INBS in September 2007, confirmed the market value as €31 million and the gross development value based on the developer's proposals as €55 million. An internal memorandum¹⁰²⁶ from Mr Fingleton (Jnr) to Mr McCollum, setting out the details of the transaction, was dated 1 October 2007.

Drawdown took place on 4 December 2007¹⁰²⁷ and the CMO¹⁰²⁸ was signed by Ms van Sinderen¹⁰²⁹ on 5 December 2007.

The CLA¹⁰³⁰ was signed on 17 January 2008 and on the same date the loan was approved by the Credit Committee.¹⁰³¹ The Board noted the loan on 21 January 2008.¹⁰³² The loan remained outstanding as at 11 February 2010 with a balance of over €22.6 million.¹⁰³³ This loan was transferred to NAMA.

4.1194 There were two Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

¹⁰²⁴ Letter from [REDACTED] to Michael Fingleton (Jnr), dated 11 January 2007 (Doc ID: 0.7.120.895188).

¹⁰²⁵ Savills Valuation Report, dated September 2007, page 2 (Doc ID: 0.7.120.894988).

¹⁰²⁶ Internal memorandum from Michael Fingleton (Jnr) to Gary McCollum, dated 1 October 2007 (Doc ID: 0.7.120.21840).

¹⁰²⁷ Society Advance Detail, dated 4 December 2007 (Doc ID: 0.7.120.44219).

¹⁰²⁸ Commercial Mortgage Offer, dated 5 December 2007, page 4 (Doc ID: 0.7.120.431174).

¹⁰²⁹ Ms van Sinderen commenced employment with INBS in September 2007 as a solicitor in the legal department.

¹⁰³⁰ Commercial Loan Application, signed 17 January 2008 (Doc ID: 0.7.120.16611).

¹⁰³¹ Minutes of Credit Committee meeting, dated 17 January 2007 (Doc ID: 0.7.120.31125).

¹⁰³² Minutes of Board meeting, dated 21 January 2008 (Doc ID: 0.7.120.17427).

¹⁰³³ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760563).

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Three years' audited accounts.

4.1195 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1196 This borrower company was formed on 20 June 2005¹⁰³⁴ and therefore three years' accounts would not have been available at the time of the loan.

The Consolidated Table in respect of this allegation stated in a footnote:

*"Or, for newly incorporated companies where three years audited accounts were not available at the time of loan application, the number of years of audited accounts that would have been available at the time of loan application (ie one or two years)".*¹⁰³⁵

On this basis SPC 1.3 was alleged in respect of borrower companies that were less than three years old. However, the Inquiry has seen no basis in policy for this approach. The relevant policies all refer to "*Three years audited accounts*" and there is no provision for requiring accounts for a shorter period.

4.1197 The Inquiry finds that the requirement for three years' audited accounts does not apply to this borrower company and, accordingly, finds that SPC 1.3 is not proven against INBS.

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1198 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The relevant policies for urgent credit decision approval procedures were the Board Resolution September 2002 and the 19 July Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

¹⁰³⁴ Letter from [REDACTED] to Michael Fingleton (Jnr) (with enclosures) dated 11 January 2007 (Doc ID: 0.7.120.895188).

¹⁰³⁵ Consolidated Table C1.3 page vii, footnote 2 (Doc ID: RDU_REL1600-00000041).

4.1199 The CMO was signed on 5 December 2007¹⁰³⁶ and the loan was not approved by the Credit Committee until 17 January 2008.¹⁰³⁷

The Inquiry has examined the consolidated loan file and Credit Committee and Board meeting minutes and packs until the end of the Review Period, and there is no evidence of any urgent credit decision approval procedures being complied with in respect of this loan.

4.1200 The Inquiry finds that the CMO was issued prior to appropriate approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven as against INBS

CUSTOMER 5: [REDACTED]

4.1201 [REDACTED] was a businessman with a number of loans from INBS for speculative property investment, mainly in County Meath. This section of the Findings Report analyses six of these loans for various breaches of policy.

One of the issues that all of these loans had in common was an allegation that the loans were changed from recourse to non-recourse without appropriate approval. It is useful to set out the chain of correspondence that led to that allegation being brought in respect of this customer at the beginning of this section, and therefore repetition of the same set of facts can be avoided.

4.1202 By letter dated 18 February 2008¹⁰³⁸, [REDACTED] wrote to Mr McMenamin of INBS and stated:

"I refer to the Agreements of Purchase and Mortgage in respect of the following lands with which I am associated.

[Ten properties are listed]

As you are aware, these Mortgages were signed by me on a non-recourse basis and having regard to the fact that none of us are getting any younger and that various changes are likely to take place in the Society some time in the future I just wish to put my own position on record".

¹⁰³⁶ Commercial Mortgage Offer, dated 5 December 2007, page 4 (Doc ID: 0.7.120.431174).

¹⁰³⁷ Minutes of Credit Committee meeting, dated 17 January 2007 (Doc ID: 0.7.120.31125).

¹⁰³⁸ Letter from [REDACTED] to Tom McMenamin, INBS, dated 18 February 2008 (Doc ID: 0.7.120.41332).

A letter dated 2 April 2008¹⁰³⁹ from Mr McMenemy to [REDACTED] responded to this by stating *"I confirm all mortgages listed are non-recourse"*.

4.1203 A further letter issued from INBS dated 8 December 2008¹⁰⁴⁰ referring to the previous letter of 18 February 2008 and to the response of 2 April 2008, which stated:

"Please be advised that this letter was issued in error and that all Mortgages executed by you either solely or in the joint names with others are on a full recourse basis to all borrowers".

This letter was signed by Conal Regan, the senior commercial manager.

4.1204 A further letter was then issued by Michael Fingleton, dated 21 March 2010¹⁰⁴¹, which stated:

"I refer to copies of your correspondence with the Irish Nationwide Building Society which you forwarded to me late last month. In particular I refer to your letter of the 18th February 2008 to Tom McMenemy and his reply on the 2nd April 2008.

In relation to the loans concerned I fully agree with Tom that all such loans being on a joint venture / profit sharing basis were non recourse".

This letter was written after Mr Fingleton had left INBS and was written from his private address. None of the CMOs for these loans referred to them as being non-recourse.

4.1205 The allegation arises because any such variation to the terms of a loan would have to be approved by the Credit Committee and the Board.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Loan 1 and Loan 2 - background to loans

4.1206 These two loans concerned the financing of the purchase by [REDACTED] of land in Dublin [REDACTED]. The borrower, [REDACTED], was incorporated in August 2005 as a SPV. [REDACTED] and [REDACTED] were the

¹⁰³⁹ Letter from Tom McMenemy, INBS to [REDACTED] dated 2 April 2008 (Doc ID: 0.7.120.31820).

¹⁰⁴⁰ Letter from Conal Regan, INBS, to [REDACTED] dated 8 December 2008 (Doc ID: 0.7.120.12733).

¹⁰⁴¹ Letter from Michael Fingleton, INBS, to [REDACTED], dated 21 March 2010 (Doc ID: 0.7.120.15601).

beneficial owners of the SPV.¹⁰⁴² These loans were not Belfast loans, but emanated from the Dublin office. The CMOs were signed by Mr McMenamin and Mr John Roche.

4.1207 A total of 12 Loan Specific Allegations were advanced in respect of these two loans. Eight of these Loan Specific Allegations were INBS Only Allegations¹⁰⁴³ and so were not dealt with by the Inquiry. The four remaining Loan Specific Allegations were based on the 9 November 2004 Commercial Lending Criteria and, following the Inquiry's decision that this was not an applicable policy, these were also not considered by the Inquiry.

4.1208 In respect of the four Loan Specific Allegations that were not considered by the Inquiry because they were based on the 9 November 2004 Commercial Lending Criteria, there were corresponding Loan Specific Allegations of participation advanced against Mr Purcell. These allegations consequently fall away.

4.1209 Details of all Loan Specific Allegations, including those advanced against Mr Purcell, are included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1210 A loan facility in the amount of €4.71 million was made available by INBS in 2006 for a term of two years. The CMO stated that the purpose of the loan was to enable the purchase of 40 acres of land in County Meath and to repay an existing facility. This loan emanated from the Dublin office.

4.1211 Seven Loan Specific Allegations were advanced in respect of this loan. Five of the seven Loan Specific Allegations were INBS Only Allegations and so were not dealt with by the Inquiry. The two remaining Loan Specific Allegations were based on the 9 November 2004 Commercial Lending Criteria and, following the Inquiry's decision that this was not an applicable policy, these were also not considered by the Inquiry.

4.1212 In respect of the two Loan Specific Allegations that were not considered by the Inquiry because they were based on the 9 November 2004 Commercial Lending Criteria, there

¹⁰⁴² INBS Credit Summary of [REDACTED] (Doc ID: 0.7.120.25881).

¹⁰⁴³ See paragraph 3.29 of Chapter 3 (Introduction to SPCs 1 to 4) for an explanation of the INBS Only Allegations.

were corresponding Loan Specific Allegations of participation advanced against Mr Purcell. These allegations consequently fall away.

4.1213 Details of all Loan Specific Allegations, including those advanced against Mr Purcell, are included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1214 The purpose of this loan was to facilitate the purchase of 43 acres in [REDACTED], County Meath. The loan emanated from the Dublin office and Mr Fingleton appears to have introduced this proposal to INBS.

4.1215 There were two loans arising from this transaction, the first loan facility was extended by CMO, dated 18 April 2005.¹⁰⁴⁴ This loan was in the sum of €9.55 million and was for a term of three years. The date of the first drawdown for this first loan was 20 April 2005, when €8.3 million was drawn down.¹⁰⁴⁵ This amount was repaid to the account on 30 May 2005. There does not appear to have been a CLA or any Credit Committee or Board approval in respect of this loan.

4.1216 The second loan facility, which is the subject of the allegation below, was for a sum of €10.9 million and was for a term of three years. The CLA for this second loan was dated 1 July 2005 and it provided for a full moratorium for the term of the loan with a 40% profit share to INBS.¹⁰⁴⁶ The LTV was 100% based on the purchase price and the security was a first legal charge over the property the subject matter of the loan. The CLA stated: "*On receipt of planning the overall position will be reviewed*".

The CMO issued pursuant to this CLA was dated 4 July 2005 and it superseded the previous CMO of 18 April 2005. It was signed by the borrower on 5 July 2005.¹⁰⁴⁷

4.1217 The date of the first drawdown for the second loan was 6 July 2005.¹⁰⁴⁸ A valuation dated 18 July 2005 put the market value of the lands as hope value (in relation to

¹⁰⁴⁴ Commercial Mortgage Offer, dated 18 April 2005 (Doc ID: 0.7.120.27577).

¹⁰⁴⁵ Society Advance Detail, dated 20 April 2005 (Doc ID: 0.7.120.23104).

¹⁰⁴⁶ Commercial Loan Application, dated 1 July 2005 (Doc ID: 0.7.120.14608).

¹⁰⁴⁷ Commercial Mortgage Offer, dated 4 July 2005 (Doc ID: 0.7.120.33465).

¹⁰⁴⁸ Society Advance Detail, dated 6 July 2005 (Doc ID: 0.7.120.24969).

residential zoning in 2006) at €12,255,000.¹⁰⁴⁹ The loan continued to accrue interest until 10 February 2010 when there was an outstanding balance of €15,674,939.46. This loan was transferred to NAMA.

4.1218 There were ten Loan Specific Allegations advanced in respect of this loan. Nine of these were INBS Only Allegations and so were not dealt with by the Inquiry. The remaining Loan Specific Allegation is set out below, and details of all allegations are included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 2.7: Funds advanced on security already held by INBS were in excess of the loan amount and additional funds were not appropriately approved.

4.1219 The relevant policies were the Board Resolution September 2002, the April 2003 Credit Risk Policy, the 16 October 2003 Commercial Credit Committee Terms of Reference and the December 2007 Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1220 This allegation related to the second loan advanced on this account. The CLA dated 1 July 2005 was for €10.9 million¹⁰⁵⁰ and this was the figure offered in the CMO dated 4 July 2005.¹⁰⁵¹ The Summit account shows that €12,495,530 was advanced on this account.¹⁰⁵² The additional advances were as follows:

- (a) €1,047,792 on 25 July 2005.
- (b) €363 on 3 August 2005.
- (c) €544,350 on 14 September 2007.
- (d) €3,025 on 7 May 2008.

4.1221 The instruction for the Debit Agreed Advance (**DAA**) for the first of these advances was signed by Mr Purcell and Mr Roche.¹⁰⁵³ The other three advances were signed by commercial lenders, the latter two also by Mr Fingleton.¹⁰⁵⁴ There is no evidence that the "*Additional Funds*" requirement in the April 2003 Credit Risk Policy, mandating that

¹⁰⁴⁹ Remax Valuation, dated 18 July 2005 (Doc ID: 0.7.120.8894).

¹⁰⁵⁰ Commercial Loan Application, dated 1 July 2005 (Doc ID: 0.7.120.14608).

¹⁰⁵¹ Commercial Mortgage Offer, dated 4 July 2005 (Doc ID: 0.7.120.33465).

¹⁰⁵² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760601).

¹⁰⁵³ Internal memorandum from Tom McMenamin to Barbara Donaldson, dated 25 July 2005 (Doc ID: 0.7.120.11508).

¹⁰⁵⁴ Society Advance Detail, dated 14 September 2007 (Doc ID: 0.7.120.11814); Society Advance Detail, dated 7 May 2008 (Doc ID: 0.7.120.13637).

the identical procedure be utilised for additional funds, was complied with in respect of the additional advances. These additional advances were not recommended for approval or approved by the Credit Committee or the Board.

4.1222 There is no evidence that these advances complied with the urgent credit decision approval procedures in the 16 October 2003 Commercial Credit Committee Terms of Reference or the Board Resolution September 2002.

4.1223 **The Inquiry finds that funds were advanced in excess of the loan amount which were not approved and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.7 is proven against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. Consolidated Table 2.5.1 of the Investigation Report stated that:

“For one of the four loans in the Loan sample where it is suspected that the funds advanced were in excess of the loan amount and additional funds were not appropriately approved, Mr Purcell signed the DAA in respect of one of those additional advances”.¹⁰⁵⁵

In his submission to the Inquiry at the commencement of the SPC 1 to 4 Loan Hearing, Mr Purcell stated with respect to this allegation:

“In this instance I signed the DAA internal memorandum, dated 25 July 2005, as PP for Tom McMEnamin, the Commercial Lending Manager. I was asked to sign this document because Tom McMEnamin, who had initiated the [DAA] document was unavailable at the time to sign the document himself. I was told that the loan amount set out in the DAA had been approved as required by Michael Fingleton, Tom McMEnamin and John Roche. John Roche also signed the DAA.

And to the best of my recall, I checked with Tom McMEnamin after I signed the DAA and when he was available to confirm that he, Michael Fingleton and John Roche had approved this urgent credit decision. The responsibility to ensure compliance with the credit policy lies with the underwriter and ultimately with a senior commercial lender. The

¹⁰⁵⁵ Consolidated Table C2.5.1 (Doc ID: RDU_REL1600-00010005).

investigation report on page 961 paragraph 7.98, states that “signing a DAA was not approval in accordance with INBS policy”.¹⁰⁵⁶

The Inquiry agrees with Mr Purcell’s submission that signing the DAA did not amount to approval of a loan and did not amount to participation in the commission of SPC 2.7. Accordingly, the Inquiry finds that the loan specific participation allegation against Mr Purcell is not proven.

The broader allegation of participation by Mr Purcell in SPC 2.7 is considered by the Inquiry in Chapter 6 (at paragraph 6.430 et seq.). The Inquiry finds that there was no participation by Mr Purcell in this breach generally on the grounds that the issue of funds being advanced in excess of loan amounts which were not approved, was not raised in either the Contemporaneous Reports or the Financial Regulator Correspondence. Accordingly, the Inquiry does not make a finding that Mr Purcell was aware of the occurrence of these breaches and therefore no finding has been made against Mr Purcell in respect of this allegation.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1224 This loan was made available by INBS in 2005 in the amount of €6.85 million for a term of three years. The purpose of the loan was to provide finance for the purchase of 36 acres of land in County Meath with a view to applying for planning permission and either selling on or developing the site. This loan emanated from the Dublin office.

4.1225 Nine Loan Specific Allegations were advanced in respect of this loan. Seven of the Loan Specific Allegations were INBS Only Allegations and so were not dealt with by the Inquiry. The two remaining Loan Specific Allegations were based on the 9 November 2004 Commercial Lending Criteria and, following the Inquiry’s decision that this was not an applicable policy, these were also not considered by the Inquiry.

4.1226 In respect of the two Loan Specific Allegations that were not considered by the Inquiry because they were based on the 9 November 2004 Commercial Lending Criteria, there

¹⁰⁵⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 30 October 2020, page 81, line 7 et seq. (Doc ID: RDU_FT_SPC1-4_D1-00000001).

were corresponding Loan Specific Allegations of participation advanced against Mr Purcell. These allegations consequently fall away.

4.1227 Details of all the Loan Specific Allegations, including those advanced against Mr Purcell, are included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1228 This loan was made available by INBS in January 2006 in the amount of €4.4 million for a term of three years. The purpose of the loan was to enable the borrower to purchase 25 acres in County Meath and pay associated costs. The loan was introduced directly through the Dublin office.

4.1229 Nine Loan Specific Allegations were made in respect of this loan. Seven of these Loan Specific Allegations were INBS Only Allegations and so were not dealt with by the Inquiry. The two remaining allegations were based on the 9 November 2004 Commercial Lending Criteria and, following the Inquiry's decision that this was not an applicable policy, these were also not considered by the Inquiry.

4.1230 In respect of the two Loan Specific Allegations that were not considered by the Inquiry because they were based on the 9 November 2004 Commercial Lending Criteria, there were corresponding Loan Specific Allegations of participation advanced against Mr Purcell. These allegations consequently fall away.

4.1231 Details of all the Loan Specific Allegations advanced, including those against Mr Purcell, are included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

CUSTOMER 6: [REDACTED]

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1232 The loan, which emanated directly from the Dublin office, was initially made available by INBS in 2006 in the amount of £47 million for a term of 42 months. An internal memorandum dated 19 October 2006¹⁰⁵⁷ set out that the purpose of the loan was to provide finance to assist with the purchase of a (approximately) 1.6 hectare site at the [REDACTED] Edinburgh, Scotland, which would then be developed. The total facility required was £97 million, which included development finance.

The CLA was dated 6 November 2006, and was signed on 29 November 2006.¹⁰⁵⁸ The amount was £47 million to cover the acquisition of the site and associated costs. The proposed term was 42 months with a capital and interest moratorium. INBS was to be entitled to a 30% share of the development profit if they provided the development finance.

4.1233 A valuation report for the property was carried out on behalf of INBS in November 2006 confirming the market value as £42 million.¹⁰⁵⁹ The facility was recommended for approval at the Credit Committee meeting on 13 November 2006¹⁰⁶⁰, and was duly approved at the Board meeting on 29 November 2006.¹⁰⁶¹ The CMO¹⁰⁶² dated 5 December 2006 was signed by Mr McMenamin and Mr Alan Deering on behalf of INBS, and by the borrower.

The loan was first drawn down on 5 December 2006.¹⁰⁶³ This loan remained outstanding as at 5 December 2009 with a balance of just over £57.2 million.¹⁰⁶⁴ This loan was transferred to NAMA.

4.1234 There were three Loan Specific Allegations advanced in respect of this loan. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

¹⁰⁵⁷ Internal memorandum from Michael Fingleton (Jnr) to Tom McMenamin, dated 19 October 2006 (Doc ID: 0.7.120.36063).

¹⁰⁵⁸ Commercial Loan Application, dated 6 November 2006 (Doc ID: 0.7.120.39060).

¹⁰⁵⁹ Colliers CRE Report, dated 29 November 2006 (Doc ID: 0.7.120.11654).

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.1235 The relevant policies identified in the Investigation Report were the April 2003 Credit Risk Policy (see Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The April 2003 Credit Risk Policy did apply to this allegation, and it stated that personal guarantees should be acquired where the borrower was a private company.

4.1236 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA nor the CMO made any reference to a personal guarantee from any of the identified directors of the borrowing company. The Credit Committee and Board meeting minutes similarly did not refer to a personal guarantee from directors.

4.1237 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, it finds that SPC 3.2 is proven as against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding

¹⁰⁶⁰ Minutes of Credit Committee meeting, dated 13 November 2006 (Doc ID: 0.7.120.25072).

¹⁰⁶¹ Minutes of Board meeting, dated 29 November 2006 (Doc ID: 0.7.120.23075).

¹⁰⁶² Commercial Mortgage Offer, dated 5 December 2006 (Doc ID: 0.7.120.40702).

¹⁰⁶³ Society Advance Detail, dated 5 December 2006 (Doc ID: 0.7.120.19192).

¹⁰⁶⁴ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760580).

against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.1238 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

4.1239 A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As no finding has been made against INBS, this loan specific participation allegation against Mr Purcell now falls away.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.1240 In circumstances where the Inquiry makes no finding in respect of SPC 3.4, this allegation against INBS no longer arises.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1241 The borrower wrote to INBS¹⁰⁶⁵ on 17 October 2005 seeking support for the purchase of 67 acres of land in County Kildare for a price of €65 million. These lands were owned by another prominent developer who was seeking planning for them. The proposal was that the borrower and this developer would enter into an option agreement to be triggered when permission was granted. The transaction was structured such that

¹⁰⁶⁵ Letter from [REDACTED] to Tom McMenamin, INBS, dated 17 October 2005 (Doc ID: 0.7.120.13220).

INBS lent the funds to the borrower who lent them on to the developer, with INBS taking security over both the option agreement and the land, as well as a corporate guarantee from the borrower.

4.1242 The CLA was signed on 11 November 2006.¹⁰⁶⁶ A valuation report for the property was carried out by CBRE on behalf of INBS, dated 3 July 2006, and it confirmed the market value as €70 million.¹⁰⁶⁷

The facility was recommended for approval at the Credit Committee meeting on 22 November 2006¹⁰⁶⁸ and was duly approved at the Board meeting on 29 November 2006.¹⁰⁶⁹

The CMO dated 15 November 2006 was signed on behalf of INBS and the borrower.¹⁰⁷⁰ It provided for a loan in the amount of €65 million for a term of three years on a capital moratorium but with interest payable on a quarterly basis.

4.1243 The loan was first drawn down on 16 November 2006.¹⁰⁷¹ This loan remained outstanding as at 1 February 2010 with a balance of over €69.5 million.¹⁰⁷² This loan was transferred to NAMA.

4.1244 There were seven Loan Specific Allegations advanced in respect of this loan. Four of these Loan Specific Allegations were INBS Only Allegations, and so were not dealt with by the Inquiry. Two of the Loan Specific Allegations were based on the 9 November 2004 Commercial Lending Criteria and, following the Inquiry's decision that this was not an applicable policy, these were also not considered by the Inquiry. In respect of those two Loan Specific Allegations (which were based on the 9 November 2004 Commercial Lending Criteria) there were corresponding Loan Specific Allegations of participation advanced against Mr Purcell. These allegations consequently fall away.

4.1245 The remaining Loan Specific Allegation is outlined below, and further details of all the Loan Specific Allegations are included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

¹⁰⁶⁶ Commercial Loan Application, dated 11 November 2006 (Doc ID: 0.7.120.484153).

¹⁰⁶⁷ CBRE Valuation Report, dated 3 July 2006 (Doc ID: 0.7.120.16910).

¹⁰⁶⁸ Minutes of Credit Committee meeting, dated 22 November 2006 (Doc ID: 0.7.120.37239).

¹⁰⁶⁹ Minutes of Board meeting, dated 29 November 2006 (Doc ID: 0.7.120.23075).

¹⁰⁷⁰ Commercial Mortgage Offer, dated 15 November 2006 (Doc ID: 0.7.120.44602).

¹⁰⁷¹ Society Advance Detail, dated 16 November 2006 (Doc ID: 0.7.120.42513).

¹⁰⁷² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760698).

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.1246 The relevant policies identified in the Investigation Report were the April 2003 Credit Risk Policy (see Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The April 2003 Credit Risk Policy did apply to this allegation.

4.1247 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA nor the CMO made any reference to a personal guarantee from any of the identified directors of the borrowing company.¹⁰⁷³ The Credit Committee or Board meeting minutes similarly did not refer to a personal guarantee from directors.¹⁰⁷⁴

However, the guarantee of the borrower's holding company was obtained and this would have been regarded as very strong. In such circumstances an adverse finding is not merited in this case.

4.1248 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan. However, given the nature of the corporate guarantee obtained, an adverse finding is not warranted and, accordingly, the Inquiry finds that SPC 3.2 is not proven as against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. In light of the Inquiry's finding in respect of INBS, this loan specific participation allegation against Mr Purcell now falls away.

¹⁰⁷³ Commercial Loan Application, dated 1 September 2008 (Doc ID: 0.7.120.43699); Commercial Mortgage Offer, dated 15 November 2006 (Doc ID: 0.7.120.44602).

¹⁰⁷⁴ Minutes of Credit Committee meeting, dated 22 November 2006 (Doc ID: 0.7.120.37239); Minutes of Board meeting, dated 29 November 2006 (Doc ID: 0.7.120.23075).

CUSTOMER 7: [REDACTED]

4.1249 This section of the Loan File Analysis involves loans from INBS to an entity called [REDACTED], as well as other borrowers associated with the customer's development company, [REDACTED].

[REDACTED] was engaged in carrying out a number of developments in London. There were seven loans divided between three groups and all of the loans were advanced between 2004 and 2007. [REDACTED] was a joint venture in which INBS participated with [REDACTED], a company run by the customer. INBS owned 51% of the joint venture. The decision to form this joint venture with the customer was taken at a Board meeting of INBS on 30 October 2002.¹⁰⁷⁵ On 12 December 2002, Mr McCollum became a director of [REDACTED], a position he held until 27 April 2007 when the joint venture was dissolved.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1250 A loan facility in the amount of £8.5 million was made available by INBS in 2004 for a term of 60 months. The purpose of the loan was to provide finance for the purchase of land and property at [REDACTED], London.¹⁰⁷⁶

The borrower was a subsidiary undertaking of INBS, with INBS holding 51% of ordinary shares in the borrower, and [REDACTED] holding the remaining 49% of ordinary shares.

4.1251 INBS entered into a fee agreement with the borrower on 30 September 2004 pursuant to which it was entitled to a finance fee of 25% on any net profit.¹⁰⁷⁷

In an internal memorandum, dated 24 September 2004¹⁰⁷⁸, Mr McCollum outlined the proposal for an initial loan facility in the amount of £8.5 million to be made available to the borrower in relation to the initial purchase cost of the site at [REDACTED]. Mr

¹⁰⁷⁵ Extract from minutes of Board meeting, dated 3 October 2002 (Doc ID: 0.7.120.5327).

¹⁰⁷⁶ Commercial Mortgage Offer, dated 24 September 2004 (Doc ID: 0.7.120.42830).

¹⁰⁷⁷ Fee Agreement between INBS and [REDACTED], dated 30 September 2004 (Doc ID: 0.7.120.23937).

¹⁰⁷⁸ Internal memorandum from Gary McCollum to Michael Fingleton, dated 24 September 2004 (Doc ID: 0.7.120.36830).

McCollum indicated that the balance of the purchase price of £33 million was due to be paid on 31 March 2005.

4.1252 A valuation report dated September 2004 carried out on behalf of INBS estimated the market value of the site (with vacant possession) at £33 million, and the value of the site with planning permission at £120 million.¹⁰⁷⁹ The CMO dated 24 September 2004 was signed on behalf of INBS by Mr Fingleton, and acceptance was signed on behalf of the borrower by Mr McCollum and another director.¹⁰⁸⁰ The CLA was dated 27 September 2004.¹⁰⁸¹ Funds were first drawn down on 29 September 2004.¹⁰⁸²

4.1253 At the Credit Committee meeting on 13 October 2004¹⁰⁸³, the loan facility was discussed but no decision was made in relation to same, pending further information. The facility was approved at the Board meeting on 19 October 2004. The minutes of the Board meeting recorded that the Managing Director had spoken to all Board members by phone on 27 September 2004 in relation to this loan facility and that all Board members had approved and authorised this loan on that date.¹⁰⁸⁴

The Summit account for this loan¹⁰⁸⁵ showed that it was redeemed on 31 March 2005 with an outstanding balance remaining of over £144,000.

4.1254 There were two Loan Specific Allegations advanced in respect of this loan. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 2.1: Funds advanced without Credit Committee approval or recommendation and not in compliance with INBS's urgent credit decision approval procedures.

4.1255 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1256 The Credit Committee meeting on 13 October 2004, which considered this loan, did not come to any conclusion and noted in the minutes, "*Pending further information*". It

¹⁰⁷⁹ Kemsley, Whitley & Ferris Valuation, dated 20 September 2004, page 16 (Doc ID: 0.7.120.13170).

¹⁰⁸⁰ Commercial Mortgage Offer, dated 24 September 2004 (Doc ID: 0.7.120.42830).

¹⁰⁸¹ Commercial Loan Application, dated 27 September 2004 (Doc ID: 0.7.120.488410).

¹⁰⁸² Society Advance Detail, dated 29 September 2004 (Doc ID: 0.7.120.26449).

¹⁰⁸³ Minutes of Credit Committee meeting, dated 13 October 2004 (Doc ID: 0.7.120.432508).

¹⁰⁸⁴ Minutes of Board meeting, dated 19 October 2004, page 14 (Doc ID: 0.7.120.25338).

¹⁰⁸⁵ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760586).

was not specified what this further information consisted of.¹⁰⁸⁶ The Board meeting minutes for the meeting held on 19 October 2004 noted: "*The Board noted that the Managing Director had spoken to all board members by phone on 27 September 2004 in relation to this loan and that all board members had approved and authorised this loan on that date*".¹⁰⁸⁷

4.1257 The urgent credit decision approval procedures stated that loans must be approved by the Managing Director and two members of the Credit Committee and presented to the Credit Committee as soon as practicable. Any loans so approved should be signed off by the Board as soon as practicable.

4.1258 It is clear from the documents that the Credit Committee did not recommend this loan. The CLA stated, "*Credit committee have reviewed this application and sanction as set out is recommended to the Board*".¹⁰⁸⁸ The CLA recommendation signed by Mr McMenamain was dated 27 September 2004, which was some weeks before the Credit Committee meeting occurred and is consistent with the date of Mr Fingleton's phone call with the Board members.

The Inquiry has considered whether the procedure followed could be compliant with the urgent credit decision approval procedures as set out above. However, the details as set out above show that the Credit Committee appeared to be excluded from the decision making process and the loan was not presented to it at any stage following its request for further information.

4.1259 The Inquiry finds that there was no Credit Committee recommendation for this loan and no compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.1 is proven against INBS.

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1260 The relevant policy was the April 2003 Credit Risk Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

¹⁰⁸⁶ Minutes of Credit Committee meeting, dated 13 October 2004 (Doc ID: 0.7.120.432508).

¹⁰⁸⁷ Minutes of Board meeting, dated 19 October 2004, page 14 (Doc ID: 0.7.120.25338).

¹⁰⁸⁸ Commercial Loan Application, dated 27 September 2004, page 3 (Doc ID: 0.7.120.488410).

4.1261 The CMO was issued on 24 September 2007.¹⁰⁸⁹ The Credit Committee meeting on 13 October 2004 did not recommend this loan for approval¹⁰⁹⁰, and the Board meeting approving it occurred on 19 October 2004.¹⁰⁹¹

4.1262 The phone calls of 27 September 2004 from the Managing Director to all the Board members, in which they all approved the loan, would have been a valid approval if it had occurred before the CMO was issued. However, those phone calls were made three days after the CMO had been issued and signed by Mr McCollum as a director of the borrowing company, although not by the other director who did not sign it until 29 September 2004.

It should be noted that there was another document on file also dated 27 September 2004¹⁰⁹², which was an email from Mr McCollum to INBS's treasury department requesting that £8.1 million be transferred to Howard Kennedy on 29 September 2004 and bank documents show that this was done.¹⁰⁹³

A meeting of the board of directors of [REDACTED] took place on 29 September 2004 accepting the facility.¹⁰⁹⁴

4.1263 The wording of the SPC Allegation is that the CMO was issued before approval, not that it was accepted before approval, and therefore there was a breach with respect to this SPC Allegation.

4.1264 The Inquiry finds that the CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures and, accordingly, finds that SPC 2.13 is proven against INBS.

¹⁰⁸⁹ Commercial Mortgage Offer, dated 24 September 2004 (Doc ID: 0.7.120.42830).

¹⁰⁹⁰ Minutes of Credit Committee meeting, dated 13 October 2004 (Doc ID: 0.7.120.432508).

¹⁰⁹¹ Minutes of Board meeting, dated 19 October 2004, page 14 (Doc ID: 0.7.120.25338).

¹⁰⁹² Email from Gary McCollum to David Murray, INBS, dated 27 September 2004 (Doc ID: 0.7.120.282856).

¹⁰⁹³ Sterling Commercial Advance Static Sheet, dated 29 September 2004 (Doc ID: 0.7.120.6594).

¹⁰⁹⁴ Minutes of meeting of the board of directors of [REDACTED] dated 29 September 2004 (Doc ID: 0.7.120.16134).

Borrower: [REDACTED]

Loan Account No: [REDACTED]

Loan 1 and Loan 3 - background to loans

4.1265 Various facilities were previously sanctioned by INBS for the purchase and development of sites at [REDACTED] and [REDACTED] London, by the borrower.¹⁰⁹⁵

Loan 1

4.1266 The borrower was a subsidiary undertaking of INBS, with INBS holding 51% of ordinary shares in the borrower and [REDACTED] holding the remaining 49% of ordinary shares.

In an internal memorandum dated 31 January 2005, Mr McCollum outlined the proposal for a loan facility of £9.9 million to finalise the purchase of [REDACTED], London, and towards planning costs. INBS was to be entitled to a profit share fee of 25%. This was signed "Approved" by Mr Fingleton on 24 February 2005.¹⁰⁹⁶

4.1267 The CMO dated 14 February 2005 was signed on behalf of INBS by Mr Fingleton and Mr Purcell, and acceptance was signed on behalf of the borrower on 16 February 2005.¹⁰⁹⁷

There were two CLAs on file in respect of this loan. The first was dated 31 January 2005¹⁰⁹⁸ and the second was dated 21 February 2005.¹⁰⁹⁹ Both provided for a loan of £9.9 million for a five year term, as well as a full capital and interest moratorium with INBS entitled to a 25% profit share. The security was a fixed and floating charge over the assets of the borrowing company and a first legal mortgage over the property being purchased. The LTV was 100% of a valuation that was to be confirmed.

4.1268 The loan facility was referred to at two separate Credit Committee meetings dated 2 February and 23 February 2005 respectively¹¹⁰⁰, and was approved at the Board

¹⁰⁹⁵ Commercial Loan Application, dated 21 February 2005 (Doc ID: 0.7.120.489430).

¹⁰⁹⁶ Internal memorandum from Gary McCollum to Michael Fingleton, dated 31 January 2005 (Doc ID: 0.7.120.16526).

¹⁰⁹⁷ Commercial Mortgage Offer, dated 14 February 2005 (Doc ID: 0.7.120.43981).

¹⁰⁹⁸ Commercial Loan Application, dated 31 January 2005 (Doc ID: 0.7.120.29494).

¹⁰⁹⁹ Commercial Loan Application, dated 21 February 2005 (Doc ID: 0.7.120.489430).

¹¹⁰⁰ Minutes of Credit Committee meeting, dated 23 February 2005 (Doc ID: 0.7.120.19811).

meeting on 24 February 2005.¹¹⁰¹ The funds were first drawn down on 25 February 2005.¹¹⁰²

According to the Summit account, this loan continued to accrue interest until 25 February 2010 when there was an outstanding balance of £13,347,852.¹¹⁰³ This loan was transferred to NAMA.

Loan 3

4.1269 In an internal memorandum dated 21 May 2007¹¹⁰⁴, Mr McCollum outlined the proposal for a loan facility of £7.5 million to be made available to take the site to full planning stage, at which time it was envisaged that the construction element would be financed by another lender. INBS was to remain entitled to its profit share.

The additional CMO dated 23 May 2007¹¹⁰⁵ was signed by Mr McCollum on behalf of INBS, and acceptance was signed on behalf of the borrower on 24 May 2007. The CLA was dated 6 June 2007.¹¹⁰⁶ The loan facility was recommended for approval at the Credit Committee meeting on 26 June 2007¹¹⁰⁷, and was duly approved at the Board meeting on 27 June 2007.¹¹⁰⁸

4.1270 The loan facility was first drawn down on 30 May 2007.¹¹⁰⁹ [REDACTED] ceased to be a subsidiary of INBS in May 2007.¹¹¹⁰ According to the Summit account, this loan continued to accrue interest until 29 January 2010, when there was an outstanding balance of £3.975 million.¹¹¹¹ This loan was transferred to NAMA.

4.1271 There were 11 Loan Specific Allegations advanced in respect of the two loans to this borrower. Full details of these Loan Specific Allegations are set out below under each loan, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

¹¹⁰¹ Minutes of the Board meeting, dated 24 February 2005 (Doc ID: 0.7.120.6850).

¹¹⁰² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760718).

¹¹⁰³ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760718).

¹¹⁰⁴ Internal memorandum from Gary McCollum to Michael Fingleton, dated 21 May 2007 (Doc ID: 0.7.120.22226).

¹¹⁰⁵ Additional Commercial Mortgage Offer, dated 23 May 2007 (Doc ID: 0.7.120.18059).

¹¹⁰⁶ Commercial Loan Application, dated 6 June 2007 (Doc ID: 0.7.120.28539).

¹¹⁰⁷ Minutes of Credit Committee meeting, dated 26 June 2007 (Doc ID: 0.7.120.16540).

¹¹⁰⁸ Minutes of Board meeting, dated 27 June 2007 (Doc ID: 0.7.120.6693).

¹¹⁰⁹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760587).

¹¹¹⁰ Minutes of Board meeting, dated 24 April 2007, page 10 (Doc ID: 0.7.120.7630) and KPMG Project Harmony Report, dated 20 June 2007, page 66 et seq. (Doc ID: 0.7.120.55785).

¹¹¹¹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760587).

Loan 1

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Business plan/proposals.**
- (b) **Forecast cash flow analysis.**

4.1272 The relevant policy identified by the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1273 The relevant policy was the April 2003 Credit Risk Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1274 At the Loan Hearings, the Inquiry was referred to the CMO, which issued on 14 February 2005¹¹¹², a CLA which issued on 21 February 2005¹¹¹³, and a Credit Committee recommendation dated 23 February 2005.¹¹¹⁴ Board approval came the following day on 24 February 2005.¹¹¹⁵ As noted above at paragraph 4.1267, there were two CLAs on file in respect of this loan. The other CLA was dated 31 January 2005.

A loan specific participation allegation was advanced against Mr Purcell in respect of this loan. Consolidated Table 2.5.2 of the Investigation Report stated:

"For one of the 48 loans where it is suspected that the CMO was issued prior to the appropriate recommendation for approval and/or approval (Credit Committee and/or Board) being received and without compliance with the

¹¹¹² Commercial Mortgage Offer, dated 14 February 2005 (Doc ID: 0.7.120.43981).

¹¹¹³ Commercial Loan Application, dated 21 February 2005 (Doc ID: 0.7.120.489430).

¹¹¹⁴ Minutes of Credit Committee meeting, dated 23 February 2005 (Doc ID: 0.7.120.19811).

¹¹¹⁵ Minutes of the Board meeting, dated 24 February 2005 (Doc ID: 0.7.120.6850).

Society's urgent credit decision approval procedures, Stan Purcell signed the CMO and subsequently attended the Board meeting at which the loan was approved".¹¹¹⁶

In written submissions to the Inquiry at the conclusion of the Loan Hearing, Mr Purcell stated as follows with respect to this allegation¹¹¹⁷:

"1. A CLA for [REDACTED] dated 31 January 2005 for the purchase and redevelopment of planning at [REDACTED], London [REDACTED] was signed "Recommended" by Tom McMEnamin on 31 January 2005. The CLA was for £STG. 9.9m. (0.7.120.29494). This CLA was not mentioned during yesterday's hearing when this [REDACTED] loan was considered.

2. This CLA dated 31 January 2005 was based on an internal memo dated 31 January 2005 (07.120.16526) from Gary McCollum to Michael Fingleton.

3. At a meeting of the Credit Committee held on 2 February 2005 (0.7.120.9606) a loan to [REDACTED] to provide finance for the purchase and redevelopment of planning at [REDACTED], London [REDACTED] was recommended by the Credit Committee for board approval. This recommendation was signed by Tom McMEnamin and John Roche.

The minutes of the Credit Committee contain a typing mistake, £STG 9.0m is recorded in the minutes whereas the minutes should have recorded £STG 9.9m. as per the memo and CLA mentioned.

4. The minutes of the Credit Committee meeting held on 23 February 2005 (0.7.120.19811) record the loan to [REDACTED] to purchase [REDACTED] [REDACTED] being recommended again by the Credit Committee but this time recording the correct amount sought as £STG 9.9m.

The loan for £STG 9.9m. was already recommended by Tom McMEnamin on the CLA dated 31 January 2005 and by the Credit Committee on 2 February 2005. The typing mistake in the minutes of 2 February 2005 was corrected on 23 February 2005.

¹¹¹⁶ Consolidated Table C2.5.2 (Doc ID: RDU_REL1600-00010006).

¹¹¹⁷ Written submissions and response to specific loans of Mr Purcell, dated 22 April 2021, page 14 (Doc ID: RDU_REL623-000000019).

The Commercial Mortgage Offer (CMO) for £STG 9.9m. for [REDACTED] was signed by Michael Fingleton and Stan Purcell on 14 February 2005. This loan was approved by the Credit Committee on 2 February 2005 and the CMO was signed by two directors on 14 February 2005. This interim approval was in line with the board resolution dated 10 September 2002 (0.7.120.431867)".

4.1275 The Inquiry has checked the documentation and timeline submitted by Mr Purcell and agrees with his submission.

4.1276 The Inquiry finds that the CMO was not issued prior to appropriate recommendation for approval and, accordingly, finds that SPC 2.13 is not proven against INBS.

In light of the Inquiry's finding in respect of INBS, the loan specific participation allegation against Mr Purcell falls away.

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.1277 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

4.1278 A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As no finding has been made against INBS, this loan specific participation allegation against Mr Purcell now falls away.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.1279 The relevant policy was the 16 October 2003 Commercial Credit Committee Terms of Reference.

In circumstances where the Inquiry makes no finding in respect of SPC 3.4, this allegation no longer arises.

4.1280 A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. As the allegation against INBS falls away, this loan specific participation allegation against Mr Purcell also now falls away.

Loan 3

SPC 1.2: CLA not prepared in advance of funds being drawn down.

4.1281 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1282 The CLA for this loan was dated 6 June 2007.¹¹¹⁸ The date of first drawdown, according to the Summit account, was 30 May 2007 in the sum of £390,550.¹¹¹⁹

4.1283 **The Inquiry finds that the CLA was not prepared in advance of funds being drawn down and, accordingly, finds that SPC 1.2 is proven against INBS.**

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) **Business plan/proposals.**

(b) **Forecast cash flow analysis.**

4.1284 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1285 An internal memorandum from Mr McCollum to Mr Fingleton dated 21 May 2007, stated:

"1. As you are aware, [REDACTED] have recently provided full updates in relation to both projected profits and additional costs to take various sites to full planning stage, at which time it is envisaged that the construction element will be financed by another lender with the Society remaining entitled to it's [sic] profit share.

2. As such, it is now required to put in place additional facilities in relation to the three sites charged to the Society as follows:

¹¹¹⁸ Commercial Loan Application, dated 6 June 2007 (Doc ID: 0.7.120.28539).

¹¹¹⁹ Summit Account No. [REDACTED] (Doc ID: 0.7.120.760587).

[current site - £7,500,000.00.]

...

3. I enclose the updated development appraisals and seek approval to proceed...".¹¹²⁰

The consolidated loan file for this loan did not contain the information cited above. This documentation was received by INBS but not inserted into the loan file as it should have been.

No valuation report or certificate of valuation was identified in the folder for this loan. The Board meeting minutes recorded a total valuation figure of £60 million. The drawdown documentation recorded no completed valuation.¹¹²¹

4.1286 The Inquiry is mindful that there is no definition of a business plan and, in the circumstances of this loan, they are satisfied that the documentation suggests that adequate information may have been acquired in advance of it being advanced.

The Inquiry does not believe that they have enough information to make a finding that a cash flow analysis was not obtained – the information referred to above may have contained such a document.

4.1287 The Inquiry finds that there was evidence that required information had been acquired from the borrower and, accordingly, it finds that SPC 1.3 is not proven against INBS.

SPC 2.5: Loans advanced prior to quorate Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with INBS's urgent credit decision approval procedures.

4.1288 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

¹¹²⁰ Internal memorandum from Gary McCollum to Michael Fingleton, dated 21 May 2007 (Doc ID: 0.7.120.22226).

¹¹²¹ Drawdown and Control Section Payout Approval, dated 30 October 2008 (Doc ID: 0.7.120.22159).

4.1289 The date of the first drawdown for this loan was 30 May 2007¹¹²², while the date of Credit Committee recommendation was 26 June 2007.¹¹²³ The Credit Committee meeting therefore took place 27 days after the first drawdown of this loan.

The Inquiry has examined the consolidated loan file and Credit Committee and Board meeting minutes and packs, and there is no evidence of compliance with any urgent credit decision approval procedures.

4.1290 The Inquiry finds that this loan was advanced prior to the Credit Committee meeting and not in compliance with urgent credit decision approval procedures. Accordingly, it finds that SPC 2.5 is proven against INBS.

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1291 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1292 The date of the first drawdown for this loan was 30 May 2007¹¹²⁴, while the date of the Credit Committee recommendation was 26 June 2007.¹¹²⁵ The Board approved the loan on 27 June 2007.¹¹²⁶ There is no reference to urgent credit decision approval procedures in the Board meeting minutes approving this loan.

The Inquiry has examined the consolidated loan file and Credit Committee and Board meeting minutes and packs and there is no evidence of compliance with any urgent credit decision approval procedures.

4.1293 The Inquiry finds that this loan was advanced prior to Board approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.6 is proven against INBS.

¹¹²² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760587).

¹¹²³ Minutes of Credit Committee meeting, dated 26 June 2007 (Doc ID: 0.7.120.16540).

¹¹²⁴ Summit Account No [REDACTED] (Doc ID: 0.7.120.760587).

¹¹²⁵ Minutes of Credit Committee meeting, dated 26 June 2007 (Doc ID: 0.7.120.16540).

¹¹²⁶ Minutes of Board meeting, dated 27 June 2007 (Doc ID: 0.7.120.6693).

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1294 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1295 The CMO was dated 23 May 2007¹¹²⁷, and the date of Credit Committee recommendation was 26 June 2007.¹¹²⁸ The loan was approved by the Board on 27 June 2007.

The Inquiry has examined the consolidated loan file and Credit Committee and Board meeting minutes and packs, and there is no evidence of compliance with any urgent credit decision approval procedures.

4.1296 The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures. Accordingly, it finds that SPC 2.13 is proven against INBS.

SPC 2.16: CMO not appropriately signed by INBS.

4.1297 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 12).

4.1298 The CMO was issued on 23 May 2007 and was signed by Mr McCollum only.¹¹²⁹ The 28 February 2007 Commercial Mortgage Lending Policy cited above had changed the rules regarding sign-off of CMOs and it directed that "*All commercial loan offers are to be signed by two members of the commercial lending department, one of whom must be either the Commercial lending Manager or Senior Commercial lender*".¹¹³⁰ The previous April 2003 Credit Risk Policy had provided that CMOs should be signed off by a senior commercial lender or the underwriter¹¹³¹, however this had been superseded by the above referenced requirement for signatures of two members of the commercial lending department, which did not occur in this instance.

¹¹²⁷ Commercial Mortgage Offer, dated 23 May 2007 (Doc ID: 0.7.120.18059).

¹¹²⁸ Minutes of Credit Committee meeting, dated 26 June 2007 (Doc ID: 0.7.120.16540).

¹¹²⁹ Commercial Mortgage Offer, dated 23 May 2007 (Doc ID: 0.7.120.18059).

¹¹³⁰ 28 February 2007 Commercial Mortgage Lending Policy, page 13 (Doc ID: 0.7.120.27792).

¹¹³¹ April 2003 Credit Risk Policy, page 14 (Doc ID: 0.7.120.478217).

4.1299 **The Inquiry finds the CMO was not appropriately signed by INBS and, accordingly, finds that SPC 2.16 is proven against INBS.**

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.1300 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

4.1301 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA¹¹³² nor the CMO¹¹³³ made any reference to a personal guarantee from any of the identified directors of the borrowing company. The Credit Committee¹¹³⁴ or Board minutes¹¹³⁵ similarly did not refer to a personal guarantee from directors. [REDACTED] ceased to be a subsidiary of INBS in May 2007¹¹³⁶ and, thereafter, the requirement for a personal guarantee arose.

4.1302 **The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.**

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

¹¹³² Commercial Loan Application, dated 6 June 2007 (Doc ID: 0.7.120.28539).

¹¹³³ Commercial Mortgage Offer, dated 23 May 2007 (Doc ID: 0.7.120.18059).

¹¹³⁴ Minutes of Credit Committee meeting, dated 26 June 2007 (Doc ID: 0.7.120.16540).

¹¹³⁵ Minutes of Board meeting, dated 27 June 2007 (Doc ID: 0.7.120.6693).

¹¹³⁶ KPMG Project Harmony Report, dated 20 June 2007, page 66 et seq. (Doc ID:0.7.120.55785).

Borrower: [REDACTED]

Loan Account: [REDACTED]

Loans 1, 2, 3 and 4 - background to loans

4.1303 INBS advanced a number of facilities to the borrower in 2005, 2006 and 2007 in relation to a site in east London. The purpose of these facilities was to enable the borrower refinance loan account [REDACTED] (set out above at paragraph 4.1265 4.1244et seq.), to provide funds in relation to overage payments and the ongoing development of planning, and to enable the borrower service the planning and related costs associated with bringing the site to full planning stage.

The borrower was a subsidiary undertaking of INBS, with INBS holding 51% of ordinary shares in the borrower, and [REDACTED] holding the remaining 49% of ordinary shares. This ceased to be the case from May 2007, when INBS divested itself of its interest in [REDACTED] and Mr McCollum resigned as a director of the company.¹¹³⁷

Loan 1

4.1304 A loan facility in the amount of £35,775,000 was made available by INBS in 2005 for a term of 54 months. The purpose of the loan was to refinance the existing borrowings of the borrower under loan account [REDACTED] in relation to deposit monies provided by INBS, and to provide funds in relation to the purchase costs and development of planning at a site in east London.¹¹³⁸

A valuation report dated September 2004 was prepared by an independent valuer on behalf of INBS. The market value of the site (with vacant possession) was estimated to be £33 million and the value of the site with planning permission was estimated at £120 million.¹¹³⁹ A further valuation from a different valuation firm, dated 2 March 2005¹¹⁴⁰, valued the site at £40 million with full vacant possession.

4.1305 The CLA was dated 21 February 2005.¹¹⁴¹ It provided for a loan of £27 million for a term of five years with a full capital and interest moratorium for the term of the loan. The LTV was stated to be 100%, although the valuation section of the CLA stated:

¹¹³⁷ KPMG Project Harmony Report, dated 20 June 2007, page 66 et seq. (Doc ID:0.7.120.55785).

¹¹³⁸ Commercial Loan Application, dated 21 February 2005 (Doc ID: 0.7.120.485690).

¹¹³⁹ Kemsley, Whitley & Ferris Valuation Report, dated September 2004, page 16 (Doc ID: 0.7.120.13170).

¹¹⁴⁰ Alan Selby Valuation Report, dated February 2005, page 3 (Doc ID: 0.7.120.5155).

¹¹⁴¹ Commercial Loan Application dated 21 February 2005 (Doc ID: 0.7.120.485690).

“Valuation: £33 M Stg Purchase price. Re-Sale Value with Planning £120 M – To be confirmed”. INBS had already advanced a loan of £8.5 million for a deposit and stamp duty.¹¹⁴²

INBS was to be entitled to a 25% share of the profits upon resale or refinance. The security for the loan was a mortgage debenture over the assets of the company to include a first legal charge over the property the subject matter of the loan.

4.1306 The CMO dated 21 March 2005¹¹⁴³ provided for a loan of £35,775,000 for 54 months and the purpose of the loan included refinancing the existing borrowing in relation to deposit monies and costs. It was signed by Mr Fingleton on behalf of INBS and was signed on behalf of the borrower on 22 March 2005. The Credit Committee recommended this loan for £27 million at its meeting on 23 February 2005.¹¹⁴⁴ The Board approved this loan for £27 million at its meeting on 24 February 2005.¹¹⁴⁵

4.1307 The loan was first drawn down on 30 March 2005¹¹⁴⁶ and continued to accrue interest until 10 February 2010 when, according to the Summit account, there was an outstanding balance of £48,256,433.91.¹¹⁴⁷ This loan was transferred to NAMA.

Loan 2

4.1308 A further loan facility in the amount of £6.2 million was made available by INBS on 11 July 2005 for a term of 50 months. The purpose of this loan was to provide additional funds in relation to a negotiated overage payment due to the vendor and in relation to the ongoing development of planning at [REDACTED] in east London.

In an internal memorandum dated 27 June 2005, Mr McCollum outlined the proposal for an additional loan facility in the amount of £6.2 million.¹¹⁴⁸ This consisted of £4.2 million for planning fees and £2 million payment due to the vendor.

4.1309 The CLA was dated 11 July 2005.¹¹⁴⁹ It provided for a loan of £9.2 million for a five year term. There was a full capital and interest moratorium for the duration of the loan and repayment was to be made in full from resale or refinance. The purpose of the loan, according to the CLA, was to pay £6.2 million in relation to planning fees and £2

¹¹⁴² See Loan Account: [REDACTED], relating to [REDACTED] (above at paragraph 4.1244 et seq.).

¹¹⁴³ Commercial Mortgage Offer, dated 21 March 2005 (Doc ID: 0.7.120.41639).

¹¹⁴⁴ Minutes of Credit Committee meeting, dated 23 February 2005 (Doc ID: 0.7.120.19811).

¹¹⁴⁵ Minutes of Board meeting, dated 24 February 2005 (Doc ID: 0.7.120.6850).

¹¹⁴⁶ Society Advance Detail, dated 30 March 2005 (Doc ID: 0.7.120.23105).

¹¹⁴⁷ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760570).

¹¹⁴⁸ Internal memorandum from Gary McCollum to Michael Fingleton, dated 27 June 2005 (Doc ID: 0.7.120.7296).

¹¹⁴⁹ Commercial Loan Application, dated 11 July 2005 (Doc ID: 0.7.120.749753).

million in relation to a negotiated overage payment due to the vendor. The CLA stated: “The initial overage payment of Stg£2M has already been paid by [REDACTED] who wish to be reimbursed”.

The value in the CLA was estimated at £140 million according to a valuation obtained on 13 June 2005. INBS was to be entitled to a profit share of 25% upon resale.

4.1310 The additional CMO dated 11 July 2005 was signed by Mr Fingleton on behalf of INBS and by the borrower on 13 July 2005.¹¹⁵⁰ The amount stated in the CMO was “£6,200,000.00stg... in addition to the balances outstanding under Mortgage account number [REDACTED]”. The CMO made no reference to overage payments.

The facility for £6.2 million was recommended for approval at the Credit Committee meeting on 18 July 2005¹¹⁵¹, and was duly approved at the Board meeting on 25 July 2005.¹¹⁵² The loan was first drawn down on 18 July 2005.¹¹⁵³

4.1311 This loan was transferred to NAMA.

Loan 3

4.1312 A further loan facility was made available by INBS in 2006 in the amount of £6 million for a term of 40 months. The purpose of this loan was to provide additional funds in relation to overage payments and the ongoing development of planning at [REDACTED] in east London.

4.1313 The additional CMO dated 1 June 2006 was signed on that date by the borrower, however it does not appear to have been signed on behalf of INBS. Mr Fingleton’s name was printed on the form but his signature is missing.¹¹⁵⁴ On that same date, 1 June 2006, Mr McCollum wrote to INBS’s treasury department and requested a transfer of £6 million on the following day.¹¹⁵⁵

The loan was first drawn down on 2 June 2006. It continued to accrue interest until 3 December 2009 when, according to the Summit account, there was an outstanding balance of £7,557,832.49.¹¹⁵⁶ This loan was transferred to NAMA.

¹¹⁵⁰ Additional Commercial Mortgage Offer, dated 11 July 2005 (Doc ID: 0.7.120.18429).

¹¹⁵¹ Minutes of Credit Committee meeting, dated 18 July 2005 (Doc ID: 0.7.120.518843).

¹¹⁵² Minutes of Board meeting, dated 25 July 2005 (Doc ID: 0.7.120.25821).

¹¹⁵³ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760582).

¹¹⁵⁴ Additional Commercial Mortgage Offer, dated 1 June 2006 (Doc ID: 0.7.120.41524).

¹¹⁵⁵ Internal memorandum from Gary McCollum to John Costelloe, dated 1 June 2006 (Doc ID: 0.7.120.16128).

¹¹⁵⁶ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760722).

Loan 4

- 4.1314 A further loan facility in the amount of £7.5 million was made available by INBS on 23 May 2007 for a term of 28 months (in line with the existing term which expired in September 2009). The purpose of the loan was to enable the borrower service the planning and related costs associated with bringing the site to full planning stage.¹¹⁵⁷
- 4.1315 In an internal memorandum dated 21 May 2007, Mr McCollum outlined the proposal for an additional facility in the sum of £7.5 million in relation to the site.¹¹⁵⁸ The additional CMO dated 23 May 2007 was signed on behalf of INBS by Mr McCollum, and acceptance was signed on behalf of the borrower on 24 May 2007.¹¹⁵⁹ [REDACTED] ceased to be a subsidiary of INBS in May 2007¹¹⁶⁰, the day before this CMO was issued.
- 4.1316 The funds were first drawn down on 30 May 2007.¹¹⁶¹ The CLA was dated 6 June 2007.¹¹⁶² It provided an additional facility of £7.5 million until September 2009 with a full capital and interest moratorium. The LTV was stated to be 52% based on a valuation of £120 million, although a satisfactory valuation was required. The additional facility was recommended for approval at the Credit Committee meeting on 26 June 2007¹¹⁶³, and was duly approved at the Board meeting on 27 June 2007.¹¹⁶⁴
- 4.1317 This loan continued to accrue interest until December 2009 when there was an outstanding balance of £8,204,978.74.¹¹⁶⁵ This loan was transferred to NAMA.
- 4.1318 There were 20 Loan Specific Allegations advanced in respect of the four loans to this borrower. Full details of these Loan Specific Allegations are set out below under each loan, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

¹¹⁵⁷ Commercial Loan Application, dated 6 June 2007 (Doc ID: 0.7.120.487242).

¹¹⁵⁸ Internal Memorandum from Gary McCollum to Michael Fingleton, dated 21 May 2007 (Doc ID: 0.7.120.43251).

¹¹⁵⁹ Additional Commercial Mortgage Offer, dated 23 May 2007 (Doc ID: 0.7.120.25211).

¹¹⁶⁰ KPMG Project Harmony Report, dated 20 June 2007, page 66 et seq. (Doc ID: 0.7.120.55785).

¹¹⁶¹ Summit Account No. [REDACTED] (Doc ID: 0.7.120.760553).

¹¹⁶² Commercial Loan Application, dated 6 June 2007 (Doc ID: 0.7.120.487242).

¹¹⁶³ Minutes of Credit Committee meeting, dated 26 June 2007 (Doc ID: 0.7.120.16540).

¹¹⁶⁴ Minutes of Board meeting, dated 27 June 2007 (Doc ID: 0.7.120.6693).

¹¹⁶⁵ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760553).

Loan 1

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) Business plan/proposals.**
- (b) Forecast cash flow analysis.**

4.1319 The relevant policy identified in the Investigation Report policy was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval (as required) and not in compliance with INBS's urgent credit decision approval procedures.

4.1320 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1321 This allegation arose from the fact that both the Credit Committee and the Board approved a loan for £27 million, as per the CLA. The CMO, however, offered a facility of £33,775,000. The CLA stated that the purpose of the loan was to provide finance to assist with the purchase and development of planning at the site.

The purpose of the loan as set out in the CMO was to refinance an existing borrowing in relation to deposit monies and costs already provided to the borrower under a separate account number.

4.1322 The Inquiry does not believe that it is accurate to say that there was no Credit Committee or Board approval in this case. The additional sum in the CMO was to repay existing finance and it did not provide an additional risk to INBS.

Technically, the Credit Committee and Board approval should have been consistent with the offer made to the borrower, but in this instance the Inquiry does not believe this breach merits an adverse finding against INBS.

4.1323 The Inquiry does not find that there was no Credit Committee approval or recommendation and no Board approval in this case and, accordingly, finds that SPC 2.2 is not proven against INBS.

SPC 3.4: The LTV was greater than the maximum applicable LTV set out in INBS's internal policies.

4.1324 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

4.1325 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 3.5: For loans where the LTV was greater than the LTV set out in relevant lending policy, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.

4.1326 This allegation was an INBS Only Allegation and so it was not opened during the SPC 1 to 4 Loan Hearings. Accordingly, this allegation was not considered by the Inquiry.

Loan 2

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Business plan/proposals.

(b) Forecast cash flow analysis.

4.1327 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 2.4: Credit Committee not quorate when loans were approved or recommended and loans not in compliance with INBS's urgent credit decision approval procedures.

4.1328 This allegation is an INBS Only Allegation and so it was not opened during the SPC 1 to 4 Loan Hearings. Accordingly, this allegation was not considered by the Inquiry.

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1329 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1330 The date of Board approval for this loan was 25 July 2005¹¹⁶⁶, and the date of first drawdown was 18 July 2005.¹¹⁶⁷

There is no evidence that the urgent credit decision approval procedures were complied with in this case and there was no reference to this drawdown having taken place in the minutes approving this loan.

4.1331 **The Inquiry finds that funds were advanced prior to Board approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.6 is proven against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1332 The relevant policy was the April 2003 Credit Risk Policy. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

¹¹⁶⁶ Minutes of Board meeting, dated 25 July 2005 (Doc ID: 0.7.120.25821).

¹¹⁶⁷ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760582).

4.1333 The CMO for this loan was dated 11 July 2005¹¹⁶⁸, and the date of the Credit Committee recommendation was 18 July 2005.¹¹⁶⁹ The loan was approved by the Board on 25 July 2005.¹¹⁷⁰

There is no evidence from the consolidated loan file or from the Credit Committee and Board meeting minutes and packs that urgent credit decision approval procedures were complied with in this case. Neither the Credit Committee nor the Board meeting minutes referred to the fact that the CMO had already been issued.

4.1334 The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.13 is proven against INBS.

Loan 3

SPC 1.1: No CLA was prepared at all.

4.1335 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) Business plan/proposals.

(b) Forecast cash flow analysis.

4.1336 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

¹¹⁶⁸ Additional Commercial Mortgage Offer, dated 11 July 2005 (Doc ID: 0.7.120.18429).

¹¹⁶⁹ Minutes of Credit Committee meeting, dated 18 July 2005 (Doc ID: 0.7.120.518843).

¹¹⁷⁰ Minutes of Board meeting, dated 25 July 2005 (Doc ID: 0.7.120.25821).

SPC 1.4: Credit grades were not assigned to commercial loans.

4.1337 The relevant policies were the 8 April 2003 Credit Grading System for Commercial Lending and the 2005 Impairment Provisioning Policy. (See Table included at Appendix 11).

4.1338 In his submissions to the Inquiry, Mr Purcell stated that the Impairment Provisioning Policies did not create new policy with regard to credit grades. He further submitted that the 8 April 2003 Credit Grading System for Commercial Lending did not require that a CLA should have a credit grade when presented to the Credit Committee or the Board. The Inquiry agrees with both of these assertions and therefore no finding is made in respect of this allegation. The assigning of credit grades during the loan approval process is dealt with at Chapter 5 of this Findings Report (see paragraph 5.197 et seq.). That part of the Findings Report outlines Mr Purcell's submissions on this point and the reasoning for the Inquiry's finding that a failure to assign a credit grade at the loan approval stage was not a breach of INBS internal policy.

SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval (as required) and not in compliance with INBS's urgent credit decision approval procedures.

4.1339 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002. (See Table included at Appendix 12).

4.1340 From an analysis of all Credit Committee and Board meeting minutes and packs during the Review Period, there is no evidence that this loan was presented to the Credit Committee or the Board at any stage during that time, either as a loan application or as part of the urgent credit decision approval process.

4.1341 **The Inquiry finds that this loan had no Credit Committee approval or recommendation and no Board approval and was not in compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.2 is proven against INBS.**

SPC 2.16: CMO not appropriately signed by INBS.

4.1342 The relevant policy was the UK Version of the April 2003 Credit Risk Policy. (See Table included at Appendix 12).

4.1343 This policy required that the CMO be signed by the manager of the INBS Belfast Branch, Mr McCollum. However, as Mr McCollum was a director of the borrowing company, he was not in a position to sign on behalf of INBS. The CMO provided for Mr Fingleton's signature, but he does not appear to have signed it. In fact the CMO was not signed at all on behalf of INBS.

4.1344 The Inquiry finds that the CMO was not appropriately signed by INBS and, accordingly, that SPC 2.16 is proven against INBS.

Loan 4

SPC 1.2: CLA not prepared in advance of funds being drawn down.

4.1345 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1346 The CLA was dated 6 June 2007.¹¹⁷¹ The initial drawdown, according to the Summit account for this loan, was on 30 May 2007.¹¹⁷²

4.1347 The Inquiry finds that the CLA for this loan was not prepared in advance of the loan being drawn down. Accordingly, the Inquiry finds that SPC 1.2 is proven against INBS.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) **Business plan/proposals.**

(b) **Forecast cash flow analysis.**

4.1348 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 11).

4.1349 An internal memorandum from Mr McCollum to Mr Fingleton, dated 21 May 2007, stated:

"As you are aware, [REDACTED] have recently provided full updates in relation to both projected profits and additional costs to take the various sites to full planning stage, at which time it is envisaged that the construction element will

¹¹⁷¹ Commercial Loan Application, dated 6 June 2007 (Doc ID: 0.7.120.487242).

¹¹⁷² Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760553).

be financed by another lender with the Society remaining entitled to its [sic] profit share".¹¹⁷³

The Inquiry has taken into account the relationship between INBS and the borrower in considering the merits of this allegation, as they did with respect to Loans 1, 2 and 3.

At the time that this loan was advanced INBS was no longer a 51% shareholder in the borrowing company, but the information outlined in the CLA¹¹⁷⁴ and quoted above would constitute a business plan and forecast cash flow analysis for the purposes of this loan.

4.1350 The Inquiry finds that there was no failure to acquire required information and, accordingly, finds that SPC 1.3 is not proven against INBS.

SPC 2.5: Loans advanced prior to quorate Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with INBS's urgent credit decision approval procedures.

4.1351 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1352 The CMO for this loan was dated 23 May 2007¹¹⁷⁵, and the date of the first drawdown was 30 May 2007.¹¹⁷⁶ The Credit Committee recommended the loan on 26 June 2007¹¹⁷⁷, and it was approved by the Board on 27 June 2007.¹¹⁷⁸ The first drawdown for this loan occurred 28 days before the Board approval.

Urgent credit decision approval procedures required approval by two members of the Credit Committee and the Managing Director and presentation to the Credit Committee and the Board as soon as practicable thereafter.¹¹⁷⁹ There is no evidence that urgent credit decision approval procedures were complied with in respect of this loan. Neither the Credit Committee meeting minutes nor the Board meeting minutes made any reference to the fact that the CMO had issued and the loan had been drawn down.

¹¹⁷³ Internal memorandum from Gary McCollum to Michael Fingleton, dated 21 May 2007 (Doc ID: 0.7.120.43251).

¹¹⁷⁴ Commercial Loan Application, dated 6 June 2007 (Doc ID: 0.7.120.487242).

¹¹⁷⁵ Additional Commercial Mortgage Offer, dated 23 May 2007 (Doc ID: 0.7.120.25211).

¹¹⁷⁶ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760553).

¹¹⁷⁷ Minutes of Credit Committee meeting, dated 26 June 2007 (Doc ID: 0.7.120.16540).

¹¹⁷⁸ Minutes of Board meeting, dated 27 June 2007 (Doc ID: 0.7.120.6693).

¹¹⁷⁹ 19 July Credit Committee Terms of Reference, page 3 (Doc ID: 0.7.120.13247).

4.1353 **The Inquiry finds that this loan was advanced prior to the Credit Committee meeting and not in compliance with urgent credit decision approval procedures. Accordingly, it finds that SPC 2.5 is proven against INBS.**

SPC 2.6: Funds advanced prior to Board approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1354 The relevant policies were the 28 February 2007 Commercial Mortgage Lending Policy and the 19 July 2006 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 19 July 2006 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1355 The CMO for this loan was dated 23 May 2007¹¹⁸⁰ and the date of first drawdown was 30 May 2007.¹¹⁸¹ The Credit Committee recommended the loan on 26 June 2007¹¹⁸², and it was approved by the Board on 27 June 2007.¹¹⁸³

There is no evidence that the urgent credit decision approval procedures were complied with and the Board meeting minutes did not make any reference to the fact that the CMO had issued and the loan had already been drawn down prior to Board approval.

4.1356 **The Inquiry finds that funds were advanced prior to Board approval and not in compliance with urgent credit decision approval procedures. Accordingly, it finds that SPC 2.6 is proven against INBS.**

SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with INBS's urgent credit decision approval procedures.

4.1357 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. The relevant urgent credit decision approval procedures were set out in the 19 July 2006 Commercial Credit Committee Terms of Reference and the Board Resolution September 2002. (See Table included at Appendix 12).

¹¹⁸⁰ Additional Commercial Mortgage Offer, dated 23 May 2007 (Doc ID: 0.7.120.25211).

¹¹⁸¹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760553).

¹¹⁸² Minutes of Credit Committee meeting, dated 26 June 2007 (Doc ID: 0.7.120.16540).

¹¹⁸³ Minutes of Board meeting, dated 27 June 2007 (Doc ID: 0.7.120.6693).

4.1358 The CMO for this loan was dated 23 May 2007¹¹⁸⁴ and the date of first drawdown was 30 May 2007.¹¹⁸⁵ The Credit Committee recommended the loan on 26 June 2007¹¹⁸⁶, and it was approved by the Board on 27 June 2007.¹¹⁸⁷

There is no evidence that urgent credit decision approval procedures were complied with in respect of this loan. Neither the Credit Committee meeting minutes nor the Board meeting minutes made any reference to the fact that the CMO had issued and the loan had already been drawn down.

4.1359 The Inquiry finds that the CMO was issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures. Accordingly, it finds that SPC 2.13 is proven against INBS.

SPC 2.16: CMO not appropriately signed by INBS.

4.1360 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 12).

4.1361 The CMO was signed by Mr McCollum on 23 May 2007¹¹⁸⁸, which was a day after Mr McCollum ceased to be a director of the borrowing company and INBS ceased to be a majority shareholder.

The 28 February 2007 Commercial Mortgage Lending Policy cited above had changed the rules regarding sign-off of CMOs and it directed that "*All commercial loan offers are to be signed by two members of the commercial lending department, one of whom must be either the Commercial lending Manager or Senior Commercial lender*".¹¹⁸⁹ The April 2003 Credit Risk Policy had previously provided that CMOs should be signed off by a senior commercial lender or the underwriter.¹¹⁹⁰

4.1362 The Inquiry finds that the CMO was not appropriately signed by INBS and, accordingly, that SPC 2.6 is proven against INBS.

¹¹⁸⁴ Additional Commercial Mortgage Offer, dated 23 May 2007 (Doc ID: 0.7.120.25211).

¹¹⁸⁵ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760553).

¹¹⁸⁶ Minutes of Credit Committee meeting, dated 26 June 2007 (Doc ID: 0.7.120.16540).

¹¹⁸⁷ Minutes of Board meeting, dated 27 June 2007 (Doc ID: 0.7.120.6693).

¹¹⁸⁸ Additional Commercial Mortgage Offer, dated 23 May 2007 (Doc ID: 0.7.120.25211).

¹¹⁸⁹ 28 February 2007 Commercial Mortgage Lending Policy, page 13 (0.7.120.27792).

¹¹⁹⁰ April 2003 Credit Risk Policy, page 14 (Doc ID: 0.7.120.478217).

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.1363 The relevant policy was the 28 February 2007 Commercial Mortgage Lending Policy. (See Table included at Appendix 13).

4.1364 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. Neither the CLA¹¹⁹¹ nor the CMO¹¹⁹² made any reference to a personal guarantee from any of the identified directors of the borrowing company. Similarly, neither the Credit Committee¹¹⁹³ nor Board meeting minutes¹¹⁹⁴ referred to a personal guarantee from directors. [REDACTED] ceased to be a subsidiary of INBS in May 2007¹¹⁹⁵ and, thereafter, the requirement for a personal guarantee arose.

4.1365 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, it finds that SPC 3.2 is proven against INBS.

A Loan Specific Allegation was also advanced against Mr Purcell in respect of this loan. The Inquiry notes from the Board meeting minutes that Mr Purcell attended the Board meeting at which this loan was authorised and therefore knew or ought to have known that there was no guarantee indicated in the CLA. The Inquiry finds that Mr Purcell's attendance at the Board meetings and his role as a Board member in approving this loan, did amount to participation in the authorisation of this loan without a personal guarantee from the corporate borrower. The Inquiry will have regard to this loan specific participation finding against Mr Purcell in Chapter 7, when considering the broader allegation of participation by Mr Purcell in SPC 3.

¹¹⁹¹ Commercial Loan Application, dated 6 June 2007 (Doc ID: 0.7.120.487242).

¹¹⁹² Additional Commercial Mortgage Offer, dated 23 May 2007 (Doc ID: 0.7.120.25211).

¹¹⁹³ Minutes of Credit Committee meeting, dated 26 June 2007 (Doc ID: 0.7.120.16540).

¹¹⁹⁴ Minutes of Board meeting, dated 27 June 2007 (Doc ID: 0.7.120.6693).

¹¹⁹⁵ KPMG Project Harmony Report, dated 20 June 2007, page 66 et seq. (Doc ID:0.7.120.55785).

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1366 A loan facility was originally made available by INBS to the borrower in September 2002 in relation to the development of [REDACTED] in east London. The loan facility formed part of a wider financing strategy for the development, which saw Anglo Irish Bank provide further development finance for the residential units at [REDACTED] and a connected hotel. The details of the loan arrangements are not relevant to the allegations under consideration.

4.1367 In an internal memorandum dated 16 February 2005¹¹⁹⁶, Mr McCollum outlined the proposal for a loan facility of £20 million to be made available to the borrower to effect the transfer of a residential development known as [REDACTED] from [REDACTED] to the borrower. The transfer was valued at £20 million by Savills, although there is a lack of clarity regarding what the valuation covered. The funds were to be allocated, as follows:

- (a) £8 million to reduce [REDACTED] borrowings with INBS.
- (b) £8 million to be lent by [REDACTED] to [REDACTED] to reduce its borrowings with INBS.
- (c) £4 million to be used for working capital spent to date on the [REDACTED] development.

4.1368 The borrower, [REDACTED] was a wholly owned subsidiary of [REDACTED] which itself was 90% owned by [REDACTED] and 10% owned by INBS.

4.1369 The facility was to be secured by a second charge over the subject property, a second debenture over the assets of the borrower, and a guarantee from [REDACTED] supported by a first charge over a separate site, also owned by [REDACTED]. INBS received a profit share of £21,823,000 from the development pursuant to a fee agreement entered into dated 4 March 2005.¹¹⁹⁷

¹¹⁹⁶ Internal memorandum from Gary McCollum to Stan Purcell, dated 16 February 2005 (Doc ID: 0.7.120.5583).

¹¹⁹⁷ File Note on [REDACTED] related facilities, dated 31 March 2006 (Doc ID: 0.7.120.31182).

The CMO dated 21 February 2005 was signed by Mr McCollum on behalf of INBS and was signed on behalf of the borrower on 3 March 2005.¹¹⁹⁸ The loan was drawn down on 4 March 2005.¹¹⁹⁹

4.1370 There were five Loan Specific Allegations advanced in respect of this loan. Full details of these Loan Specific Allegations are set out, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

SPC 1.1: No CLA was prepared at all.

4.1371 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

- (a) **Three years' audited accounts.**
- (b) **Business plan/proposals.**
- (c) **Forecast cash flow analysis.**

4.1372 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.4: Credit grades were not assigned to commercial loans.

4.1373 The relevant policy was the 8 April 2003 Credit Grading System for Commercial Lending. (See Table included at Appendix 11).

4.1374 In his submissions to the Inquiry, Mr Purcell stated that the 8 April 2003 Credit Grading System for Commercial Lending did not require that a CLA should have a credit grade

¹¹⁹⁸ Commercial Mortgage Offer, dated 21 February 2005 (Doc ID: 0.7.120.22181).

¹¹⁹⁹ Extract from Summit Account No [REDACTED] (Doc ID: 0.7.120.760573).

when presented to the Credit Committee or the Board. The Inquiry agrees with this assertion and therefore no finding is made in respect of this allegation. The assigning of credit grades during the loan approval process is dealt with at Chapter 5 of this Findings Report (see paragraph 5.197 et seq.). That part of the Findings Report outlines Mr Purcell's submissions on this point and the reasoning for the Inquiry's finding that a failure to assign a credit grade at the loan approval stage was not a breach of INBS internal policy.

SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval (as required) and not in compliance with INBS's urgent credit decision approval procedures.

4.1375 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1376 The Inquiry has examined Credit Committee meeting minutes and has not seen any evidence that this loan was recommended for approval by the Credit Committee. The Inquiry has also examined the Board meeting minutes and packs and can find no evidence that this loan was approved by the Board. The Inquiry examined minutes from 2002, when this loan was first presented by Mr McCollum, and there is no record of this loan being considered at that time.

The urgent credit decision approval procedures required that urgent loans should be approved by the Managing Director and signed off by two members of the Credit Committee and then signed off by the Credit Committee as soon as practicable thereafter. Under the Board Resolution September 2002, the loan had to be signed off by the Credit Committee and two members of the Board and then advised to the Board in the normal way. There is no evidence on the loan file or from the Credit Committee or Board meeting minutes and packs that this procedure was applied.

4.1377 The Inquiry finds that there was no Credit Committee approval or recommendation and no Board approval and no compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.2 is proven against INBS.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.

4.1378 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

The UK Version of the April 2003 Credit Risk Policy did apply to this allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower was a private company.

4.1379 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. The CMO¹²⁰⁰, which is the significant document with respect to this allegation, makes no reference to a personal guarantee from any of the identified directors of the borrowing companies.

4.1380 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, that SPC 3.2 is proven as against INBS.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1381 The borrowing company was incorporated on 30 September 2002.¹²⁰¹ On the same date a CMO offered the sum of £36,603,562 to two borrowers, [REDACTED] and [REDACTED] for a term 59 months, to be allocated between the two borrowers as follows:

(a) [REDACTED] - £10,603,562.

(b) [REDACTED] - £26 million.

¹²⁰⁰ Commercial Mortgage Offer, dated 21 February 2005 (Doc ID: 0.7.120.22181).

¹²⁰¹ Certificate of Incorporation, dated 30 September 2002 (Doc ID: 0.7.120.894779).

The CMO dated 30 September 2002 was signed by Mr McCollum on behalf of INBS and was signed on behalf of the borrowers on the same date.¹²⁰²

4.1382 The purpose of the facility was to refinance existing loans made to [REDACTED] and to provide additional working capital to the borrowers to fund ongoing construction works at [REDACTED] London, [REDACTED]

INBS held a 10% interest in the shareholding of the first borrower, [REDACTED] with [REDACTED] holding the remaining 90% interest. [REDACTED] was 100% owned by [REDACTED]¹²⁰³

4.1383 The development at [REDACTED] in east London comprised of three separate phases. A residential phase, a hotel phase and a commercial phase.¹²⁰⁴

The initial loan facility was subsequently split between the two borrowers and a loan facility in the amount of £15,763,925.44 on loan account number [REDACTED] was made available by INBS to [REDACTED] in 2005 for a term of two years six months. According to the Sterling Commercial Advance Static Sheet, the stated purpose of the loan was to reschedule existing loan account [REDACTED]¹²⁰⁵ The stated valuation of the property as at 20 August 2002 was £40 million.¹²⁰⁶ The loan was drawn down on 21 February 2005.¹²⁰⁷ As at 5 January 2006, the outstanding balance on this loan account had been paid and the account had been redeemed.¹²⁰⁸

4.1384 There were five Loan Specific Allegations advanced in respect of the loan to this borrower. Full details of these Loan Specific Allegations are set out below, and are also included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

¹²⁰² Commercial Mortgage Offer, dated 30 September 2002 (Doc ID: 0.7.120.37388).

¹²⁰³ Commercial Mortgage Offer, dated 30 September 2002 (Doc ID: 0.7.120.37388).

¹²⁰⁴ [REDACTED] Progress Report, dated 28 January 2004 (Doc ID: 0.7.120.929821).

¹²⁰⁵ Sterling Commercial Advance Static Sheet, dated 21 February 2005 (Doc ID: 0.7.120.8272).

¹²⁰⁶ Sterling Commercial Advance Static Sheet, dated 21 February 2005 (Doc ID: 0.7.120.8272). Note that an excerpt of a valuation prepared for Anglo Irish Bank by FPD Savills, dated September 2002 notes the current value as £42.5 million.

¹²⁰⁷ Society Advance Detail, dated 21 February 2005 (Doc ID: 0.7.120.23176).

¹²⁰⁸ Internal memorandum from Gary McCollum to Stan Purcell, dated 5 January 2006 (Doc ID: 0.7.120.925680).

SPC 1.1: No CLA was prepared at all.

4.1385 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:

(a) **Three years' audited accounts.**

(b) **Business plan/proposals.**

(c) **Forecast cash flow analysis.**

4.1386 The relevant policy identified in the Investigation Report was the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore no finding is made in respect of this allegation.

SPC 1.4: Credit grades were not assigned to commercial loans.

4.1387 The relevant policy was the 8 April 2003 Credit Grading System for Commercial Lending. (See Table included at Appendix 11).

4.1388 In his submissions to the Inquiry, Mr Purcell stated that the 8 April 2003 Credit Grading System for Commercial Lending did not require that a CLA should have a credit grade when presented to the Credit Committee or the Board. The Inquiry agrees with this assertion and therefore no finding is made in respect of this allegation. The assigning of credit grades during the loan approval process is dealt with at Chapter 5 of this Findings Report (see paragraph 5.197 et seq.). That part of the Findings Report outlines Mr Purcell's submissions on this point and the reasoning for the Inquiry's finding that a failure to assign a credit grade at the loan approval stage was not a breach of INBS internal policy.

SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval (as required) and not in compliance with INBS's urgent credit decision approval procedures.

4.1389 The relevant policies were the UK Version of the April 2003 Credit Risk Policy and the 16 October 2003 Commercial Credit Committee Terms of Reference. The urgent credit decision approval procedures were set out in the Board Resolution September 2002 and the 16 October 2003 Commercial Credit Committee Terms of Reference. (See Table included at Appendix 12).

4.1390 The Inquiry has examined the Credit Committee meeting minutes and packs and have not seen any evidence that this loan was recommended for approval by the Credit Committee. The Inquiry has also examined Board meeting minutes and packs and can find no evidence that this loan was approved by the Board.

The urgent credit decision approval procedures required that urgent loans should be approved by the Managing Director and signed off by two members of the Credit Committee and then signed off by the Credit Committee as soon as practicable thereafter. Under the Board Resolution September 2002, the loan had to be signed off by the Credit Committee and two members of the Board and then advised to the Board in the normal way. There is no evidence on the file or from the Credit Committee or Board meeting minutes and packs that this procedure was applied.

4.1391 The Inquiry finds that there was no Credit Committee approval or recommendation and no Board approval and no compliance with urgent credit decision approval procedures. Accordingly, the Inquiry finds that SPC 2.2 is proven against INBS.

SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained

4.1392 The relevant policies identified in the Investigation Report were the UK Version of the April 2003 Credit Risk Policy (See Table included at Appendix 13) and the 9 November 2004 Commercial Lending Criteria.

The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007. The UK Version of the April 2003 Credit Risk Policy did apply to this

allegation. The UK Version of the April 2003 Credit Risk Policy stated that personal guarantees should be acquired where the borrower was a private company.

4.1393 The Inquiry has examined the consolidated loan file for this loan and there is no evidence that a personal guarantee was either sought or obtained from the directors of [REDACTED]. The CMO dated 30 September 2002¹²⁰⁹, which is the significant document with respect to this allegation, makes no reference to a personal guarantee from any of the identified directors of the borrowing companies.

4.1394 The Inquiry finds no evidence that personal guarantees were sought or received in relation to this loan and, accordingly, finds that SPC 3.2 is proven as against INBS.

CUSTOMER 8: [REDACTED]

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1395 This loan for €600,000 was offered to the borrower in February 2006. The purpose of the loan was to facilitate the borrower's purchase of 41 acres of agricultural land in County Monaghan with a view to obtaining rezoning from agricultural to residential use.¹²¹⁰

4.1396 There were six Loan Specific Allegations advanced in respect of this loan. Four of the six Loan Specific Allegations were INBS Only Allegations and so were not dealt with by the Inquiry. The two remaining allegations were based on the 9 November 2004 Commercial Lending Criteria and, following the Inquiry's decision that this was not an applicable policy, these were also not considered by the Inquiry.

4.1397 In respect of the two Loan Specific Allegations that were not considered by the Inquiry because they were based on the 9 November 2004 Commercial Lending Criteria, there were corresponding Loan Specific Allegations of participation advanced against Mr Purcell. These allegations consequently fall away.

¹²⁰⁹ Commercial Mortgage Offer, dated 30 September 2002 (Doc ID: 0.7.120.37388).

¹²¹⁰ Commercial Loan Application, dated 27 January 2006 (Doc ID: 0.7.120.484097).

4.1398 Details of all the Loan Specific Allegations, including those advanced against Mr Purcell, are included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1399 This was a loan for €223,000 to purchase an apartment in County Monaghan.¹²¹¹

4.1400 There were seven Loan Specific Allegations advanced in respect of this loan. Five of the seven Loan Specific Allegations were INBS Only Allegations and so were not dealt with by the Inquiry. The two remaining Loan Specific Allegations were based on the 9 November 2004 Commercial Lending Criteria and, following the Inquiry's decision that this was not an applicable policy, these were also not considered by the Inquiry.

4.1401 In respect of the two Loan Specific Allegations that were not considered by the Inquiry because they were based on the 9 November 2004 Commercial Lending Criteria, there were corresponding Loan Specific Allegations of participation advanced against Mr Purcell. These allegations consequently fall away.

4.1402 Details of all the Loan Specific Allegations, including those advanced against Mr Purcell, are included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

Borrower: [REDACTED]

Loan Account: [REDACTED]

Background to loan

4.1403 This loan was made available by INBS in September 2006 in the amount of €198,000 for a term of ten years for the purpose of acquiring a property in [REDACTED] County Monaghan.

4.1404 There were five Loan Specific Allegations advanced in respect of this loan. Three of the five Loan Specific Allegations were INBS Only Allegations and so were not dealt with by the Inquiry. The two remaining Loan Specific Allegations were based on the 9

¹²¹¹ Commercial Loan Application, dated 27 April 2006 (Doc ID: 0.7.120.487814).

November 2004 Commercial Lending Criteria and, following the Inquiry's decision that this was not an applicable policy, these were also not considered by the Inquiry.

4.1405 In respect of the two Loan Specific Allegations that were not considered by the Inquiry because they were based on the 9 November 2004 Commercial Lending Criteria, there were corresponding Loan Specific Allegations of participation advanced against Mr Purcell. These allegations consequently fall away.

4.1406 Details of all the Loan Specific Allegations, including those advanced against Mr Purcell, are included in the Table of SPC 1 to 4 Loan Specific Allegations and Findings at Appendix 7 hereto.

CHAPTER 5

SPC 1

INTRODUCTION

5.1 SPC 1 concerns a suspected failure to ensure that CLAs were processed in accordance with INBS's internal policies.

5.2 The three individual SPCs are as follows:

SPC 1(a)

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that CLAs were processed in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 1(b)

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that CLAs were processed in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by section 76 (1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 1(c)

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that CLAs were processed in accordance with INBS's internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 the 2005 Regulatory Document. It is also suspected that certain Persons Concerned

in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 1 ALLEGATIONS

5.3 The following four allegations of non-compliance by INBS with its internal policies were advanced in respect of SPC 1¹:

- (a) SPC 1.1 alleged that CLAs were not prepared at all.
- (b) SPC 1.2 alleged that CLAs were not prepared in advance of funds being drawn down.
- (c) SPC 1.3 alleged that the required information was not acquired from borrowers to facilitate an assessment of borrowers' repayment capacity.
- (d) SPC 1.4 alleged that credit grades were not assigned to commercial loans in the credit decision making process.

RELEVANT INFORMATION AND SOURCES OF EVIDENCE

5.4 In addressing the SPC 1 Allegations, the following information and sources of evidence were considered by the Inquiry:

- (a) Relevant INBS policy documents.
- (b) The Loan File Analysis (carried out by the Inquiry in Chapter 4 of this Findings Report).
- (c) Contemporaneous Reports (including relevant corporate governance documentation and Financial Regulator Correspondence).
- (d) Corporate governance documentation.
- (e) Other relevant documentary evidence (in particular electronic data).
- (f) Interview evidence² (from individuals interviewed by Enforcement in the course of its Investigation), which were opened to witnesses.

¹ The SPC 1 Allegations are set out in Chapter 6, paragraph 6.5, of the Investigation Report (Doc ID: RDU_REL-00000030) and are outlined in full in Consolidated Tables C1.1 to C1.4 and C1.16 (Doc IDs: RDU_REL1600-00000039; RDU_REL1600-00000040; RDU_REL1600-00000041, RDU_REL1600-00000042 and RDU_REL1600-00000054).

² Interviews were conducted by Authorised Officers of the Central Bank during the period February 2013 to January 2014 to assist with the Investigation. Transcripts of these interviews were provided to the Inquiry.

- (g) Witness evidence.
- (h) Mr Purcell's replies to Examination Letter.
- (i) Mr Purcell's submissions.³
- (j) Mr Purcell's evidence to the Inquiry.

SPC 1.1

5.5 SPC 1.1 alleged that CLAs were not prepared at all.

Relevant INBS policy document

5.6 The 28 February 2007 Commercial Mortgage Lending Policy stated, with respect to the requirement that a CLA be prepared prior to approval:

"Approval Process

All Commercial Loan Applications (CLA) must be prepared and supporting documentation in place prior to all loans being presented to the Credit Committee. The CLA must also contain loan classifications, details on fee/profit shares (if applicable), LTV and other information on the loan".⁴

Loan File Analysis

5.7 The Loan Sample included 14 loans where it was suspected that no CLA was prepared at all. In one of the 14 loans in respect of which SPC 1.1 was alleged, the SPC 1.1 Loan Specific Allegation was excluded from the Loan Hearings on the basis that it was an INBS Only Allegation.⁵ Accordingly, the Inquiry only considered the SPC 1.1 Allegations that were advanced in the remaining 13 loans.

5.8 The policies identified by the Investigation Report as relevant to the remaining 13 loans were: the 9 November 2004 Commercial Lending Criteria and the 28 February 2007 Commercial Mortgage Lending Policy.⁶

5.9 The Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and

³ As outlined in Chapter 2, paragraph 2.5, Mr Purcell represented himself during the Inquiry and accordingly made written and oral submissions to the Inquiry, in addition to and distinct from the evidence he provided under oath and in his witness statements.

⁴ 28 February 2007 Commercial Mortgage Lending Policy, page 13 (Doc ID: 0.7.120.27792).

⁵ See paragraph 3.29 of Chapter 3 (Introduction to SPCs 1 to 4) for an explanation of the INBS Only Allegations.

⁶ See Table included at Appendix 11 for details of the relevant policy provisions.

February 2007.⁷ Ten of the remaining 13 loans in the Loan Sample cited the 9 November 2004 Commercial Lending Criteria as the applicable policy and therefore the allegation that no CLA had been prepared in respect of these ten loans had to fall away.

5.10 It should be noted that the requirement for a CLA to be in place prior to monies being drawn down was a policy requirement under the April 2003 Credit Risk Policy which stated:

- “2. *Commercial Loan Applications with total exposure to the Borrower of €300,000 or less can be approved by the Senior Commercial Lender without reference to the Credit Committee.*
3. *Commercial Loan Applications with total exposure to the Borrower of €635,000 or less can be approved by the Credit Committee.*
4. *Loan facilities with an exposure in excess of €635,000 can be recommended by the Credit Committee and submitted for approval by the Board of Directors”.*⁸

5.11 It was also a requirement for loans emanating from Belfast under the UK Version of the April 2003 Credit Risk Policy, which stated:

- “5. *Commercial loan applications of £500,000 or less can be approved by the UK Branch Manager without reference to the Credit Committee.*
6. *Commercial loan applications in excess of £500,000 are referred to the Society’s Managing Director for initial approval prior to being approved by the Credit Committee and the Board of Directors”.*⁹

5.12 The Investigation Report did not base the allegations for the loans relating to SPC 1.1 on either of these policies, but rather relied on the 9 November 2004 Commercial Lending Criteria. It is for this reason that the Inquiry cannot consider the ten loans that predated the 28 February 2007 Commercial Mortgage Lending Policy and which, as noted a paragraph 5.9 above, cited the 9 November 2004 Commercial Lending Criteria as the applicable policy.

⁷ See Inquiry’s reasons for its decision in relation to the 9 November 2004 Commercial Lending Criteria at Appendix 10.

⁸ April 2003 Credit Risk Policy, page 27 (Doc ID: 0.7.120.478217).

⁹ UK Version of the April 2003 Credit Risk Policy, page 22 para. 5 and 6 (Doc ID: 0.7.120.622022).

5.13 In respect of the three loans¹⁰ in the Loan Sample that cited the 28 February 2007 Commercial Mortgage Lending Policy as the applicable policy, the Inquiry found that the allegation that no CLA had been prepared for these loans was proven against INBS. The three loans involved facilities amounting to over 39 million in sterling and euro advances.

Contemporaneous Reports

5.14 In the 2004 Belfast Internal Audit Report, the CLA was described as “*the document used by the Society to ensure appropriate authorisation is received prior to any monies being advanced*”. It represented “*an integral part of the credit risk policy*”, containing “*essential credit information including credit grading, LTV ratio, customer history, and appropriate authorisation*”.¹¹

5.15 The Inquiry identified six Contemporaneous Reports in which CLAs had been identified as a problem in INBS during the Review Period. These were:

- (a) the 2004 Internal Audit Report;
- (b) the 2004 Belfast Internal Audit Report;
- (c) the 2005 Internal Audit Report;
- (d) the 2006 Belfast Internal Audit Report;
- (e) the 2007 Belfast Internal Audit Report; and
- (f) the 2008 Belfast Internal Audit Report.

5.16 The Inquiry notes that in respect of these six reports, the finding related to an absence of a CLA on the loan file. The 2006 Belfast Internal Audit Report was the only Contemporaneous Report that referred to the possibility that a CLA had not been prepared at all.

2006 Belfast Internal Audit Report

5.17 The audit on which this report was based was conducted in January 2006. In relation to CLAs it stated:

¹⁰ Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]); Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]); and Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).

¹¹ 2004 Belfast Internal Audit Report, page 9 para. 1 (Doc ID: 0.7.120.432168).

“Loan Approval Testing

*From the sample of 10 Accounts, 5 (50%) CLA’s could not be found. In 1 (10%) case of these exceptions, a CLA was not required as the loan was for under the Belfast Manager approval limit. In the remaining 4 cases due to the absence of the CLA it was unknown whether credit committee approval was obtained”.*¹²

5.18 The recommendation in respect of this finding was:

*“(1) A copy of each CLA prepared in Dublin must be kept in Belfast. The CLA must be prepared and approved prior to the loan being advanced. This is imperative for loans exceeding £2m... Finding Rating 4”.*¹³

Interview evidence

Killian McMahon

5.19 Mr McMahon, internal auditor of INBS, confirmed to the Authorised Officers of the Central Bank in the course of his interview leading to the preparation of the Investigation Report, that his concern when making the recommendation that advances must not be made without a fully complete and authorised CLA being on file was around consistency of document information. He stated:

*“...The application, the commercial applications were either held on file or in a separate folder, which caused problems... for documentation consistency. Sometimes it would be on file without being signed, and it was more around we wanted to ensure compliance with policy etc”.*¹⁴

Mr McMahon reiterated this in his direct evidence to the Inquiry. He stated:

*“...the CLAs often weren’t kept on file, they were kept in a separate folder, so it was very difficult for us, as auditors, to – you know, to find the CLAs without having to go to commercial lending”.*¹⁵

Mr Purcell’s submissions

5.20 Mr Purcell provided closing submissions to the Inquiry dated 22 October 2021. With

¹² 2006 Belfast Internal Audit Report, page 11 (Doc ID: 0.7.120.56457).

¹³ 2006 Belfast Internal Audit Report, page 12 (Doc ID: 0.7.120.56457).

¹⁴ Transcript of Interview with Mr Killian McMahon, dated 9 March 2013, page 91 line 27 et seq. (Doc ID: 0.7.120.683753).

¹⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 40 line 1 et seq. (Doc ID: RDU_FT_SPC1-4_D30-000000001).

respect to the SPC 1 allegations of participation, he stated:

“SPC 1 Context

Paragraph 6.448 of the Investigation Report(“IR”). (Ref.2 page 2)

As a member of the Board, I was satisfied that CLA’s were processed in accordance with internal policies on the basis of the credit committee processes, authorities and duties, the role and assurances of the managing director as the link between the credit committee and the board and the responses from lending managers that they had carried out or were carrying out actions required by audit recommendations.

Paragraph 6.450 of the IR. (Ref.2 page 3)

It was the responsibility of the lending area managers and the managing director to ensure that policy provisions relating to commercial lending were adhered to. It was the duty of the internal auditor to follow-up on the implementation of internal audit recommendations.

Paragraph 6.452 of the IR

The Managing Director and the lending area managers who reported to him were responsible for ensuring that commercial lending was managed in accordance with internal controls.

This responsibility is evidenced in writing as set out on pages 4 to 5 of Ref.2 and pages 1 to 2 of Ref.3.

Paragraph 6.454 of the IR – Credit Grades

The 2003 Credit Grading Policy did not require that the credit grade be stated on the CLA presented to the Board.

The assigning of credit grades early in the decision- making process became a policy when included in the Credit Risk Management Policy on 27 June 2007. (Ref.1pages 6 to 8,Ref.2 p.5 to 8,Ref.3 p. 10 to 14)”¹⁶

¹⁶ Closing Submissions of John S Purcell, dated 22 October 2021, page 11 and 12 (Doc ID: RDU_REL623-00000016).

Mr Purcell's evidence to the Inquiry

- 5.21 In the course of his examination by the LPT, Mr Purcell was asked about the various reports that raised issues about the absence of CLAs. He stated:

"Yeah, they did. I mean there is a lot of comments, and a lot of comments were CLAs were not there where they should be... it wasn't a question that a loan that came to the Board that there was no CLA presented to the Board. A lot of issues, appear to me from reading it, was misfiled and misplaced CLAs".¹⁷

- 5.22 Mr Purcell went on to say that there was a CLA for every loan approved by the Board:

"... I mean every loan approved by the Board, there was a CLA. I mean I know that. I was there at all Board meetings bar one.

So, any loan that was approved by the Board, there was a CLA, and I would have signed that CLA when approved, dated it and we would have returned it to Mr. McMenamini".¹⁸

- 5.23 This accords with what the Inquiry found in examining the loan files. Where a CLA was found to have not been prepared, there was no Credit Committee or Board consideration of that loan.

Corporate governance documentation - Board and Audit Committee meeting minutes

- 5.24 The Inquiry did not examine in detail the Audit Committee or Board response to this allegation as it is satisfied that the issue that there was no CLA prepared at all was not raised in a sufficiently clear manner in any of the contemporaneous documents. Mr McMahon's own evidence, as outlined above, confirmed that his concern was that CLAs were misfiled, and Mr Purcell stated in evidence that that was his understanding of the finding as well.

INQUIRY FINDING – SPC 1.1

Finding in relation to INBS

- 5.25 **The Inquiry finds, based on the Loan File Analysis set out in Chapter 4 and**

¹⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 45 line 28 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

¹⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 46 line 24 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

summarised above, that the SPC 1.1 Allegation, namely that loans were advanced where no CLA was prepared at all, was proven against INBS in respect of three loans.¹⁹

5.26 With regard to the legislative provisions and condition on INBS's authorisation underpinning SPC 1(a), 1(b) and 1(c), the Inquiry finds as follows:

(a) Regulation 16(1) of the 1992 Regulations

The Inquiry finds that from 28 February 2007 to 30 September 2008 INBS failed to ensure that CLAs were processed in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed. Accordingly, the Inquiry finds that a contravention of Regulation 16(1) of the 1992 Regulations occurred.

(b) Section 76(1) of the 1989 Act

The Inquiry finds that from 28 February 2007 to 30 September 2008, INBS failed to ensure that CLAs were processed in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon. Accordingly, the Inquiry finds that a contravention of section 76 (1) of the 1989 Act occurred.

(c) Part 1 of the 2005 Regulatory Document

The Inquiry finds that from 28 February 2007 to 30 September 2008, INBS failed to ensure that CLAs were processed in accordance with INBS's internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. Accordingly, the Inquiry finds that a contravention of Part 1 of the 2005 Regulatory Document occurred.

¹⁹ Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]); Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]); and Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED])

Finding in relation to Mr Purcell's participation

- 5.27 Although the Inquiry finds that loans were advanced without a CLA, as alleged, the Inquiry finds that this practice was not brought to the attention of the Board or of Mr Purcell. The contemporaneous documents examined by the Inquiry do not provide a sufficiently clear warning to the Board that loans were being advanced without a CLA. Accordingly, the Inquiry finds that Mr Purcell did not participate in SPC 1.1, or in the commission by INBS of SPCs 1(a), 1(b) and 1(c).

SPC 1.2

- 5.28 SPC 1.2 alleged that INBS did not prepare a CLA in advance of funds being drawn down.

Relevant INBS policy document

- 5.29 As set out above, the 28 February 2007 Commercial Mortgage Lending Policy stated:

"Approval Process

*All Commercial Loan Applications (CLA) must be prepared and supporting documentation in place prior to all loans been presented to the Credit Committee. The CLA must also contain loan classifications, details on fee/profit shares (if applicable), LTV and other information on the loan..."*²⁰

Loan File Analysis

- 5.30 The Loan Sample included seven loans where it was suspected that the CLA was not prepared in advance of funds being drawn down. All seven of these loans emanated from the Belfast Branch.
- 5.31 In respect of five of these loans a breach of the 28 February 2007 Commercial Mortgage Lending Policy was alleged, and in respect of two of these loans a breach of the 9 November 2004 Commercial Lending Criteria was alleged.
- 5.32 As already stated, the Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and therefore the allegation in respect of those two loans falls away.

²⁰ 28 February 2007 Commercial Mortgage Lending Policy, page 13 (Doc ID: 0.7.120.27792).

- 5.33 As outlined at Paragraphs 5.10 and 5.11 above, there was a requirement under the April 2003 Credit Risk Policy and the UK Version of the April 2003 Credit Risk Policy that a CLA must be in place prior to loan approval and therefore prior to any loan drawdown.
- 5.34 However, the Investigation Report did not base the allegations for the loans relating to SPC 1.2 on either of these policies, but rather relied on the 9 November 2004 Commercial Lending Criteria. It is for this reason that the Inquiry cannot consider the two loans that predated the 28 February 2007 Commercial Mortgage Lending Policy.
- 5.35 The Inquiry found that the remaining five of the alleged SPC 1.2 breaches had occurred with respect to INBS. The Inquiry established these breaches by examining the date of the first drawdown as evidenced by the Summit account and the date on the CLA. For one of the five loans the CLA was prepared 44 days after the first drawdown.²¹ Another was prepared 37 days after drawdown.²² In two of the loans²³, the CLA was prepared seven days after drawdown and in the other loan²⁴ it was prepared two days after drawdown. The five loans involved facilities amounting to over 54 million in both sterling and euro advances. The initial drawdowns for the five loans were generally for less than the agreed facility and they amounted to almost 37 million in both sterling and euro advances.²⁵ The facility that was 37 days without a CLA had been drawn down in full in the sum of almost €28 million.

Contemporaneous Reports

- 5.36 The Inquiry has established that three Contemporaneous Reports referred to loans being drawn down in advance of a CLA being prepared.

2004 Internal Audit Report²⁶

- 5.37 This report was prepared by the internal audit department and presented to the Audit Committee on 23 November 2004²⁷ and to the Board on 21 December 2004.²⁸ In the executive summary, it stated:

²¹ Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).

²² Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).

²³ Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]); and Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).

²⁴ Loan Account: [REDACTED] (Customer and Borrower: [REDACTED]s).

²⁵ Exact total: 36,971,321.21 (without taking account of sterling/euro mix – three loans were in sterling, two loans in euro).

²⁶ 2004 Internal Audit Report (Doc ID: 0.7.120.430900).

²⁷ Minutes of Audit Committee meeting, dated 23 November 2004 (Doc ID: 0.7.120.56226).

²⁸ Minutes of Board meeting, dated 21 December 2004 (Doc ID: 0.7.120.26342).

*“This report summarises the findings of a comprehensive review of the Society’s commercial lending function conducted by Internal Audit during the period February 2004 to April 2004... The objective of the review is to identify any issues or high-risk areas in the lending process, and suggest corrective action in order to address the issues and mitigate the risks”.*²⁹

- 5.38 The report identified commercial lending as representing a high-risk area within INBS. It stated:

*“Due to the high value of the transactions, commercial lending is considered one of the most risky areas of the Society’s business, as evidenced in the 2003 Risk Assessment. As such, it is imperative that proper procedures and controls are in place to mitigate the risk”.*³⁰

- 5.39 The report examined a sample of 20 new accounts to verify that appropriate approval had been received prior to the loan being advanced. It stated:

“Risk B

Internal audit selected 20 samples to ensure the necessary approval was received for loans advanced...

*Internal audit noted that on one occasion, a loan was advanced before the CLA was prepared...”.*³¹

- 5.40 The audit report emphasised the importance of a fully completed and authorised CLA being on file. It stated:

“Advances must not be made without a fully complete and authorised CLA being on file. This ensures the approval controls will be adhered to. It also ensures the LTV ratio will be calculated. The CLA provides much information and ensures numerous controls are working... Staff members responsible for this are Tom McMenamain and Gary McCollum. This recommendation should be implemented immediately”.³²

- 5.41 The 2004 Internal Audit Report was discussed at the Audit Committee meeting on 23 November 2004.³³ The minutes for that meeting noted that some of the

²⁹ 2004 Internal Audit Report, page 1 (Doc ID: 0.7.120.430900).

³⁰ 2004 Internal Audit Report, page 7 (Doc ID: 0.7.120.430900).

³¹ 2004 Internal Audit Report, page 15 (Doc ID: 0.7.120.430900).

³² 2004 Internal Audit Report, page 18 (Doc ID: 0.7.120.430900).

³³ Minutes of Audit Committee meeting, dated 23 November 2004 (Doc ID: 0.7.120.56226).

recommendations in the report required senior management or Board authorisation and the internal auditor was requested to prepare a note of those recommendations. This document entitled "*Commercial Lending Report – Board Level Recommendations*"³⁴ was prepared and was presented to the Audit Committee meeting on 21 December 2004, however it did not include any reference to a CLA being on file before drawdown could occur, indicating that this was seen as a matter not for the Board but for the department head.

5.42 The minutes of the 2004 Audit Committee meetings were circulated at the Board meeting held on 21 December 2004 but, according to the minutes of that meeting, they were not discussed during the meeting.³⁵

5.43 In addition to an analysis of sample loan files, the 2004 Internal Audit Report also conducted a comprehensive review of INBS's commercial lending function. The report stated:

*"The objective of the review is to identify any issues or high-risk areas in the lending process, and suggest corrective action in order to address the issues and mitigate the risks".*³⁶

5.44 The internal auditor made 25 "*Recommendations for Improvement*". Number five on this list was that "*Advances must not be made without a fully complete and authorised CLA being on file*".³⁷ As outlined above, that recommendation was not raised to the level of senior management authorisation by the internal auditor in his subsequent review, but other recommendations were so identified.

5.45 One of these recommendations was that a lending compliance officer should be appointed. This recommendation was never implemented.

2004 Belfast Internal Audit Report³⁸

5.46 This audit by the internal audit department was conducted during November and December 2004. As well as making findings regarding CLAs not being on file (see SPC 1.1 above), the audit also found an example of a CLA prepared ten days after the loan was advanced. The audit report stated: "*This is a serious control weakness*".³⁹

³⁴ Commercial Lending Report – Board Level Recommendations (Doc ID: 0.7.120.430846).

³⁵ Minutes of Board meeting, dated 21 December 2004 (Doc ID: 0.7.120.26342).

³⁶ 2004 Internal Audit Report, page 1 (Doc ID: 0.7.120.430900).

³⁷ 2004 Internal Audit Report, page 2 (Doc ID: 0.7.120.430900).

³⁸ 2004 Belfast Internal Audit Report (Doc ID: 0.7.120.432168).

³⁹ 2004 Belfast Internal Audit Report, page 6 (Doc ID: 0.7.120.432168).

5.47 The internal audit department's recommendation in respect of CLA findings, identified under the heading "*Department Level (UK Branch manager responsibility)*", emphasised the importance of the CLA and noted that it contained essential credit information, including credit grading. The audit report stated:

"A copy of each CLA prepared in Dublin must be kept in Belfast. The CLA must be prepared and approved prior to the loan being advanced. This is imperative for loans exceeding £2m. The CLA is the document used by the Society to ensure appropriate authorisation is received prior to any monies being advanced. It is an integral part of the credit risk policy. It contains essential credit information including credit grading, LTV ratio, customer history, and appropriate authorisation. Finding Rating: 4. Staff member responsible for this is Gary McCollum, UK branch manager. This recommendation should be implemented immediately".⁴⁰

5.48 The Audit Committee at its meeting on 31 May 2005 considered the 2004 Belfast Internal Audit Report. The meeting minutes indicated that the Committee did not specifically address the finding in relation to a CLA post-dating the advance of a loan, but they did note that: "*potential over-concentration of lending is marked in the UK context. The Committee noted that over dependence on the UK Manager, Gary McCollum and agreed that more administration support was needed in Belfast*".⁴¹

5.49 The minutes of the Board meeting held on the same day stated:

"Belfast and London Branches

*The Board discussed strengthening the management of the UK Branches in view of the amount of loan business in these Branches. The Board agreed to discuss the matter further at its [sic] next meeting".*⁴²

5.50 This was followed up at the Board meeting held on 21 June 2005, the minutes of which recorded:

"Belfast and London Branches.

The Board discussed strengthening the management of the UK Branches and agreed to recruit an additional lender and to review the administration of the

⁴⁰ 2004 Belfast Internal Audit Report, page 9 (Doc ID: 0.7.120.432168).

⁴¹ Minutes of Audit Committee meeting, dated 31 May 2005, page 3 (Doc ID: 0.7.120.56788).

⁴² Minutes of Board meeting, dated 31 May 2005, page 15 (Doc ID: 0.7.120.32656).

UK Branches in light of the Internal Audit report".⁴³

- 5.51 The Inquiry has seen an email from Mr Gary McCollum to the head of compliance in INBS, dated 23 October 2006, which stated that INBS had appointed Mr Michael Fingleton (Jnr) as commercial lender within the London office.⁴⁴
- 5.52 The Board considered the draft Audit Committee minutes dated 31 May 2005 at its meeting on 25 July 2005, but these minutes indicate that no discussion took place in relation to the findings highlighted in the 2004 Belfast Internal Audit Report.⁴⁵

2005 Internal Audit Report⁴⁶

- 5.53 This report was described as a "*comprehensive review of the Society's commercial administration department by Internal Audit during May and June 2005*".⁴⁷ It made a finding in relation to a CLA post-dating the drawdown of the loan facility:

"In one case (9%) the date of the Loan drawdown was the same day on which the Board approved the loan. The CLA on file is dated 2 days after drawdown. This indicates that at the time of drawdown there was no security in place to secure the loan in the case of default".⁴⁸

- 5.54 The internal audit department's "*Departmental Level*" recommendation in respect of this finding was:

"All commercial loans must have a signed and completed commercial loan application on file. This will help commercial advances when considering additional loan requests. The signed commercial loan application also gives reassurance that approval was granted before the cheque was issued to the customer".⁴⁹

- 5.55 The staff member responsible was Mr Tom McMenemy and the recommendation was to be implemented immediately.
- 5.56 It is not clear how the Board approved the loan without a CLA in place and the audit report did not clarify that matter.

⁴³ Minutes of Board meeting, dated 21 June 2005, page 8 (Doc ID: 0.7.120.37131).

⁴⁴ Email from Gary McCollum to Ita Rogers, dated 23 October 2006 (Doc ID: 0.7.120.273477).

⁴⁵ Minutes of Board meeting, dated 25 July 2005 (Doc ID: 0.7.120.25821).

⁴⁶ 2005 Internal Audit Report (Doc ID: 0.7.120.432697).

⁴⁷ 2005 Internal Audit Report, page 1 (Doc ID: 0.7.120.432697).

⁴⁸ 2005 Internal Audit Report, page 12 (Doc ID: 0.7.120.432697).

⁴⁹ 2005 Internal Audit Report, page 14 (Doc ID: 0.7.120.432697).

5.57 This report was discussed at the Audit Committee meeting on 18 October 2005, the minutes of which recorded:

*“The Board reviewed the audit of commercial administration. The committee emphasised that all recommendations should be implemented without delay”.*⁵⁰

5.58 Notwithstanding the reference above, there was no minute recording the Board’s discussion of the 2005 Internal Audit Report. The minutes of the 18 October Audit Committee meeting were noted but not discussed at the Board meeting on 22 November 2005.⁵¹

5.59 Although there was no follow up at Board level, there was subsequent follow up at Audit Committee level. The Audit Pack prepared for the 11 April 2006 meeting included a paper entitled *“Follow-up of Internal Audit Recommendations”*. This included an internal audit recommendation log that stated: *“Recommendation: All commercial loans must have a signed and completed commercial loan application on file”*. The paper confirmed that this recommendation had been assigned to Mr McMenamain but had not yet been implemented.⁵²

5.60 The minutes of the next Audit Committee meeting on 14 June 2006⁵³, recorded that all items on this audit of the commercial administration department which had yet to be implemented should be followed up on as a matter of urgency.

5.61 The minutes also recorded that the Audit Committee discussed and reviewed a paper entitled *“Paper No.2 Review of Matters arising at the 11 April 2006 meeting”*. This paper⁵⁴ recommended that internal audit should look at the standard of commercial lending administration as a matter of priority and indicated that this had started on 18 April 2006. It also recorded that a new Commercial Advances Checklist had been in use since May 2006 and a new pre-populated lending pack had also been devised for all new commercial lending. It stated that internal audit would audit all files created in June 2006 to ensure the new checklist and lending packs were being used.

5.62 The minutes of the next Audit Committee meeting and the subsequent meetings did not identify any evidence that this audit of files created in June 2006, as referred to above, was conducted.

⁵⁰ Minutes of Audit Committee meeting, dated 18 October 2005 (Doc ID: 0.7.120.56773).

⁵¹ Minutes of Board meeting, dated 22 November 2005, page 13 (Doc ID: 0.7.120.37391).

⁵² Follow-up of Internal Audit Recommendations (Doc ID: 0.7.120.430789).

⁵³ Minutes of Audit Committee meeting, dated 14 June 2006 (Doc ID: 0.7.120.56364).

⁵⁴ Review of matters arising at the 11 April 2006 Audit Committee meeting (Doc ID: 0.7.120.431601).

- 5.63 The Audit Committee paper entitled “*Audit of Commercial Admin Dept*”, that was circulated at the Audit Committee meeting on 25 October 2006, confirmed that the following recommendation had been implemented:

*“Recommendation: All commercial loans must have a signed and completed commercial loan application on file”.*⁵⁵

- 5.64 Notwithstanding this, deficiencies in CLAs were identified in the 2006 Belfast Internal Audit Report, although there was no finding made that money was advanced before the CLA had been prepared.

- 5.65 There is no record of the Board discussing the findings in the 2005 Internal Audit Report, other than to have the Audit Committee meeting minutes circulated.

Witness evidence

- 5.66 The Inquiry asked numerous witnesses about the findings in Contemporaneous Reports that loans were advanced before the CLA had been prepared.

Tom McMenamin

- 5.67 Mr McMenamin, who was an INBS senior commercial lender in the Republic of Ireland throughout the Review Period, submitted a statement to the Inquiry in relation to SPCs 1 to 4 in response to a number of questions posed by the Inquiry.⁵⁶

- 5.68 He was asked if he was aware of internal policies in respect of the preparation of CLAs, to which he responded:

*“I can confirm that I was aware of the policies in this regard and in fact had an input, in liaison with the secretary, Stan Purcell in upgrading the format of the CLA document”.*⁵⁷

- 5.69 He was then asked to what extent policies were adhered to in INBS. He responded:

“My recall here is that policies were observed for the most part. Certainly, on the instructions of the Managing Director, loans were, on occasions, advanced prior to CLA been [sic] completed, but this would have been remedied within a short time thereafter. Consideration of a loan for a formal sanction to issue would require a CLA to be submitted, in the first instance, to the Credit

⁵⁵ Audit of Commercial Administration Department, page 1 (Doc ID: 0.7.120.431690).

⁵⁶ Witness Statement of Tom McMenamin, dated 6 July 2021 (Doc ID: RDU_REL611-000000001).

⁵⁷ Witness Statement of Tom McMenamin, dated 6 July 2021, page 1 (Doc ID: RDU_REL611-000000001).

Committee and ultimately to the Board. Staffing shortages and inexperienced staff would have contributed to a fall in standards in the filing of loan documentation, and I would submit that CLA's would have been completed but possibly misfiled. I cannot, of course, comment on loans advanced by the Belfast Branch. In the loan sample produced by the Authorised Officers, where CLA's for 16 loans were not sighted, one loan refers to Dublin".⁵⁸

5.70 He was asked about the findings in Contemporaneous Reports and he stated:

"I am painfully aware that the issues continued to arise in contemporaneous reports.

...

I can categorically state that in respect of those loans for the Dublin Head Office... I am not aware of the procedures in place for Belfast... in each and every case the decision to advance the funds would only have been taken with the prior approval of the Managing Director".⁵⁹

5.71 Mr McMenamin confirmed that he was aware of INBS's policy requirements relating to approval of commercial loans, variations to commercial loans and CMOs. He stated:

"The Policies, in so far as they related to the portfolios of the commercial lenders, would have been observed save for the very rare exception, and in these instances prior verbal approval would have been offered by Credit Committee or the Managing Director. The same, however, cannot be said in quite a number of instances of those loans being processed through Credit Committee. Due to pressure from clients for immediate draw-down of funds, the Managing Director would on occasion issue verbal approval for such transactions, with remedial compliance procedures being undertaken retrospectively.

7(a) In the main, this would relate to urgent requests from large corporate clients to meet say, a tax payment deadline or payment of deposit for a site etc. Remedial action to conform with compliance issues would be undertaken retrospectively. Mr Fingleton did not address the matter of urgent credit

⁵⁸ Witness Statement of Tom McMenamin, dated 6 July 2021, page 1 (Doc ID: RDU_REL611-000000001).

⁵⁹ Witness Statement of Tom McMenamin, dated 6 July 2021, page 2 (Doc ID: RDU_REL611-000000001).

*decision approval procedures. I cannot recall an instance where no remedial action was taken”.*⁶⁰

Michael Walsh

- 5.72 Dr Walsh gave evidence to the Inquiry during the Context Hearing on 1 July 2021. He was asked whether he, as chairman or as a Board member, was aware that large sums of money were paid out either without a CLA or in advance of a CLA being prepared. He stated:

*“I think, by definition... if something came to the Board, you know, we believe it was coming to the Board in good faith. We were never informed that money had already left the building”.*⁶¹

- 5.73 Dr Walsh was asked if the Managing Director had authority to waive policy requirements. He stated:

“Sorry, what was there was an ability in what I would describe as “urgent cases” for the Managing Director, and, I think, it was two members of the Credit Committee... had a right to authorise, you know, the payment in advance. But they were required to actually bring it to the Board and notify the Board that that had actually happened.

...

*At no stage did that occur”.*⁶²

David Brophy

- 5.74 Mr Brophy was a non-executive director of INBS from March 2006 to the end of the Review Period. He gave evidence to the Inquiry during the Context Hearing on 29 June 2021. He was asked about instances where loans were approved subsequent to the sums having been paid out, and was asked if this was something he recalled arising during his time on the Board. He said:

“No, I mean, I’m not saying definitively it didn’t, but I genuinely have no recollection of that, because that would be, you know, fairly fundamental, very

⁶⁰ Witness Statement of Tom McMenamin, dated 6 July 2021, page 3 (Doc ID: RDU_REL611-000000001).

⁶¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 93 line 5 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

⁶² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 93 line 15 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

*unusual. So, as I say, I am open to contradiction, if you can point to a particular Board pack or CLA or minutes, but I genuinely have no recollection of it. It—I would have regarded it as fairly fundamental”.*⁶³

- 5.75 Mr Brophy had no recollection of the urgent credit decision approval procedures being applied during his time on the Board – *“I can’t say definitively that it did or it didn’t”.*⁶⁴

Brian Fitzgibbon

- 5.76 Mr Fitzgibbon had various roles in INBS between 2000, when he joined, and July 2008, when he left. He was seconded as commercial review manager for a six month period from October 2004 to April 2005, during which period he reviewed between 1500 and 1700 files.

- 5.77 From July 2006 to November 2007, he was a member of the Credit Committee.

- 5.78 Mr Fitzgibbon gave evidence to the Inquiry during the Context Hearing on 11 June 2021. He was referred to the 2004 Internal Audit Report. He said that the finding in that audit that 5% of loans did not have a CLA did not surprise him. He stated:

*“As I said on several occasions, lending in Irish Nationwide was entirely informal and was controlled by Mr. Fingleton. It does not surprise me, and I am sure the instance... of missing CLAs and valuations is an awful lot higher than 5%, an awful lot higher”.*⁶⁵

- 5.79 Mr Fitzgibbon said that he had discussed these discrepancies with Mr Fingleton but would not have discussed them with Mr Purcell:

*“Yes. Mr. Purcell would not have been aware of the deficiencies, nor did I make him aware of those deficiencies”.*⁶⁶

- 5.80 Mr Fitzgibbon recalled from his time on the Credit Committee that he had never known a loan that had originated in the Belfast Branch or had come from Mr Fingleton to be thoroughly debated upon as to whether the client or the counter party should get the money. He further said that there was very little discussion on any case that came from

⁶³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 29 June 2021, page 23 line 9 et seq. (Doc ID: RDU_FT_SPC1-4_D27-000000001).

⁶⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 29 June 2021, page 24 line 2 (Doc ID: RDU_FT_SPC1-4_D27-000000001).

⁶⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 80 line 16 et seq. (Doc ID: RDU_FT_SPC1-4_D19-000000004).

⁶⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 87 line 5 et seq. (Doc ID: RDU_FT_SPC1-4_D19-000000004).

the Belfast Branch and/or the favourite customers in the Republic of Ireland – that is long term customers or customers with a personal relationship with Mr Fingleton.⁶⁷

- 5.81 He said that if such a loan did not comply with policy it would have been approved anyway:

“And in some circumstances, not in all cases, I would have been informed that the money has already gone.

...

*So, it’s where a borrower wants the money to close out a deal, it may be an auction... in some circumstances the money was already gone, it was gone. It would have been a personal telephone call to Mr. Fingleton and that money would have been advanced”.*⁶⁸

- 5.82 He was asked about being required to approve such a loan despite it having already been paid out:

*“There would have been discussions. I definitely remember Mr. Noonan being somewhat uncomfortable that this practice was going on. But, no, there was no uproar or we’ll fight our corner as A Credit Committee, because Mr. Fingleton was a member of the Credit Committee in my time, but he never attended one meeting in my time there”.*⁶⁹

Darragh Daly

- 5.83 Mr Daly was a member of the Credit Committee until July 2006, when he was appointed credit risk manager. He gave evidence to the Inquiry during the Context Hearing on 16 June 2021.
- 5.84 He was asked if he recalled occasions when the Credit Committee was asked to approve loans which had already been advanced. He stated:

⁶⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 97 line 1 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

⁶⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 97 line 20 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

⁶⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 98 line 10 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

*“...yes, I do have recollection of that happening, not very often, but I recall the senior lender making reference to this fact”.*⁷⁰

5.85 Mr Daly was asked if this would have arisen because, as a matter of urgency, the loan had to be processed before there was an opportunity for Credit Committee approval. He said that INBS was very much a niche lender, and stated:

*“And there were times when an opportunity came up and speed was of the essence, and it’s my understanding that it was in those instances where it may have been approved and then subsequently brought to Credit Committee”.*⁷¹

Vincent Reilly

5.86 Mr Reilly was the KPMG partner responsible for the statutory audit of INBS during the Review Period. He gave evidence to the Inquiry during the Context Hearing on 24 June 2021.

5.87 In the 2003 KPMG Management Letter, KPMG had observed that facility letters did not appear to be on file in some cases. Mr Reilly was asked about this. It was noted that he had identified the importance of a checklist in the loan approval process, and then had made clear: *“Failure to fully complete the checklist may result in inappropriate or unauthorised disbursements that could result in future loss to the Society”.*⁷²

5.88 He was asked to describe what he meant by that statement and he said:

*“Well, potentially, I am referring to the fact that a payment may have been made by the Society to a lender [sic], but there isn’t, you know, appropriate paperwork in place. So in the event of a dispute or any issue, the Society may be at a loss”.*⁷³

Mr Purcell’s submissions

5.89 Mr Purcell made submissions on the processing of CLAs at the conclusion of the Loan Hearings. He referred to a statement made by the LPT on the first day of the Loan Hearings in which the LPT indicated that before approving a loan the Board members,

⁷⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 16 June 2021, page 37 line 24 et seq. (Doc ID: RDU_FT_SPC1-4_D21-000000001).

⁷¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 16 June 2021, page 38 line 8 et seq. (Doc ID: RDU_FT_SPC1-4_D21-000000001).

⁷² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 24 June 2021, page 34 line 28 et seq. (Doc ID: RDU_FT_SPC1-4_D25-000000001).

⁷³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 24 June 2021, page 35 line 8 et seq. (Doc ID: RDU_FT_SPC1-4_D25-000000001).

including Mr Purcell, should have been satisfied that CLAs had been processed in accordance with internal policies, bearing in mind also that Mr Purcell would have been aware of the findings made by internal audit concerning compliance with internal policies.⁷⁴

5.90 In response, Mr Purcell stated:

“As a Board member I was satisfied that CLAs had been processed in accordance with policy as:

A. The authority and assurances of the managing director. The managing director was a senior member of the Credit Committee and the link between the Credit Committee and the Board.

The managing director presented the CLAs at Board meetings and answered any questions about the applications.

The Board approved a loan on the basis that all would be done as required before a loan was paid out.

Commercial lending used a checklist to ensure this. Con Power said in an interview with the Central Bank on 15th March 2013, that:

Formal approval of a CLA by the Board was on the basis of the managing director’s assurance that everything that should have been done had been done, or that if there was anything to be done, it would be done and that no loan was drawn down until all the boxes were ticked.

B. The authority and responsibilities of the Credit Committee.

The Terms of Reference of the Credit Committee in operation during the review period stated under authority/duties:

“The Credit Committee will ensure that credit applications comply with the current policy of the Society as may be amended from time to time”.

The Credit Committee is responsible for ensuring that lenders, underwriters review all relevant documentation pertaining to a credit application e.g.

⁷⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 30 October 2020, page 42 line 1 et seq. (Doc ID: RDU_FT_SPC1-4_D1-00000001).

accounts, valuation securities, guarantees, cash flows, et cetera, before an application is submitted to the Board.

C. The authority and responsibilities of the lending area managers.

When issues were raised by internal or external audits as regards CLAs, or indeed any matter relating to loans, it was the responsibility of the lending area managers reporting to the managing director to address and carry out audit recommendations.

This responsibility is set out in audit reports, and in particular, a document authored by the Internal Auditor called "recommendations not implemented in a timely manner" ... which set out the lending manager responsible for the audit recommendation, and also the managing director as executive director responsible.

D. In summary:

As a member of the Board I was satisfied that CLAs were processed in accordance with internal policies on the basis of the Credit Committee processes, authorities and duties. The role and assurance of the managing director as the link between the Credit Committee and the Board. And the responses from lending managers that they had carried out, or were carrying out actions required by audit recommendations.

As stated above, I was not responsible for internal controls in the lending area".⁷⁵

5.91 As outlined above, Mr Purcell submitted that as a Board member he was satisfied that CLAs were processed in accordance with policy. In this regard he relied upon the authority and assurances of the Managing Director and the authority and responsibilities of the Credit Committee and the lending area managers. He denied any participation in SPC1.2 and stated:

"I was not responsible for internal controls in the lending area".⁷⁶

5.92 Mr Purcell's closing submissions, dated 22 October 2021, as outlined at paragraph

⁷⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 22 April 2021, page 87 line 10 et seq. (Doc ID: RDU_FT_SPC1-4_D18-000000001).

⁷⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 22 April 2021, page 89 line 25 and 26 (Doc ID: RDU_FT_SPC1-4_D18-000000001).

5.20 above reiterated these points.

Mr Purcell's evidence to the Inquiry

5.93 Mr Purcell gave evidence to the Inquiry during the Context Hearing on 21 July 2021. He was asked about the necessity for a CLA and he said there was always a necessity, and that it came from "*the Credit Risk Policy 2003, to my recollection*".⁷⁷ His evidence continued, as follows:

"A. ...So, any loan that was approved by the Board, there was a CLA, and I would have signed that CLA when approved, dated it and we would have returned it to Mr. McMenamin.

...

Q. Yes, well, of course the problems with CLAs, Mr. Purcell, as you know, aren't just the absence of CLAs, it's loans being advanced before a CLA, that's another problem that's been identified, isn't that right?

A. That is correct, yeah.

...

Q. It's not just that there should be a CLA. There should, under no circumstances, be funds advanced before a CLA is prepared, isn't that right?

A. That would be correct, yeah".⁷⁸

INQUIRY FINDING – SPC 1.2

Finding in relation to INBS

5.94 **Without a CLA there can be no Credit Committee or Board approval of a loan. The CLA is the fundamental document central to any approval process. The breach alleged in SPC 1.2 is that when CLAs were presented to either the Credit Committee or the Board for approval, the money had already been paid out by INBS. There was no evidence in the Credit Committee or Board meeting minutes that these payments were presented as exceptions or were communicated to the**

⁷⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 45 line 4 and 5 (Doc ID: RDU_FT_SPC1-4_D31-000000001).

⁷⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 46 line 28 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

Credit Committee or the Board, as required by policy.

- 5.95 Former Board members, Dr Walsh and Mr Brophy gave evidence to the Inquiry (see paragraphs 5.72 and 5.74 above) that they were not aware of monies being advanced prior to the preparation of the CLA.
- 5.96 The Inquiry finds, based on the Loan File Analysis set out in Chapter 4 and summarised above at paragraphs 5.30 to 5.35, that INBS was in breach of internal policy provisions in relation to SPC 1.2, in that in respect of the five loans analysed in the Loan File Analysis, the CLA was not prepared in advance of funds being drawn down.
- 5.97 With regard to the legislative provisions and condition on INBS's authorisation underpinning SPCs 1(a), 1 (b) and 1(c), the Inquiry finds as follows:

(a) Regulation 16(1) of the 1992 Regulations

The Inquiry finds that from 28 February 2007 to 30 September 2008, INBS failed to ensure that CLAs were prepared in advance of funds being drawn down in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed. Accordingly, the Inquiry finds that a contravention of Regulation 16(1) of the 1992 Regulations occurred.

(b) Section 76(1) of the 1989 Act

The Inquiry finds that from 28 February 2007 to 30 September 2008, INBS failed to ensure that CLAs were prepared in advance of funds being drawn down in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon. Accordingly, the Inquiry finds that a contravention of section 76 (1) of the 1989 Act occurred.

(c) Part 1 of the 2005 Regulatory Document

The Inquiry finds that from 28 February 2007 to 30 September 2008, INBS failed to ensure that CLAs were prepared in advance of funds being

drawn down in accordance with INBS's internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. Accordingly, the Inquiry finds that a contravention of Part 1 of the 2005 Regulatory document occurred.

Finding in relation to Mr Purcell's participation

- 5.98 Mr Purcell was an executive director of INBS throughout the Review Period and he attended Audit Committee meetings in his capacity as secretary of INBS. Mr Purcell attended both Audit Committee and Board meetings from 23 November 2004 onwards where the issue of loans being advanced before a CLA had been prepared was raised as a credit risk issue.
- 5.99 The finding that money had been advanced prior to the preparation of a CLA was first identified as an issue in the 2004 Internal Audit Report.⁷⁹ Although the recommendation that a CLA be approved before a loan could be advanced was set out in this audit report and this report was discussed at the Audit Committee meeting on 23 November 2004, the Audit Committee minutes⁸⁰ contained no reference to this finding or any discussion of its implications for risk management within INBS.
- 5.100 The 2004 Belfast Internal Audit Report⁸¹ also made a finding that in the case of one loan (out of a sample of 20) the CLA was prepared ten days after the loan was advanced. The internal audit department recommendation was that *"The CLA must be prepared and approved prior to the loan being advanced. This is imperative for loans exceeding €2m"*.
- 5.101 The 2005 Internal Audit Report⁸² conducted a few months later, also made a finding that money had been advanced before a CLA had been prepared. While the Audit Committee meeting minutes⁸³ record that the Board had reviewed this audit report, there is no record of the Board discussing this particular finding or any follow up at Board level. The Audit Committee directed that all recommendations should be implemented without delay, however in the follow-

⁷⁹ 2004 Internal Audit Report (Doc ID: 0.7.120.430900).

⁸⁰ Minutes of Audit Committee meeting, dated 23 November 2004 (Doc ID: 0.7.120.56226).

⁸¹ 2004 Belfast Internal Audit Report (Doc ID: 0.7.120.432168).

⁸² 2005 Internal Audit Report (Doc ID: 0.7.120.432697).

⁸³ Minutes of Audit Committee meeting, dated 18 October 2005 (Doc ID: 0.7.120.56773).

up document⁸⁴ prepared for the Audit Committee meeting on 11 April 2006, it was noted that the recommendation that all commercial loans should have a signed and completed CLA on file before any drawdown could occur, had not yet been implemented.

- 5.102 The issue was not formally recorded as being resolved until the Audit Committee paper, entitled "*Audit of Commercial Admin Dept*"⁸⁵, was circulated at the Audit Committee meeting on 25 October 2006 (see paragraph 5.63 above). This document stated that the recommendation that all commercial loans must have a signed and completed CLA on file, had been implemented.
- 5.103 The Inquiry has considered Mr Purcell's closing submission, dated 22 October 2021, which is outlined in detail in Chapter 3 of this Findings Report. Mr Purcell cites examples of the extent to which the Audit Committee required that audit and external review recommendations must be implemented. However, the fact that such repeated requests were necessary indicates a failure in proper management and risk control.
- 5.104 The Inquiry finds that Mr Purcell did not have any personal knowledge of the five loans identified in the Loan Sample. However, the Inquiry believes that the failure of the Board of INBS to act decisively on the recommendation that there should be a CLA prepared and signed before any monies could be advanced was a significant failure of risk management. A delay of two years and eight months before the issue was resolved is not an adequate response to the risk this breach presented.
- 5.105 The primary responsibility for this matter rests, in the first instance, with the commercial lending department comprising the Managing Director and the senior executives in Ireland and the UK, and secondly with the non-executive directors who attended all the Audit Committee and Board meetings and who had the numerical majority and the authority to insist on resolution. Ultimately, responsibility rests with the Board, and as a member of that Board Mr Purcell cannot avoid that responsibility. However, taking into account Mr Purcell's role in INBS, the Inquiry does not find that this failure of responsibility amounted to participation in SPC 1.2 on the part of Mr Purcell and, accordingly, the Inquiry does not find that Mr Purcell participated in the commission by INBS of SPCs

⁸⁴ Follow-up of Internal Audit Recommendations (Doc ID: 0.7.120.430789).

⁸⁵ Audit of Commercial Administration Department (Doc ID: 0.7.120.431690).

1(a), 1(b) and 1(c).

SPC 1.3

5.106 SPC 1.3 alleged that the required information was not acquired from borrowers to facilitate an assessment of borrowers' repayment capacity.

Relevant INBS policy documents

5.107 This allegation refers to basic criteria that was required to be met before a loan was approved. There were four policy documents identified by the Investigation Report in relation to this allegation. These were: the 9 November 2004 Commercial Lending Criteria; the 28 February 2007 Commercial Mortgage Lending Policy; the December 2007 Commercial Mortgage Lending Policy; and the 21 April 2008 Commercial Mortgage Lending Policy.⁸⁶

5.108 As outlined above, the Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007.

5.109 The remaining three policy documents set out basic criteria for commercial lending as follows:

"General Basic Criteria

Commercial Lending to a Company

- *Memo & Articles of Association*
- *Certification of Incorporation*
- *Three years Audited Accounts*
- *Personal Guarantees of Directors*
- *Business Plan/Proposals*
- *Forecast Cash Flow Analysis*

Commercial lending to a Individual (non company)

⁸⁶ See Table included at Appendix 11 for details of the relevant policy provisions.

- *Statement of Affairs (Net Worth)*
- *Income Details*
- *Bank Statements (6 months current accounts)*
- *Loan Statements (personal & business)*
- *Business Plan/Proposals”*.⁸⁷

5.110 The loan application or CLA was dealt with under the heading “*Approval Process*”. This provision stated:

“All Commercial Loan Applications (CLA) must be prepared and supporting documentation in place prior to all loans being presented to the Credit Committee. The CLA must also contain loan classifications, details on fee/profit shares (if applicable), LTV and other information on the loan”.⁸⁸

Loan File Analysis

5.111 The Investigation Report identified 86 loans where it was alleged that some or all of the above criteria were not acquired before approval. With respect to companies, the three pieces of information that it was alleged had not been acquired were:

- (a) Three years’ audited accounts.
- (b) Business plan/proposals.
- (c) Forecast cash flow analysis.

5.112 With respect to individuals, the five pieces of information that it was alleged had not been acquired were:

- (a) Statement of affairs (net worth).
- (b) Income details.
- (c) Bank statements (six months’ current accounts).

⁸⁷ 28 February 2007 Commercial Mortgage Lending Policy, page 5 (Doc ID: 0.7.120.27792); December 2007 Commercial Mortgage Lending Policy, page 5 (Doc ID: 0.7.120.450156); 21 April 2008 Commercial Mortgage Lending Policy, page 5 (Doc ID: AD-0.7.120.512062).

⁸⁸ 28 February 2007 Commercial Mortgage Lending Policy, page 13 (Doc ID: 0.7.120.27792); December 2007 Commercial Mortgage Lending Policy, page 13 (Doc ID: 0.7.120.450156); 21 April 2008 Commercial Mortgage Lending Policy, page 13 (Doc ID: AD-0.7.120.512062).

(d) Loan statements (personal and business).

(e) Business plan/proposals.

5.113 In 17 of the 86 loans in respect of which SPC 1.3 was alleged, the SPC 1.3 Loan Specific Allegations were excluded from the Loan Hearings on the basis that they were INBS Only Allegations.⁸⁹ Accordingly, the Inquiry only considered the SPC 1.3 Allegations that were advanced in the remaining 69 loans.

5.114 Thirty-three of the remaining 69 loans were excluded as they cited the 9 November 2004 Commercial Lending Criteria as the only relevant policy document.

5.115 Of the remaining 36 loans that cited one of the other three policy documents as the applicable policy, the Inquiry made a finding that SPC 1.3 was proven against INBS in respect of 13⁹⁰ of those loans and not proven in respect of the remaining 23 loans.

Contemporaneous Reports

5.116 The issue of failure to acquire required information from borrowers in order to assess repayment capacity was addressed in Contemporaneous Reports during the Review Period and was also referred to by the Financial Regulator in correspondence.

5.117 The basic criteria outlined above were not contained in any INBS policy prior to the 28 February 2007 Commercial Mortgage Lending Policy⁹¹ and therefore only those Contemporaneous Reports which post-dated the Board approval of this policy, or which had on-going relevance, have been considered by the Inquiry.

2006 Deloitte Audit Report⁹²

5.118 This report stated, under the heading "*Back up / Filing Information*":

"There is no standard document management requirement to support the commercial lending process.

⁸⁹ See paragraph 3.29 of Chapter 3 (Introduction to SPCs 1 to 4) for an explanation of the INBS Only Allegations. Of the 17 SPC 1.3 Loan Specific Allegations excluded from the Loan Hearings on the basis that they were INBS Only Allegations, seven were linked to loans which were wholly comprised of INBS Only Allegations and were excluded from the Loan Hearings in their entirety, and the other ten were linked to loans which were opened during the Loan Hearings in the context of addressing other Loan Specific Allegations advanced in respect of those loans.

⁹⁰ In respect of 4 of these loans the Inquiry found the SPC 1.3 Allegation was proven in relation to one or more, but not all, of the required pieces of information to be acquired from the borrower.

⁹¹ They were first set out in the 9 November 2004 Commercial Lending Criteria. However, as outlined above, the Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not an applicable policy between November 2004 and February 2007.

⁹² 2006 Deloitte Audit Report (Doc ID: 0.7.120.432332).

In a large number of cases we identified gaps in the quality of the information maintained on the loan files or that the loan/legal files are missing.

In a number of cases / files examined, monies had been advanced without the required information being retained on file.

Certain individuals retain a large amount of pertinent information on particular clients or individual transactions without this information being formally documented. This does place a large risk of commercial information being held by a small number of key individuals. This can also lead to time being wasted in discussing cases where full information would have supported a more efficient response".⁹³

5.119 Deloitte recommended three actions be taken to address these issues:

"Maintenance and use of pre populated lending pack

Filing owner who ensures that all files are in place prior to submission of loan for approval

Approved guidance put in place in relation to the Commercial Lending approval process – documented and communicated to all internal relevant parties".⁹⁴

5.120 This finding and recommendation was afforded a priority 1 rating which meant that it was seen as a *"Critical – Important matter requiring urgent attention at a senior management or Board level".⁹⁵*

5.121 Management Response to this finding was:

"A pre populated lending pack was put in place in June 2006.

Every file has to have a Commercial Advances Checklist fully completed and placed on the file.

A new filing system for commercial files has been put in place.

All the pertinent loan information is kept on the Commercial Loan Application, which is retained on each individual file.

⁹³ 2006 Deloitte Audit Report, page 21 (Doc ID: 0.7.120.432332).

⁹⁴ 2006 Deloitte Audit Report, page 21 (Doc ID: 0.7.120.432332).

⁹⁵ 2006 Deloitte Audit Report, page 10 (Doc ID: 0.7.120.432332).

*The Commercial Lending approval process will be communicated to all relevant internal parties”.*⁹⁶

5.122 The deadline for implementing the Management Response was 30 September 2006.

5.123 The Board reviewed and discussed the final draft of the 2006 Deloitte Audit Report at its meeting on 19 July 2006, the minutes of which recorded:

*“The Board discussed Deloitte’s report on the Commercial lending function and the management response to the recommendations raised”.*⁹⁷

5.124 The minutes of the Audit Committee meeting on 25 October 2006 recorded:

*“Most of the recommendations arising from Deloitte’s [sic] audit of commercial lending have been implemented. The letter of offer work and Basel II were outstanding items”.*⁹⁸

5.125 This implied that the recommendations arising from the 2006 Deloitte Audit Report, as listed above, had been implemented. With respect to the recommendations arising from the 2005 Internal Audit Report, the internal auditor is minuted as having confirmed that these were 80% complete with two items to be completed by the end of October 2006. The minutes did not record what these two outstanding items were. The minutes for this meeting were noted at the Board meeting on 23 January 2007.⁹⁹

5.126 A paper was prepared for the next Audit Committee meeting held on 19 December 2008 entitled “*Review of matters arising at the 25 October 2006 Audit Committee meeting*”. It stated:

“Issue

(4) All Deloitte and KPMG recommendations must be implemented as a matter of priority.

Progress

In progress.

Completion date /Planned completion date

⁹⁶ 2006 Deloitte Audit Report, page 21 (Doc ID: 0.7.120.432332).

⁹⁷ Minutes of Board meeting, dated 19 July 2006, page 16 (Doc ID: 0.7.120.33969).

⁹⁸ Minutes of Audit Committee meeting, dated 25 October 2006, page 2 (Doc ID: 0.7.120.56874).

⁹⁹ Minutes of Board meeting, dated 23 January 2007 (Doc ID: 0.7.120.29587).

March 2007".¹⁰⁰

- 5.127 There was no follow up on this issue at subsequent Audit Committee meetings.
- 5.128 There was a series of correspondence between INBS and the Financial Regulator with respect to the implementation of the recommendations in the 2006 Deloitte Audit Report, and other Contemporaneous Reports.¹⁰¹
- 5.129 In a letter dated 31 August 2006, the Financial Regulator made specific requests for further information with regard to the "*Back up/Filing information*" findings and recommendations made in the 2006 Deloitte Audit Report. The letter stated:

"I understand that a pre-populated lending pack was put in place in June 2006.

- *Please advise if this pack meets the requirements as recommended by Deloitte, and that this pack will be used and maintained.*
- *Has the Society taken on board Deloitte's recommendation that every file has to have a file owner?*
- *Who reviews the commercial advances checklist to ensure that the file [sic] is in order prior to loan advance? Is this review documented?*
- *Please advise if the Society is on track to implementing this recommendation by 30 September 2006".¹⁰²*

- 5.130 The Financial Regulator also requested a Quarterly Report:

"In order to monitor progress on these matters, please provide an update on developments in implementing the recommendations and report quarterly in the future".¹⁰³

- 5.131 On 10 November 2006 Mr Purcell on behalf of INBS responded to the Financial Regulator, as follows:

"A pre-populated loan pack was introduced in June 2006. The Society's [sic] has amended its commercial advances checklist which lists information which

¹⁰⁰ Review of matters arising at the 25 October 2006 Audit Committee meeting (Doc ID: 0.7.120.432270).

¹⁰¹ Chapter 12 of this Findings Report sets out the relevant Financial Regulatory Correspondence in full.

¹⁰² Letter from Yvonne Madden, Financial Regulator, to Stan Purcell, INBS, dated 31 August 2006, page 7 (Doc ID: 0.7.120.449197).

¹⁰³ Letter from Yvonne Madden, Financial Regulator, to Stan Purcell, INBS, dated 31 August 2006, page 1 (Doc ID: 0.7.120.449197).

is required for the loan file and the Society is satisfied it meets Deloitte's [sic] requirements. This recommendation is in place and will be maintained.

Deloitte's [sic] recommendation in relation to file owner is in place. Each commercial lender is responsible for a selection of customers and files relating to same.

The cheque issue personnel review the checklist to ensure that the file is in order prior to loan advance. The check list is signed off by a lender prior to cheque issue. This recommendation is in place".¹⁰⁴

- 5.132 The following update was provided in a further letter from Mr Purcell on behalf of INBS to the Financial Regulator on 19 January 2007:

"The Society's [sic] has amended its commercial advances checklist which lists information which is required for the loan file and the Society is satisfied it meets Deloitte's requirements.

Deloitte's recommendation in relation to file owner is in place Each commercial lender is responsible for a selection of customers and files relating to same.

All commercial lending staff are requested to ensure all relevant customer information is committed to the appropriate section of the commercial lending file".

This is then listed as "*Implemented*".¹⁰⁵

- 5.133 This update was repeated in a further letter to the Financial Regulator from Mr Purcell on behalf of INBS, dated 17 May 2007.¹⁰⁶

- 5.134 Notwithstanding these assurances provided by INBS, this issue of information not being obtained or retained in order to ensure a borrower's capacity to repay the facility continued to arise in contemporaneous documents.

¹⁰⁴ Letter from Stan Purcell, INBS, to Yvonne madden, Financial Regulator, dated 10 November 2006, page 4 (Doc ID: 0.7.120.13615).

¹⁰⁵ Letter from Stan Purcell, INBS, to Yvonne Madden, Financial Regulator, dated 19 January 2007, page 13 (Doc ID: 0.7.120.138147).

¹⁰⁶ Letter from Stan Purcell, INBS, to Yvonne Madden, Financial Regulator, dated 17 May 2007, page 13 (Doc ID: 0.7.120.137445).

5.135 This report made a finding regarding non-retention of information, as follows:

“We identified in many cases that required information was not being retained on file. The most frequent gaps in the required information relate to:

- *Completed checklists not on file (for most cases)*
- *Insurance Policy of the building*
- *No Board resolution regarding the commercial loan*
- *Audited accounts*
- *Credit history checks – There is limited evidence of credit history on files. In accordance with the revised lending policies, we were informed that ICB checks are requested only for new customers*
- *Profit share agreements*
- *TCC/P60*
- *Valuation report*
- *Planning Permission*
- *Loan to value*
- *Net Worth Statement*
- *Audited accounts of financial information”*.¹⁰⁸

5.136 Deloitte recommended the following:

“We recommend the Society seeks ways to ensure the checklist, which is a key control, is fully completed as a matter of routine.

¹⁰⁷ May 2008 Deloitte Review (Doc ID: 0.7.120.449197).

¹⁰⁸ May 2008 Deloitte Review, page 19 (Doc ID: 0.7.120.431665).

*A frequent and robust quality assurance or quality control check should be implemented to ensure checklists are being completed fully and correctly, e.g. a 10 – 20% monthly files check”.*¹⁰⁹

5.137 The Management Response to this was:

“The Drawdown & Control section will ensure all commercial files have a fully complete checklist on file before the loan can be paid out.

*A monthly quality control check will be performed on a sample of new loans issued to ensure checklists are being completed fully and correctly”.*¹¹⁰

5.138 The Board considered this report at its meeting on 21 April 2008.¹¹¹

5.139 The Audit Committee discussed this report at its meeting on 26 May 2008 and noted:

*“The committee agreed that in order to obtain assurance that these recommendations... were implemented and continued to be in place, the Internal Auditor should report to the committee by the end of July 2008 and also again at the end of January 2009 on the quality of the initial and continuing implementation of all fourteen recommendations”.*¹¹²

5.140 In a letter dated 25 June 2008, which had been agreed by the Board, Mr Purcell confirmed that the Audit Committee had discussed in detail the May 2008 Deloitte Review. The letter stated:

“The committee noted that the report indicated the recommendations arising from the seven “priority one” findings have been implemented.

These critical issues which are classified as important matters requiring urgent attention at a senior management or board level are:

...

5. Documentation supporting loan approval is not complete.

...

¹⁰⁹ May 2008 Deloitte Review, page 19 (Doc ID: 0.7.120.431665).

¹¹⁰ May 2008 Deloitte Review, page 19 (Doc ID: 0.7.120.431665).

¹¹¹ Minutes of Board meeting, dated 21 April 2008 (Doc ID: 0.7.120.7090).

¹¹² Minutes of Audit Committee meeting, dated 26 May 2008, page 3 (Doc ID: 0.7.120.57529).

The committee agreed that in order to obtain assurance that these recommendations... were implemented and continued to be in place, the Internal Auditor should report to the committee by the end of July 2008 and also again at the end of January 2009 on the quality of the initial and continuing implementation of all fourteen recommendations".¹¹³

5.141 In an email dated 31 July 2008¹¹⁴, Mr McMahon, the internal auditor attached a report entitled "*Deloitte lending review recommendation update*".¹¹⁵ This report provided an update in respect of the 14 recommendations outlined in the May 2008 Deloitte Review, including the recommendation in relation to obtaining required information from borrowers. Mr McMahon confirmed that the recommendations were either implemented or due to be implemented by an identified revised implementation date. This update made findings that the checklist that had been introduced to ensure proper information was being held on file was not always completed. The expected implementation date for the recommendation concerning checklists was revised to 31 July 2008.

5.142 Following these updates from internal audit, Dr Walsh on behalf of INBS provided a fuller response to the Financial Regulator on 5 September 2008¹¹⁶ and stated that the Board would provide monthly updates on the implementation of recommendations made in the May 2008 Deloitte Review. This response did not give any information in relation to any implementation that may have already occurred.

5.143 However, the Financial Regulator wrote to INBS addressing the letter to Mr Purcell, on 14 November 2008, stating:

"I would draw your attention to the large amount of correspondence, due from INBS to the Financial Regulator, set out in the attached schedule.

The Financial Regulator is concerned that INBS has not submitted these reports and documents within the original timescales agreed. The Financial Regulator requires INBS to submit these reports and documents immediately".¹¹⁷

¹¹³ Letter from Stan Purcell, INBS, to Yvonne Madden, Financial Regulator, dated 25 June 2008 (Doc ID: 0.7.120.131950).

¹¹⁴ Email from Killian McMahon to various INBS directors, dated 31 July 2008 (Doc ID: 0.7.120.293425).

¹¹⁵ Deloitte Lending Review Recommendation Update, dated 31 July 2008 (Doc ID: 0.7.120.293425-000002).

¹¹⁶ Letter from Michael Walsh, INBS, to Con Horan, Financial Regulator, dated 5 September 2008 (Doc ID: 0.7.120.136957).

¹¹⁷ Letter from Yvonne Madden, Financial Regulator, to Stan Purcell, INBS, dated 14 November 2008 (Doc ID: 0.7.120.133629).

5.144 The schedule listed ten items to be provided by INBS and one of these was “*Monthly Board reporting to the Financial Regulator on Deloitte and KPMG reports*”.

2008 Belfast Internal Audit Report¹¹⁸

5.145 This report made the following findings in relation to acquiring required information from borrowers to facilitate an assessment of repayment capacity:

“1.3 Main issues arising

The following five major weaknesses were noted in the Belfast branch control environment:

...2. The documentation used to support lending decisions is inconsistent and is largely based on the Society’s knowledge of and history with the customer.

3. There is insufficient evidence on customer loan files to support a customer’s ability to meet loan repayments...”.¹¹⁹

5.146 Under the heading “*Loan Documentation*”, the report stated:

“A number of deficiencies were noted in the documentation held on file in respect of a sample of 10 accounts...”.¹²⁰

5.147 The internal audit department’s recommendations were:

“The Belfast Branch manager must ensure that all required documentation has been received from the customers and attached to the appropriate loan file in line with the requirements of the Commercial Mortgage Lending policy.

An assessment, in relation to each customer’s ability to meet loan repayments, must be performed prior to a loan being approved. This assessment should be based on independent documentation”.¹²¹

5.148 This had a rating of 4 which signified the most serious, or critical, level of risk. This rating was designated for serious control weaknesses with a high probability of significant financial loss, misstatement of financial results, compliance implications or reputational impacts, if left unaddressed. The timeline for implementation was

¹¹⁸ 2008 Belfast Internal Audit Report (Doc ID: 0.7.120.431794).

¹¹⁹ 2008 Belfast Internal Audit Report, page 5 (Doc ID: 0.7.120.431794).

¹²⁰ 2008 Belfast Internal Audit Report, page 10 (Doc ID: 0.7.120.431794).

¹²¹ 2008 Belfast Internal Audit Report, page 10 (Doc ID: 0.7.120.431794).

“Immediately”.¹²²

5.149 The Belfast Branch manager, Mr McCollum, signed a manager’s sign off sheet confirming that the recommendations identified in the report were accepted and would be implemented.

5.150 Mr McCollum prepared a *“Management Action Plan”* with respect to the findings and in relation to the recommendations outlined above, he stated:

“In relation to assessment of a customer’s ability to meet loan repayments the nature of commercial lending undertaken at Belfast branch means that on interest only loans repayments are generated by the asset being purchased and not from the borrower’s salary as is a home loan”.¹²³

5.151 The 2008 Belfast Internal Audit Report was considered by the Audit Committee at its meeting on 12 September 2008.¹²⁴ These minutes were noted at the Board meeting on 12 December 2008.¹²⁵

5.152 The next Audit Committee meeting occurred outside the Review Period, but the minutes identified that *“Documentation supporting loan approval is incomplete. In certain instances the checklist was not being completed”*.¹²⁶

5.153 The minutes stated:

“The Committee was disappointed at the progress in implementing recommendations from the May 2008 review. The Committee asked the internal auditor to prepare a report for circulation to the Board and the Financial Regulator setting out the reasons why certain recommendations were not addressed and what is the up to date position on all 18 recommendations above”.¹²⁷

5.154 The minutes for that meeting also recorded:

¹²² 2008 Belfast Internal Audit Report, page 10 (Doc ID: 0.7.120.431794).

¹²³ Belfast Branch Audit 2008 – Management Action Plan, page 5 (Doc ID: 0.7.120.449943).

¹²⁴ Minutes of Audit Committee meeting, dated 12 September 2008 (Doc ID: 0.7.120.56436).

¹²⁵ Minutes of Board meeting, dated 12 December 2008 (Doc ID: 0.7.120.21207).

¹²⁶ Minutes of Audit Committee meeting, dated 4 November 2008, page 2 (Doc ID: 0.7.120.56063).

¹²⁷ Minutes of Audit Committee meeting, dated 4 November 2008, page 4 (Doc ID: 0.7.120.56063).

“ISSUES OUTSTANDING AND NOT ADDRESSED FROM PREVIOUS INTERNAL AUDIT REPORTS

The internal auditor outlined the following critical and significant issues remaining outstanding from previous internal audit reports.

...

12. The determination of a customer’s ability to meet loan repayments is not readily apparent on a number of UK loan files.

...

The Committee requested an update on progress in implementing the above issues for its next meeting. These recommendations should to be put in place while the business is not too active”.¹²⁸

5.155 These minutes were circulated to the Board for its 12 December 2008 meeting, but the minutes of that meeting¹²⁹ did not record any reference to or action arising from the findings cited in the 2008 Belfast Internal Audit Report or the list of outstanding findings from previous internal audit reports.

September 2008 Deloitte Review¹³⁰ and 2009 Deloitte Review¹³¹

5.156 The final Contemporaneous Report that raised the issue of required information was the September 2008 Deloitte Review. The final draft of this report was discussed at the Audit Committee meeting held on 4 November 2008.¹³² The minutes for the Board meeting on 12 December 2008¹³³ recorded that the Board “*reviewed and discussed*” the Audit Committee minutes for meetings held on 12 September 2008 and 4 November 2008.

5.157 The internal auditor prepared a memorandum in respect of the recommendations raised in both the May 2008 and September 2008 Deloitte Reviews.¹³⁴ It was

¹²⁸ Minutes of Audit Committee meeting, dated 4 November 2008, page 4 to 6 (Doc ID: 0.7.120.56063).

¹²⁹ Minutes of Board meeting, dated 12 December 2008 (Doc ID: 0.7.120.21207).

¹³⁰ September 2008 Deloitte Review (Doc ID: 0.7.120.430877).

¹³¹ 2009 Deloitte Review (Doc ID: 0.7.120.508410).

¹³² Minutes of Audit Committee meeting, dated 4 November 2008 (Doc ID: 0.7.120.56063).

¹³³ Minutes of Board meeting, dated 12 December 2008 (Doc ID: 0.7.120.21207).

¹³⁴ Memorandum from Killian McMahon to the Board and Chief Executive, dated 4 December 2008 (Doc ID: 0.7.120.749985).

addressed to the Board and the chief executive. With respect to acquiring required information, it stated:

“Documentation supporting loan approval is incomplete.

Reason(s) for recommendation

In certain instances the Commercial Advances checklist was not being completed

Current Status

A new control was put in place in August 2008 to ensure all commercial files have a completed commercial advances checklist on file before the loan is drawdown

The Commercial Advances checklist has been updated in November 2008 to require mandatory documentation on loan files

As all loan drawdowns now require a completed Checklist, the Society’s Drawdown & Control section is ensuring a quality assurance check is performed for every loan advanced

*IA will follow up on the implementation status of this recommendation in February 2009”.*¹³⁵

5.158 This memorandum together with the 4 November 2008 Audit Committee meeting minutes were discussed by the Board at its meeting on 12 December 2008.¹³⁶

5.159 In a letter dated 12 December 2008 to the Financial Regulator, Mr Purcell set out the Board’s view on the finding that documentation supporting loan approval was not complete. The letter stated:

“Deloitte could not test whether this recommendation had been addressed due to the lack of new and additional loans which were underwritten between June and August 2008. A new control was put in place in August 2008 to ensure all commercial files have a completed commercial advances checklist on file before the loan is drawdown. The Commercial advances checklist has been updated in November 2008 to require mandatory documentation on loan files.

¹³⁵ Memorandum from Killian McMahon to the Board and Chief Executive, dated 4 December 2008, page 2 (Doc ID: 0.7.120.749985).

¹³⁶ Minutes of Board meeting, dated 12 December 2008 (Doc ID: 0.7.120.21207).

*As all loan drawdowns now require a completed checklist, the Society's drawdown & control section is ensuring a quality assurance check is performed for every loan advanced".*¹³⁷

5.160 The Financial Regulator wrote to Mr Fingleton on 23 December 2008 and, with respect to the reviews conducted by Deloitte, stated:

*"The internal audit reviews of lending by Deloitte in 2008 exacerbated our concerns with regard to credit risk management, having found that certain issues previously raised by Deloitte and the Financial Regulator remained, while further issues also were identified".*¹³⁸

5.161 The Financial Regulator set out a number of measures it required INBS to take, as follows:

"INBS is required to fully implement and address all Deloitte's recommendations. The Financial Regulator requires the Board to follow-up on the resolution of these recommendations on a monthly basis, with a monthly report to be considered by the Board in this regard and submitted to the Financial Regulator. INBS is required to conduct a follow-up audit in February 2009, Deloitte is to be engaged and the resultant report is to be submitted to the Board and the Financial Regulator by the end of February 2009.

The Financial Regulator is also concerned that Deloitte's September Report identified that the Board of INBS is not exercising a credit risk management role, particularly in the current environment. In this regard:

...

- *Before loans are approved the Board of INBS is to ensure that adequate loan application documentation is in place on which to base its lending decision...".*¹³⁹

5.162 The minutes of the Audit Committee meeting held on 28 January 2009, noted with respect to the Financial Regulator's letter quoted above:

¹³⁷ Letter from Stan Purcell, INBS, to Yvonne Madden, Financial Regulator, dated 12 December 2008, page 2 (Doc ID: 0.7.120.309719-000001).

¹³⁸ Letter from Bernard Sheridan, Financial Regulator, to Michael Fingleton, INBS, dated 23 December 2008, page 2 (Doc ID: 0.7.120.140276).

¹³⁹ Letter from Bernard Sheridan, Financial Regulator, to Michael Fingleton, INBS, dated 23 December 2008, page 7 (Doc ID: 0.7.120.140276).

*“The Chairman said he would meet with the Internal Auditor and the Secretary in February in relation to assessing the adequacy of resources within Internal Audit and INBS”.*¹⁴⁰

5.163 The minutes made no reference to the credit risk issues raised by the Financial Regulator.

5.164 The Financial Regulator’s letter was also noted by the Board at its meeting on 23 January 2009¹⁴¹, but the minutes did not record any discussion of the points raised in the above extract from the letter.

Other relevant documentary evidence - electronic data

5.165 The Investigation Report identified internal emails in INBS relevant to the issue of acquiring borrower information to assess repayment capacity.¹⁴² An email dated 29 May 2007 was sent from Mr Daly, credit risk manager, to Mr McMenamin and Mr McCollum that referred to a memorandum from Mr Fingleton outlining an updated procedure with respect to loan applications. The email stated:

*“Attached copy memo signed by MPF today stipulating the information required for all approvals. This is with immediate effect for all [sic] approvals whether full, staged or additional. I will circulate a document to each of you separately whcih [sic] will need to be signed with every drawdown confirming that everything is on file. Doc is entitled New Drawdown controls”.*¹⁴³

5.166 The email attached an internal memorandum of the same date, “*Re: Commercial Lending*” with the filename “*New Drawdown Controls. doc*” from Mr Fingleton to Mr McMenamin and Mr McCollum, which stated:

“All loan applications are to include the following information:

- *Commercial Lending Application (CLA) including Grade recommendation.*
- *A full valuation report detailing current valuation and future valuations based on the proposal. Depending on the circumstances of the facility*

¹⁴⁰ Minutes of Audit Committee meeting, dated 28 January 2009, page 4 (Doc ID: 0.7.120.56256).

¹⁴¹ Minutes of Board meeting, dated 23 January 2009 (Doc ID: 0.7.120.314000-000002).

¹⁴² Investigation Report, Chapter 6, paragraph 6.274 (Doc ID: RDU_REL-000000030).

¹⁴³ Email from Darragh Daly to Tom McMenamin and Gary McCollum, dated 29 May 2007 (Doc ID: 0.7.120.300678).

requested, this may include valuations based on vacant possession, tenancy, planning enhancements, pre-sales, full build out etc.

- *A business plan outlining the rationale and basis for the advance, including financial projections.*
- *The lenders assessment of the profit share proposal, setting out the timelines and cash flows for the various phases of the project.*
- *Any additional information should be included with the proposal, either by way of Lenders memo and/or supporting documentation.*
- *All appropriate Money Laundering Documentation*
- *Appropriate financial information”.*¹⁴⁴

Witness evidence

Brian Fitzgibbon

5.167 Mr Fitzgibbon was a member of the Credit Committee from July 2006 until November 2007. He gave evidence to the Inquiry during the Context Hearing on 11 June 2021. He was asked about the 28 February 2007 Commercial Mortgage Lending Policy.¹⁴⁵ Page 5 of that policy document set out the general basic criteria that were required to be in place before a commercial loan could be drawn down. Mr Fitzgibbon said that the only information that came before the Credit Committee was what was contained in the CLA. He said that there was very little discussion on any case that came “*from Belfast, and/or the favourite customers in the republic*”. When asked why the Credit Committee approved loans that were not in compliance with policy, he stated that these loans would have got approval anyway and that in some cases, not all, he would have been informed that the money had already gone. He stated: “*It would have been a personal telephone call to Mr. Fingleton and that money would have been advanced*”.¹⁴⁶

5.168 Mr Fitzgibbon said there was no “*uproar*” from the Credit Committee in relation to the kind of lending it was being asked to approve. He said that Mr Fingleton was a member

¹⁴⁴ Internal memorandum from Michael Fingleton to Tom McMenamin and Gary McCollum, dated 29 May 2007 (Doc ID: 0.7.120.300678-000002).

¹⁴⁵ 28 February 2007 Commercial Mortgage Lending Policy (Doc ID: 0.7.120.27792).

¹⁴⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 93 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

of the Credit Committee although he never attended any meeting during Mr Fitzgibbon's time there.¹⁴⁷

Killian McMahon

5.169 Mr McMahon, INBS internal auditor, gave evidence to the Inquiry during the Context Hearing on 2 July 2021.¹⁴⁸ In relation to information that was required to be on file prior to money being paid out, Mr McMahon stated that the criteria set out in the 9 November 2004 Commercial Lending Criteria was the criteria that informed subsequent policy provisions. He confirmed that arising from his 2006 audit, he had an involvement in relation to collating a checklist for the benefit of the commercial lenders, which he described as a "*step in the right direction- to try to get more complete information on file*".¹⁴⁹

5.170 Mr McMahon was asked about a statement he made to the Authorised Officer of the Central Bank in an interview in 2013. He had stated:

*"I didn't particularly like the way they lended, it was all relationship based lending".*¹⁵⁰

5.171 He was asked about his understanding of the term "*relationship lending*". He stated:

"That the Society had a relationship with these borrowers and that we relied on the relationship as a means to, I suppose, assess their – it was one of the ways we would have assessed their creditworthiness or their repayment capacity. It wasn't – – and it may be that the lenders – you know, the commercial lending teams, you know, understood more than was actually put on file.

*So there may not be documents indicating repayment capacity, but the lenders themselves may have had relationships and may have known more than, you know, we were able to verify as Internal Audit".*¹⁵¹

¹⁴⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 98 line 12 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

¹⁴⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021 (Doc ID: RDU_FT_SPC1-4_D30-00000001).

¹⁴⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 37 line 8 et seq. (Doc ID: RDU_FT_SPC1-4_D30-00000001).

¹⁵⁰ Transcript of Interview with Mr Killian McMahon, dated 9 March 2013, page 21 line 18 et seq. (Doc ID: 0.7.120.683753).

¹⁵¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 18 line 25 et seq. (Doc ID: RDU_FT_SPC1-4_D30-00000001).

5.172 In the course of the oral hearing, Mr McMahon was asked how he tested repayment capacity in INBS in the policies, procedures and best practices. Mr McMahon stated:

“...you would select a sample of loans, and then you would go to the audit file and look to see whether there was backup documentation that would support a lender’s ability to repay.

*So with the company, that would be their annual accounts. They may have done projections. With individual borrowers, they might have a statement of affairs. ...for residential you might have, ...a tax return from the previous year...”*¹⁵²

Mr Purcell’s involvement in or awareness of the documentary evidence

5.173 Mr Purcell was a Board director and had a role in the approval of large commercial loans. Prior to 17 December 2007, the Board was responsible for approving large loans in excess of the authority levels delegated by the Board to the Credit Committee.

5.174 Mr Purcell also had a role in co-ordinating management responses to KPMG Management Letters.

5.175 As outlined above, Contemporaneous Reports raised the issue of required information not being acquired in order to assess a borrower’s capacity to repay a loan. By virtue of his role as secretary to the Audit Committee and his role as a Board member, Mr Purcell was aware or ought to have been aware of the issues being raised in these reports.

5.176 Mr Purcell was present at each Board meeting where responses to correspondence from the Financial Regulator and findings relating to Contemporaneous Reports issued during the Review Period were discussed, and some correspondence was addressed to or from him on behalf of the Board. This correspondence is dealt with in detail at paragraph 5.159 et seq. above.

Mr Purcell’s replies to Examination Letter

5.177 Mr Purcell was issued with an Examination Letter dated 17 January 2012, notifying him of the commencement of an examination under the ASP. He was asked to outline

¹⁵² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 21 line 15 et seq. (Doc ID: RDU_FT_SPC1-4_D30-00000001).

his contribution, if any, to ensuring compliance with the written commercial lending policies adopted by INBS. In his response he stated:

*“The Board laid down policies and procedures to be adopted by the lending function in the Society. I was a member of the Board during the period which considered policies/guidelines and loan applications submitted to the Board. I was not involved in commercial lending, loan approval or credit committee at any stage”.*¹⁵³

5.178 Mr Purcell was asked to outline in detail what measures were taken by him to satisfy himself that the commercial lending department, as the major credit granting function of INBS, was properly managed. He responded:

*“The Commercial Lending department reported to the MD. I refer to the Organisational Structure Chart pages 115 –116 of the KPMG Vendor’s Due Diligence Report. As far as I was aware the Commercial Lending Department was busy but properly managed”.*¹⁵⁴

Mr Purcell’s submissions

5.179 Mr Purcell stated in his submissions to the Inquiry on 22 April 2021, at the end of the Loan Hearings, that he did not have responsibility for ensuring that:

“...the entire business was managed in accordance with internal controls. I did not have responsibility for internal controls in the lending area.

*The managing director and the lending area managers who reported to him were responsible for ensuring that the commercial lending business was managed in accordance with internal controls”.*¹⁵⁵

5.180 In these submissions, which are set out in full at paragraphs 5.89 to 5.91 above, Mr Purcell addressed the statement made by the LPT on the first day of the Loan Hearings on 30 October 2020 in which the LPT indicated that before approving a loan the Board members, including Mr Purcell, should have been satisfied that CLAs had been processed in accordance with internal policies, bearing in mind also that Mr Purcell

¹⁵³ Replies of Stan Purcell dated 31 May 2012 to Notice of Examination dated 17 January 2012, page 12 of 41 (Doc ID: 0.7.120.56484).

¹⁵⁴ Replies of Stan Purcell dated 31 May 2012 to Notice of Examination dated 17 January 2012, page 18 of 41 (Doc ID: 0.7.120.56484).

¹⁵⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 22 April 2021 page 84 line15 et seq. (Doc ID: RDU_FT_SPC1-4_D18-000000001).

would have been aware of the findings made by internal audit concerning compliance with internal policies.¹⁵⁶

5.181 Mr Purcell stated:

“As a Board member I was satisfied that CLAs had been processed in accordance with policy

...

D. In summary:

As a member of the Board I was satisfied that CLAs were processed in accordance with internal policies on the basis of the Credit Committee processes, authorities and duties. The role and assurances of the managing director as the link between the Credit Committee and the Board. And the responses from lending managers that they had carried out, or were carrying out actions required by audit recommendations.

*As stated above, I was not responsible for internal controls in the lending area”.*¹⁵⁷

5.182 In his opening statement at the commencement of the Context Hearings¹⁵⁸, Mr Purcell addressed loan policies and the assessment, recommendation and approval of commercial loans. He stated that there was compliance with policy in relation to the assessment, recommendation and approval of commercial loans. He listed the relevant policies as: the 2003 Credit Risk Policy; the 28 February 2007 Commercial Mortgage Lending Policy; and the 27 June 2007 Credit Risk Management Policy. He submitted that the 9 November 2004 Commercial Lending Criteria was not a policy approved by the Board and so was not an applicable policy.

5.183 Mr Purcell also submitted that the case by case guide and guidance approach were important features of the lending policies. He quoted the 27 June 2007 Credit Risk

¹⁵⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 30 October 2020, page 42 line 1 et seq. (Doc ID: RDU_FT_SPC1-4_D1-00000001).

¹⁵⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 22 April 2021, page 87 line 10 et seq. (Doc ID: RDU_FT_SPC1-4_D18-00000001).

¹⁵⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 29 to 63 (Doc ID: RDU_FT_SPC1-4_D19-00000004).

Management Policy which stated: “*Commercial Loan Applications are assessed on a case by case basis*”.¹⁵⁹

5.184 Mr Purcell submitted that most of the commercial lending assessed under the 28 February 2007 Commercial Mortgage Lending Policy was assessed on a case by case basis as it related to development finance. He stated:

“Commercial loans with supplemental arrangement fees, also known as fee share agreements, were on a case by case basis”.¹⁶⁰

5.185 Mr Purcell also addressed the issue of Board approval. He said:

“Once the loan was recommended by the Credit Committee, the Board considered the loan. The Board’s approval covered all the features set out in the CLA...”.¹⁶¹

5.186 In his closing submissions, dated 22 October 2021, outlined above in respect of SPC 1.2 and quoted in Chapter 3 of this Findings Report, Mr Purcell reiterated that the Managing Director and the lending area managers who reported to him were responsible for ensuring that commercial lending was managed in accordance with internal controls.

INQUIRY FINDING – SPC 1.3

Finding in relation to INBS

5.187 **The Inquiry finds, based on the Loan File Analysis outlined in Chapter 4 and summarised above, that loans were advanced without required information being obtained. Of the 36 loans examined, 13 were found to be in breach of the policy provisions underlying SPC 1.3. 23 of the loans were found not to have breached policy, as alleged.**

5.188 **The five Contemporaneous Reports analysed above also made findings that required information, which would allow for an informed assessment of the borrower’s capacity to repay the loan being advanced, was not obtained. This was particularly the case in loans emanating from the Belfast Branch.**

¹⁵⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 34 line 11 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

¹⁶⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 34 line 19 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

¹⁶¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 35 line 22 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

5.189 The Financial Regulator expressed concern that adequate loan application documentation was not in place before loans were approved.

5.190 Failure to obtain the kind of information that is the subject matter of SPC 1.3, namely: three years' audited accounts; business plan or proposals; or a forecast cash flow analysis (in the case of a corporate borrower), was a serious omission. In particular, advancing large facilities without a business plan or a cash flow analysis, as demonstrated in the Loan File Analysis, is not consistent with prudent risk management. In circumstances where the borrower was an SPV and no personal guarantee from directors was obtained (this issue is dealt with in Chapter 7 concerning SPC 3), a comprehensive assessment of the financial proposal should have been conducted in all cases.

5.191 The Inquiry finds that INBS was in breach of the allegations set out in SPC 1.3.

5.192 With regard to the legislative provisions and condition on INBS's authorisation underpinning SPC 1(a), 1(b) and 1(c), the Inquiry finds as follows:

(a) Regulation 16(1) of the 1992 Regulations

The Inquiry finds that from 28 February 2007 to 30 September 2008, INBS failed to acquire required information from borrowers in order to assess repayment capacity and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed. Accordingly, the Inquiry finds that a contravention of Regulation 16(1) of the 1992 Regulations occurred.

(b) Section 76(1) of the 1989 Act

The Inquiry finds that from 28 February 2007 to 30 September 2008, INBS failed to acquire required information from borrowers in order to assess repayment capacity and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon. Accordingly, the Inquiry finds that a contravention of section 76 (1) of the 1989 Act occurred.

(c) Part 1 of the 2005 Regulatory Document

The Inquiry finds that from 28 February 2007 to 30 September 2008, INBS failed to acquire required information from borrowers in order to assess repayment capacity and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. Accordingly, the Inquiry finds that a contravention of Part 1 of the 2005 Regulatory Document occurred.

Finding in relation to Mr Purcell's participation

5.193 The Inquiry accepts that Mr Purcell was not directly involved with day to day commercial lending. His role, as set out by him in his submissions and other evidence to the Inquiry did not involve a role in processing commercial loans.

5.194 However, Mr Purcell was involved as a member of the Board. Mr Purcell, together with the other Board members, was aware from contemporaneous documents and from Financial Regulator Correspondence that commercial lenders were, in some cases, not obtaining the required information from borrowers in order to properly assess their capacity to repay the loan being provided.

5.195 Although a Commercial Advances Checklist had been introduced from June 2006, there was evidence from Contemporaneous Reports that this checklist was not being completed in all cases.

5.196 The Inquiry finds that Mr Purcell, as a Board member, did participate in the breaches set out in the SPC 1.3 Allegation. Accordingly, the Inquiry finds that Mr Purcell did participate in the commission by INBS of SPCs 1(a), 1(b) and 1(c).

SPC 1.4

5.197 SPC 1.4 alleged that credit grades were not assigned to commercial loans in the credit decision making process.

Relevant INBS policy documents

5.198 The applicable policies cited in the Investigation Report in respect of SPC 1.4 are:

- (a) the 8 April 2003 Credit Grading System for Commercial Lending;
- (b) the 2005 Impairment Provisioning Policy;

- (c) the 2006 Impairment Provisioning Policy;
- (d) the 2006 Notes on the Implementation of Impairment Provisioning Policy; and
- (e) the 27 June 2007 Credit Risk Management Policy.¹⁶²

5.199 The credit grade consisted of a letter (A to D; W to Z) and a number (1 to 6) representing LTV ratio and repayment capacity, respectively.

5.200 The standard CLA throughout the Review Period included a space for the credit grade to be inserted. Of the 80 loans in the Loan Sample that had a CLA and a date of first drawdown within the Review Period, all had a space for credit grading on the CLA.

5.201 The 8 April 2003 Credit Grading System for Commercial Lending stated that:

“From June 2002 a classification/grading system was implemented and all commercial applications paid out now include the code of 3. This is the intended starting position and depending on the repayment performance over time they would move one way or the other.

*The grading system separately grades loan to value and repayment capacity. Loan to value would be graded A – D and repayment capacity graded 1 – 6”.*¹⁶³

Mr Purcell’s submissions

5.202 Mr Purcell made a submission in respect of this SPC that the Inquiry found compelling. Mr Purcell stated:

“A. The 2003 credit grading policy (pages 1 and 2) does not state when a credit grade was to be assigned to alone [sic]. The policy did not require that a credit grade be stated on the CLA presented to the Board.

B. The Terms of Reference of the Credit Committee dated 16th October... states:

“All credit applications submitted to the Credit Committee should have the following information”.

¹⁶² See Table included at Appendix 11 for details of the relevant policy provisions.

¹⁶³ 8 April 2003 Credit Grading System for Commercial Lending, page 1 (Doc ID: 0.7.120.478217).

This following information list does not include a credit grade. Also the Appendix A list in the 19th July 2006 Credit Committee Terms of Reference does not include a credit grade.¹⁶⁴

5.203 Mr Purcell then referred to the Financial Regulator's report on an inspection of INBS in June 2006, which recommended that credit grades be assigned as part of the underwriting process. He submitted that this recommendation was recorded in an internal INBS memorandum, dated 14 June 2006, entitled "*Closing Meeting with Financial Regulator*", which was considered by the Board on 24 August 2006, and the Board requested action and a report at the next meeting.¹⁶⁵

5.204 Mr Purcell submitted that the Provisions Committee meeting held on 26 October 2006, agreed to recommend for approval the updated Impairment Provisioning Policy document and the Notes on the Implementation of Impairment Provisioning Policy. He stated that paragraph 4.1 of the Notes on the Implementation of Impairment Provisioning Policy states: "*Early in the credit decision making process, all accounts are assigned a credit classification. This note is made up of three elements*", and that one of the three elements was a credit grade, which classified the loan on the basis of LTV and repayment capacity.¹⁶⁶

5.205 Mr Purcell submitted that this was not creating a new policy for applying credit grades but was a response to the memorandum of 14 June 2006 and the Board's request for action thereon. He stated:

"The reason why the notes do not create a new policy for applying credit grades is as follows, and I am referring to two documents. The first reference is 44917; the second is 5833.

These documents were submitted to the Board Meeting on the 19th December 2006, and set out a summary of the principal changes to Impairment Policy. One of the principal changes in the notes on the implementation of the Impairment Provisioning Policy was: The Society's credit risk management

¹⁶⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 22 April 2021, page 98 line 6 et seq. (Doc ID: RDU_FT_SPC1-4_D18-000000001).

¹⁶⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 22 April 2021, page 98 line 23 et seq. (Doc ID: RDU_FT_SPC1-4_D18-000000001).

¹⁶⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 22 April 2021, page 100 line 15 et seq. (Doc ID: RDU_FT_SPC1-4_D18-000000001).

practices are documented. The notes documented the 4.1 credit classifications as a practice not a policy.¹⁶⁷

5.206 The Financial Regulator wrote to INBS on 20 November 2006¹⁶⁸ and stated: “*The Inspectors consider that credit grades should be assigned as part of the underwriting process*”.

5.207 In response, by letter dated 31 January 2007, the Managing Director said that credit grades were assigned during the assessment of proposals.¹⁶⁹

5.208 Mr Purcell submitted:

“F. An internal memo dated 29th May 2007...from Michael Fingleton to Tom McMenamin and Gary McCollum said:

*“All loan applications are to include the following information:
Commercial lending CLAs including the grade recommendation”.*

G. The assigning of credit gradings to accounts early in the decision making process became a part of the 27th June 2007 Credit Risk Management Policy”.¹⁷⁰

Loan File Analysis

5.209 The Investigation Report identified 15 loans in the Loan Sample where it was suspected that a credit grade was not assigned in the credit decision making process. In one of the 15 loans in respect of which SPC 1.4 was alleged, the SPC 1.4 Loan Specific Allegation was excluded from the Loan Hearings on the basis that it was an INBS Only Allegation.¹⁷¹ Accordingly, the Inquiry only considered the SPC 1.4 Allegations that were advanced in the remaining 14 loans. Thirteen of the 14 remaining loans lacked a CLA and are the same loans as are set out in SPC 1.1. All of these loans also lacked Credit Committee recommendation and Board approval and represent a very serious series of allegations some of which are dealt with in SPC 2.

¹⁶⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 22 April 2021, page 101 line 1 et seq. (Doc ID: RDU_FT_SPC1-4_D18-000000001).

¹⁶⁸ Letter from Yvonne Madden, Financial Regulator, to Michael Fingleton, INBS, dated 20 November 2006, page 13 (Doc ID: 0.7.120.519059).

¹⁶⁹ Letter from Michael Fingleton, INBS, to Yvonne Madden, Financial Regulator, dated 31 January 2007, page 6 (Doc ID: 0.7.120.443254).

¹⁷⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 22 April 2021, page 102 line 20 et seq. (Doc ID: RDU_FT_SPC1-4_D18-000000001).

¹⁷¹ See paragraph 3.29 of Chapter 3 (Introduction to SPCs 1 to 4) for an explanation of the INBS Only Allegations.

The Inquiry found that the SPC 1.4 Allegation was proven against INBS in respect of one¹⁷² of these 14 loans. One further loan¹⁷³ did have a CLA but the credit grade was not entered. However, in this case the Inquiry made no finding against INBS in respect of the SPC 1.4 Allegation. The basis for the Inquiry's findings in this regard is outlined at paragraphs 5.218 to 5.224 below.

5.210 A loan specific participation allegation was advanced against Mr Purcell in one¹⁷⁴ of the 14 remaining loans. This is dealt with in Chapter 4 (Loan File Analysis) at paragraph 4.1143. As the Inquiry made no finding against INBS in respect of the SPC 1.4 Allegation in that loan, the loan specific participation allegation against Mr Purcell falls away.

Contemporaneous Reports and Financial Regulator Correspondence

5.211 The Inquiry find that Mr Purcell's submission that the requirement to assign a credit grade to a loan during the approval process was not a policy requirement in INBS until the 27 June 2007 Credit Risk Management Policy, is correct. The three Contemporaneous Reports that raised the issue of credit grades were:

- (a) the 2004 Belfast Internal Audit Report;
- (b) the 2006 Belfast Internal Audit Report; and
- (c) the 2007 Belfast Branch Audit Report.

5.212 These three reports pre-dated the adoption of the 27 June 2007 Credit Risk Management Policy, and accordingly, any references in these reports to a failure to apply a credit grade at the point of preparing the CLA, was not, in the view of the Inquiry, a reference to a breach of an internal policy requirement.

5.213 Correspondence from the Financial Regulator recommended that INBS should be assigning credit grades as part of the underwriting process. This correspondence begins with a letter from the Financial Regulator to INBS, addressed to Mr Fingleton, dated 20 November 2006.¹⁷⁵ The Financial Regulator flagged that INBS ought to be assigning credit grades as part of the underwriting process.

¹⁷² Loan Account: [REDACTED] (Customer: [REDACTED] and Borrower: [REDACTED]).

¹⁷³ Loan Account: [REDACTED] (Customer: [REDACTED] and Borrower: [REDACTED]).

¹⁷⁴ Loan Account: [REDACTED] (Customer: [REDACTED] and Borrower: [REDACTED]).

¹⁷⁵ Letter from Yvonne Madden, Financial Regulator, to Michael Fingleton, INBS, dated 20 November 2006 (Doc ID: 0.7.120.519059).

5.214 INBS replied to the Financial Regulator, dated 31 January 2007, stating that credit grades were assigned during the assessment of the proposal by the commercial lender.¹⁷⁶

5.215 The Financial Regulator further corresponded with INBS on 14 March 2007, and with respect to credit grades the letter stated:

"I understand that the Society has implemented this recommendation and credit grades are assigned to exposures by lenders and that the accuracy of such grades is reviewed as part of the loan review process".¹⁷⁷

5.216 All of this correspondence occurred before the assigning of a credit grade at the underwriting stage had been adopted as policy within INBS.

Witness evidence

5.217 In light of the findings made by the Inquiry in their Loan File Analysis with respect to SPC 1.4, as outlined at paragraph 5.209 above, witness evidence is not relevant to this Findings Report.

INQUIRY FINDING – SPC 1.4

Finding in relation to INBS

5.218 **Credit grades were assigned by the commercial lender responsible for the loan at the point of preparing the CLA, which had a designated box in which the grade was inputted. In the Loan Sample there were 15 loans where it was alleged that credit grades had not been assigned in the decision making process. As outlined above, the Inquiry only considered the SPC 1.4 Allegations in 14 of these loans. In all 14 of these loans, there was no CLA prepared at all and these 14 loans were the subject of SPC 1.1 Allegations. In respect of one¹⁷⁸ of these 14 loans, the Inquiry found that the SPC 1.4 Allegation had been proven against INBS. In only one case¹⁷⁹ of the 91 loans in the Loan Sample was there a CLA with no credit grade included. However, in this case the Inquiry made no finding against INBS in respect of that Loan Specific Allegation.**

¹⁷⁶ Letter from Michael Fingleton, INBS, to Yvonne Madden, Financial Regulator, dated 31 January 2007, page 6 (Doc ID: 0.7.120.443254).

¹⁷⁷ Letter from Yvonne Madden, Financial Regulator, to Michael Fingleton, INBS, dated 14 March 2007, page 5 (Doc ID: 0.7.120.133691).

¹⁷⁸ Loan Account: [REDACTED] (Customer: [REDACTED] and Borrower: [REDACTED]).

¹⁷⁹ Loan Account: [REDACTED] (Customer: [REDACTED] and Borrower: [REDACTED]).

- 5.219 There were credit grade findings in three Contemporaneous Reports during the Review Period. However, none of those reports contained a recommendation in this regard.
- 5.220 In November 2006, the Financial Regulator, following an inspection, recommended that credit grades be assigned as part of the underwriting process. In May 2007, Mr Fingleton instructed Mr McMenemy and Mr McCollum to include a grade on all CLAs. The assignment of credit grades to accounts early in the decision making process became part of the 27 June 2007 Credit Risk Management Policy.
- 5.221 Mr Purcell made three points in his submissions on the issue of credit grading:
- (a) He stated that the 8 April 2003 Credit Grading System for Commercial Lending did not require that a CLA should have a credit grade when presented to the Credit Committee or the Board. The Inquiry agrees with this assertion.
 - (b) He stated that a credit grade was not listed as a requirement under the Credit Committee Terms of Reference. The Inquiry agrees with this assertion.
 - (c) He stated that the Impairment Provisioning Policy did not create new policy with respect to credit grades. The Inquiry agrees with this assertion.
- 5.222 In light of the above, the Inquiry takes the view that only one of the policy documents identified in the Investigation Report in respect of SPC 1.4, the 27 June 2007 Credit Risk Management Policy, was an applicable policy. This policy was identified as a relevant policy document in only one¹⁸⁰ of the 14 loans considered by the Inquiry in respect of which the SPC 1.4 Allegation was advanced.
- 5.223 While the Inquiry finds that SPC 1.4 was proven against INBS in respect of this one loan, the Inquiry finds there is insufficient evidence to support a finding that this amounted to commission by INBS of SPCs 1(a), 1(b) or 1(c).

¹⁸⁰ Loan Account: [REDACTED] (Customer: [REDACTED] and Borrower: [REDACTED])

Finding in relation to Mr Purcell's participation

5.224 In view of the Inquiry's finding above that there was no commission by INBS of SPCs 1(a), 1(b) or 1(c) in respect of the SPC 1.4 Allegation, any allegation of participation on the part of Mr Purcell must fall away.

CHAPTER 6

SPC 2

INTRODUCTION

- 6.1 SPC 2 concerns a suspected failure to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that CMOs complied with internal policies.
- 6.2 The approval process for commercial loans (and additional advances on existing commercial loans) during the Review Period, as set out in INBS's internal policies, was that a CLA would be prepared and submitted to the Credit Committee either for approval or, if above the approval threshold for the Credit Committee, for recommendation to the Board for approval. The 16 October 2003 Commercial Credit Committee Terms of Reference¹, provided for an approval threshold of €500,000. The 19 July 2006 Commercial Credit Committee Terms of Reference² increased this threshold to €1 million. From 17 December 2007³, the Credit Committee had authority to approve all commercial loans and Board approval was no longer required.
- 6.3 The Credit Committee Terms of Reference had urgent credit decision approval procedures where a lending decision was needed urgently and there was insufficient time for the approval process set out at paragraph 6.2 above to be followed. The 16 October 2003 Commercial Credit Committee Terms of Reference provided that loans in excess of €500,000 had to be approved by the Managing Director and two members of the Credit Committee and signed off by the Credit Committee and the Board as soon as practicable thereafter.⁴ From 19 July 2006, the threshold figure was increased to €1 million.⁵ From December 2007, urgent credit decision approvals had to be approved by the Managing Director and any two senior lenders listed as: Mr Tom McMenamin, Mr Martin Noonan or Mr Gary McCollum. Any loans so approved had to be signed off by the Credit Committee as soon as possible.⁶
- 6.4 The three individual SPCs relating to SPC 2 are as follows:

¹ 16 October 2003 Commercial Credit Committee Terms of Reference (Doc ID: 0.7.120.5896).

² 19 July 2006 Commercial Credit Committee Terms of Reference (Doc ID: 0.7.120.13247).

³ December 2007 Credit Committee Terms of Reference (Doc ID: 0.7.120.26675).

⁴ 16 October 2003 Commercial Credit Committee Terms of Reference, page 3 (Doc ID: 0.7.120.5896).

⁵ 19 July 2006 Commercial Credit Committee Terms of Reference, page 3 (Doc ID: 0.7.120.13247).

⁶ December 2007 Credit Committee Terms of Reference, page 3 and 4 (Doc ID: 0.7.120.26675).

SPC 2(a)

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 2(b)

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that INBS failed to ensure that CMOs complied with internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by section 76 (1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 2(c)

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that INBS failed to ensure that CMOs complied with internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 2 ALLEGATIONS

- 6.5 It was alleged in the Investigation Report that INBS had breached its internal policies with respect to instances where commercial loans had not been approved by the Board, recommended or approved by the Credit Committee and/or approved in accordance with urgent credit decision approval procedures. In addition, it alleged that loans were approved at non-quotate meetings and commercial loans were not given

adequate consideration and/or robustly assessed by the Credit Committee and/or the Board.

- 6.6 It was also alleged that variations to commercial loans were implemented without appropriate approval in accordance with internal policies, including variations to the term of the loan, variations to moratoria and variations to the terms and conditions of commercial loans as set out in the CMOs. In addition, it was alleged that updated CMOs were not issued following variations to loans.
- 6.7 Finally, in the Investigation Report, it is alleged that CMOs did not comply with internal policy in that: CMOs were issued prior to appropriate approval; funds were advanced prior to CMOs being appropriately signed; CMOs did not reflect the terms on which commercial loans were approved; and CMOs were not appropriately signed.
- 6.8 The following allegations of non-compliance by INBS with its internal policies were advanced by the Investigation Report in respect of SPC 2.⁷
- (a) SPC 2.1 alleged that funds were advanced without the Credit Committee approving or recommending the loan for approval and without compliance with INBS's urgent credit decision approval procedures.
 - (b) SPC 2.2 alleged that funds were advanced where the Credit Committee did not recommend the loan for approval or approve the loan and the Board did not approve the loan (as required), and without compliance with INBS's urgent credit decision approval procedures
 - (c) SPC 2.3 alleged that funds were advanced where Board approval was not obtained (as required) and without compliance with INBS's urgent credit decision approval procedures.

⁷ The SPC 2 Allegations are summarised in Chapter 7, paragraphs 7.8 and 7.9, of the Investigation Report (Doc ID: RDU_REL-00000031) and are outlined in full in Consolidated Tables C2.1.1 to C2.1.20 and C2.5.1 and C2.5.2 (Doc ID: RDU_REL1600-00000056; RDU_REL1600-00000057; RDU_REL1600-00000058; RDU_REL1600-00000059; Doc ID: RDU_REL1600-00000060; Doc ID: RDU_REL1600-00000061; RDU_REL1600-00000062; Doc ID: RDU_REL1600-00000063; Doc ID: RDU_REL1600-00000064; RDU_REL1600-00000065; Doc ID: RDU_REL1600-00000066; Doc ID: RDU_REL1600-00000067; RDU_REL1600-00000068; Doc ID: RDU_REL1600-00000069; Doc ID: RDU_REL1600-00000070; RDU_REL1600-00000071; Doc ID: RDU_REL1600-00000072; Doc ID: RDU_REL1600-00000073; RDU_REL1600-00000074; Doc ID: RDU_REL1600-00000075; Doc ID: RDU_REL1600-00010005; RDU_REL1600-00010006).

- (d) SPC 2.4 alleged that the Credit Committee was not quorate when loans were approved or recommended for approval and that the loans did not comply with INBS's urgent credit decision approval procedures.

All of the SPC 2.4 Allegations were INBS Only Allegations. As outlined in Chapter 3, the Inquiry decided that it was not necessary to make findings in relation to the INBS Only Allegations. Accordingly, SPC 2.4 has been excluded by the Inquiry from its analysis and no findings have been made in respect of same.

- (e) SPC 2.5 alleged that loans were advanced prior to a meeting of a quorate Credit Committee at which the loans were approved or recommended for approval and without compliance with INBS's urgent credit decision approval procedures.
- (f) SPC 2.6 alleged that funds were advanced prior to Board approval and without compliance with INBS's urgent credit decision approval procedures.
- (g) SPC 2.7 alleged that funds advanced on security already held by INBS were in excess of the loan amount and additional funds were not appropriately approved.
- (h) SPC 2.8 alleged that loan amounts advanced per the CMO were in excess of the loan amount outlined in the CLA and subsequently approved by the Board and that the additional advances were not appropriately approved.
- (i) SPC 2.9 alleged that loans, which were or ought to have been approved by the Board or Credit Committee, had their term extended without appropriate approval.
- (j) SPC 2.10 alleged that CMOs were varied, in that sales proceeds from property held as security by INBS were released to the Borrower, without appropriate approval.
- (k) SPC 2.11 alleged that the terms of the loans were varied, in that the loans were changed from being recourse to non-recourse, without appropriate approval.

All of the SPC 2.11 Allegations were INBS Only Allegations. As outlined in Chapter 3, the Inquiry decided that it was not necessary to make findings in relation to the INBS Only Allegations. Accordingly, SPC 2.11 has been

excluded by the Inquiry from its analysis and no findings have been made in respect of same.

- (l) SPC 2.12 alleged that the CMO did not reflect the terms on which the loan was approved, in that the terms outlined in the CLA and approved by the Board differed to the terms outlined in the CMO.
- (m) SPC 2.13 alleged that the CMO was issued prior to the appropriate recommendation for approval and/or approval (Credit Committee and/or Board) being received and without compliance with INBS's urgent credit decision approval procedures.
- (n) SPC 2.14 alleged that the CMO did not reflect the basis of approval by the Credit Committee and/or Board.
- (o) SPC 2.15 alleged that funds were advanced prior to the CMO being signed and issued by INBS and signed by the Borrower.

The SPC 2.15 Allegation is an INBS Only Allegation. As outlined in Chapter 3, the Inquiry decided that it was not necessary to make findings in relation to the INBS Only Allegations. Accordingly, SPC 2.15 has been excluded by the Inquiry from its analysis and no findings have been made in respect of same.

- (p) SPC 2.16 alleged that the CMO was not appropriately signed by INBS.
- (q) SPCs 2.17 to 2.20 comprise exclusively INBS Only Allegations. As outlined in Chapter 3, the Inquiry decided that it was not necessary to make findings in relation to the INBS Only Allegations. Accordingly, SPCs 2.17 to 2.20 have been excluded by the Inquiry from its analysis and no findings have been made in respect of same.

6.9 Broadly speaking, the SPC 2 Allegations related to a suspected failure by INBS to ensure that:

- (a) Commercial loans were approved in accordance with internal policies and procedures.
- (b) Variations to commercial loans were approved in accordance with internal policies and procedures.
- (c) CMOs were in compliance with its internal policies and procedures.

The Inquiry considers and makes its findings in respect of the various SPC 2 Allegations under these three broad headings below.

RELEVANT INFORMATION AND SOURCES OF EVIDENCE

6.10 In addressing the SPC 2 Allegations, the Inquiry considered the following information and sources of evidence:

- (a) Relevant INBS policy documents.
- (b) The Loan File Analysis (carried out by the Inquiry in Chapter 4 of this Findings Report).
- (c) Contemporaneous Reports (including relevant corporate governance documentation and Financial Regulator Correspondence).
- (d) Interview evidence⁸ and Section 41A Responses (from individuals interviewed by Enforcement in the course of its Investigation), which were opened to witnesses.
- (e) Witness evidence.
- (f) Mr Purcell's submissions.⁹
- (g) Mr Purcell's evidence to the Inquiry.

6.11 Much of the evidence considered by the Inquiry relates to SPC 2 generally or is relevant to a number of different SPC 2 Allegations. Rather than repeat the evidence at length for each SPC 2 Allegation, the Inquiry has set out this evidence below, prior to addressing the SPC 2 Allegations.

Relevant INBS policy documents

6.12 A table setting out the INBS policies and policy provisions relevant to each of the SPC 2 Allegations is included at Appendix 12 and these policies and relevant provisions are referred to throughout this chapter, as appropriate.

⁸ Interviews were conducted by Authorised Officers of the Central Bank during the period February 2013 to January 2014 to assist with the Investigation. Transcripts of these interviews were provided to the Inquiry.

⁹ As outlined in Chapter 2, paragraph 2.5, Mr Purcell represented himself during the Inquiry and accordingly made written and oral submissions to the Inquiry, in addition to and distinct from the evidence he provided under oath and in his witness statements.

Loan File Analysis

- 6.13 The Loan File Analysis conducted by the Inquiry and the findings made by it in respect of the SPC 2 Allegations is summarised, as appropriate, by the Inquiry when making its findings below.

Contemporaneous Reports

- 6.14 There were 15 Contemporaneous Reports produced during the Review Period identified in the Investigation Report as relevant to the SPC 2 Allegations. The Investigation Report also identified one Contemporaneous Report that issued before the Review Period and two that issued afterwards. These were included in the Investigation Report for completeness on the basis that they demonstrated that matters relating to SPC 2 had been brought to the attention of INBS management prior to the Review Period and were still arising up to and at certain dates after the Review Period.¹⁰
- 6.15 The Inquiry examined the 18 Contemporaneous Reports to assess the extent to which each of the SPC 2 Allegations were identified as a problem in INBS during the Review Period. The Contemporaneous Reports and the relevant SPC 2 Allegations identified as an issue in the reports, are set out below.
- 6.16 Relevant extracts from these Contemporaneous Reports are also included under the Inquiry Findings in respect of each SPC 2 Allegation below.

Contemporaneous Reports issued prior to Review Period

2003 KPMG Management Letter¹¹

- 6.17 The 2003 KPMG Management Letter, which issued on 8 July 2004 (one month before the commencement of the Review Period), made findings with respect to variations to loans, specifically to commercial lenders varying terms of loans without appropriate approval and without amended CMOs being issued.
- 6.18 The issues identified in the 2003 KPMG Management Letter relate to the following SPC 2 Allegations: SPC 2.9; SPC 2.11; SPC 2.12; and SPC 2.14.

¹⁰ Investigation Report Chapter 7, paragraph 7.77, page 555 (Doc ID: RDU_REL-000000031).

¹¹ 2003 KPMG Management Letter (Doc ID: 0.7.120.55764).

6.19 The 2003 KPMG Management Letter made the following observation:

“During our audit it was noted that the commercial lenders have the authority to revise the terms of the facility including:

- *extending moratorium facilities.*
- *amending interest rates on accounts*
- *changing repayment dates and amounts*

*without prior approval from the Credit Committee or Board of Directors and without new signed facility agreements being issued”.*¹²

6.20 KPMG further stated that the implication in respect of this observation was:

*“Failure of lenders to seek approval from the credit committee for facility amendments and issue new signed facility agreements could result in inappropriate or unauthorised amendments that may increase the risk of future loss to the Society”.*¹³

6.21 The 2003 KPMG Management Letter then made the following recommendation:

“We recommend that the Credit Committee or Board of Directors approve all amendments to facilities in excess of individual credit authorities.

In addition, all amendments to original facility agreements should result in a new facility agreement that should be signed by all parties.

*The Society should maintain an exception report that details all accounts that have been amended and highlights the nature of the amendment which should be highlighted to the credit committee”.*¹⁴

6.22 The 2003 KPMG Management Letter recorded the INBS Management Response to this recommendation, as follows:

“The Society's moratoria policy will be amended to include this recommendation.

¹² 2003 KPMG Management Letter, page 6 (Doc ID: 0.7.120.55764).

¹³ 2003 KPMG Management Letter, page 6 (Doc ID: 0.7.120.55764).

¹⁴ 2003 KPMG Management Letter, page 6 (Doc ID: 0.7.120.55764).

A report will be produced on the lines suggested in the recommendation".¹⁵

6.23 There is no record in Board minutes that the Moratoria Policy October 2003 was formally approved by the Board until February 2007. It was approved as part of the 28 February 2007 Commercial Mortgage Lending Policy. The Moratoria Policy was not formally adopted by the Board, however it does seem to have been regarded as a valid policy by KPMG and INBS management for the purposes of this response. The Moratoria Policy October 2003 stated that amendments to moratoria accounts could only be made with the written approval of either:

"...Mr Michael Fingleton, Managing Director

- *The approval of all members of the Credit Committee*

Or any two of the following:

- *Mr. Tom McMenamin – Commercial Lending Manager*
- *Mr. Martin Noonan – Mortgage Administration Manager*
- *Mr John Roche – Senior Commercial Lender".¹⁶*

The Moratoria Policy October 2003 further stated:

"The signed approval will be filed on the customers file.

- *A monthly report will be produced by the Commercial Section on all amendments to moratoria's [sic] on commercial loans. This will capture the society, account number, title, true balance, existing moratoria dates, amended dates and comments on the amendment".¹⁷*

6.24 From an examination of the Board minutes the Inquiry established that a report on extensions to moratoria and other accounts was submitted to the Board in November 2004 in respect of August 2004 amendments and regularly thereafter throughout the Review Period.

6.25 A draft of the 2003 KPMG Management Letter was noted by the Board during its meeting on 14 June 2004 and the Board agreed that the draft should be referred to the

¹⁵ 2003 KPMG Management Letter, page 6 (Doc ID: 0.7.120.55764).

¹⁶ Moratoria Policy October 2003, page 30 (Doc ID: 0.7.120.27792).

¹⁷ Moratoria Policy October 2003, page 30 (Doc ID: 0.7.120.27792).

Audit Committee for consideration at its next meeting.¹⁸ The minutes show that Mr Purcell did not attend that Board meeting.

- 6.26 The draft 2003 KPMG Management Letter was discussed at the Audit Committee meeting on 24 June 2004. The minutes of that meeting record that it was agreed that, because many recommendations in the 2003 KPMG Management Letter concerned the credit area, a report would be prepared for the Audit Committee's autumn meeting setting out what needed to be done to improve commercial lending administration.¹⁹
- 6.27 On 24 August 2004, the Financial Regulator wrote to INBS (in a letter addressed to Mr Purcell) seeking an update on the status of the recommendations made in the 2003 KPMG Management Letter.²⁰ This letter and the draft reply were noted at the Board meeting held on 19 October 2004.²¹ INBS responded to the Financial Regulator by letter dated 27 October 2004, signed by Mr Purcell, confirming that any amendments to loans were subject to routine checking within the commercial administration section and that a report is produced on all amended moratoria accounts which details the reason for the amendment.²²
- 6.28 A paper entitled "*Review of Matters Arising at June 2004 Audit Committee Meeting*" was prepared by internal audit and presented at the next Audit Committee meeting held on 15 September 2004. This paper stated: "*It is intended to await the outcome of the current KPMG review before commencing a detailed review of commercial lending administration*".²³ As noted at paragraph 7.176 of the Investigation Report, it is understood that the "*current KPMG review*" refers to the 2004 KPMG Commercial Credit Review, which is discussed below.
- 6.29 The minutes of the Audit Committee meetings for 2004 (which would include the above-mentioned minutes of the 15 September 2004 meeting) were noted at the Board meeting held on 21 December 2004.²⁴
- 6.30 The February 2005 Commercial Lending Review, for the quarter to 31 December 2004, included a document prepared by internal audit entitled "*KPMG Management Letter*

¹⁸ Minutes of Board meeting, dated 14 June 2004 (Doc ID: 0.7.120.431459).

¹⁹ Minutes of Audit Committee meeting, dated 24 June 2004 (Doc ID: AD-0.7.120.17113).

²⁰ Letter from Dermot Finneran, Financial Regulator, to Stan Purcell, INBS, dated 24 August 2004 (Doc ID: 0.7.120.138336).

²¹ Minutes of Board meeting, dated 19 October 2004 (Doc ID: 0.7.120.25338).

²² Letter from Stan Purcell, INBS, to Dermot Finneran, Financial Regulator, dated 27 October 2004, page 4 (Doc ID: 0.7.120.719656).

²³ Review of Matters Arising at June 2004 Audit Committee meeting (Doc ID: 0.7.120.430785).

²⁴ Minutes of Board meeting, dated 21 December 2004, page 11 (Doc ID: 0.7.120.26342).

2003 Update on Credit and other Recommendations". In respect of the recommendation regarding variations to loans, this document stated:

"This recommendation has been carried out.

A report detailing all moratoria amendments and term extensions is produced by the Commercial Lending Department and submitted to the Board on a monthly basis.

There is one exception, not all amendments result in signed new facility letters".²⁵

Contemporaneous Reports issued during Review Period

2004 KPMG Commercial Credit Review²⁶

6.31 The 2004 KPMG Commercial Credit Review, which issued on 28 October 2004, also addressed the issue of variations to loans. It highlighted (in red)²⁷ the finding made in the 2003 KPMG Management Letter regarding the approval of variations to existing facilities and it noted that new procedures for the approval of restructuring arrangements were introduced in November 2003. In that regard, it stated as follows:

“ ...

- *Following a recommendation from KPMG ... [the recommendation in the 2003 Management Letter concerning amendments to facilities addressed above], all term extensions now require a signed completed request form from the commercial lender. The request form must detail the reasons for the term extension. A full review of the account must also be completed and the results of the review included on the form.*
- *The form must then be approved by two senior commercial lenders.*
- *Once the restructuring has been approved a new facility letter is drawn up and must be signed by both the client and the Society.*
- *All amendments are reviewed at credit committee.*

²⁵ February 2005 Commercial Lending Review, page 32 of 38 (Doc ID: 0.7.120.21527).

²⁶ 2004 KPMG Commercial Credit Review, part 1 (Doc ID: 0.7.120.735064), part 2 (Doc ID: 0.7.120.735059), part 3 (Doc ID: 0.7.120.735075) and part 4 (Doc ID: 0.7.120.735070).

²⁷ KPMG reports highlighted some recommendations by placing them in red boxes in the reports – these were referred to as “red box items” and were regarded as important matters to be addressed.

- *Before the new procedures were introduced a commercial lender could approve and authorise a term extension*".²⁸

6.32 In relation to moratoria, the 2004 KPMG Commercial Credit Review stated:

"When the term of a moratorium expires, the borrower must commence repayments or obtain a term extension on the moratorium. If the borrower requests a term extension a full review of the facility must be completed by the commercial lender and the moratorium approved by the credit committee...".²⁹

6.33 Paragraph 7.191 of the Investigation Report, indicated that the new procedures outlined by KPMG in the 2004 KPMG Commercial Credit Review do not accord directly with the procedures outlined in relevant INBS policies in place at the time, and that a general variations approval process was not included in INBS policy until the 9 October 2006 Board Directive. The Inquiry agrees with this observation in the Investigation Report. There is no evidence that the detailed procedures outlined above were incorporated into any internal policy or procedure prior to October 2006.

6.34 The issues identified in the 2004 KPMG Commercial Credit Review relate to the following SPC 2 Allegation: SPC 2.9.

6.35 The 2004 KPMG Commercial Credit Review was discussed at the Audit Committee meeting held on 23 November 2004. The minutes recorded the following discussion in respect of this report:

"The Chairman mentioned, in relation to the commercial lending review carried out by KPMG, that the items highlighted in red on the KPMG report must be addressed promptly to ensure that they do not re-appear as concerns. The Internal Auditor would follow up on the completion of these items".³⁰

6.36 As noted above, the 2003 KPMG Management Letter recommendation concerning amendments to facilities was highlighted in red in the 2004 KPMG Commercial Credit Review. Although, as indicated by the Investigation Report, this could suggest that despite the 2004 KPMG Commercial Credit Review noting that new procedures had been introduced, the Audit Committee considered that the issue required further action, there is no indication in the minutes as to what that action might be.

²⁸ 2004 KPMG Commercial Credit Review, part 2, page 62 (Doc ID: 0.7.120.735059).

²⁹ 2004 KPMG Commercial Credit Review, part 2, page 64 (Doc ID: 0.7.120.735059).

³⁰ Minutes of Audit Committee meeting, dated 23 November 2004 (Doc ID: 0.7.120.56226).

- 6.37 While there is no record of the Board specifically discussing the 2004 KPMG Commercial Credit Review, the Audit Committee minutes for 2004 (which include the minutes of the above referenced meeting held on 23 November 2004) were noted at the Board meeting held on 21 December 2004.³¹
- 6.38 A paper was prepared for the next Audit Committee meeting held on 21 December 2004. The paper noted that the items highlighted in red in the 2004 KPMG Commercial Credit Review (which included the recommendation from the 2003 KPMG Management Letter regarding approval of variations) must be completed. It also noted that Mr Purcell, as secretary to the Audit Committee, was to be provided with a status report five days prior to the Audit Committee meeting.³² The minutes of the Audit Committee meeting held on 21 December 2004³³ noted that this paper was discussed but did not record how the items highlighted in red were being addressed or whether the status update was provided to Mr Purcell. There is evidence that a status report on the 2004 KPMG Commercial Credit Review was prepared some six months later and provided to Mr Purcell by email on 22 June 2005.³⁴ The status report³⁵ repeated the recommendation from the 2003 KPMG Management Letter and recorded the progress, as implemented. However, the status report did not address the issue of how the variations to loans were to be approved.
- 6.39 The minutes of the Audit Committee meetings held on 26 April 2005³⁶, 31 May 2005³⁷ and 9 August 2005³⁸, made no further reference to either the 2004 KPMG Commercial Credit Review, the instructions given by the chairman of the Audit Committee with respect to the findings highlighted in red, or (in the case of the meeting held on 9 August 2005) the status report.
- 6.40 Between 2004 and 2007 there was extensive correspondence between INBS and the Financial Regulator in respect of *inter alia* the implementation of the recommendations in the 2004 KPMG Commercial Credit Review. A letter from the Financial Regulator dated 9 December 2004³⁹ highlighted the Financial Regulator's concern regarding the issues raised in the 2004 KPMG Commercial Credit Review, in particular the process

³¹ Minutes of Board meeting, dated 21 December 2004, page 11 (Doc ID: 0.7.120.26342).

³² Review of matters arising at November 2004 Audit Committee meeting, page 1 (Doc ID: 0.7.120.431472).

³³ Minutes of Audit Committee meeting, dated 21 December 2004 (Doc ID: 0.7.120.56452).

³⁴ Email from Ita Rogers to Stan Purcell dated 22 June 2005 (Doc ID: 0.7.120.297148).

³⁵ Status Report on the progress in implementing the Recommendations of the 2004 KPMG Report on Commercial Lending (Doc ID: 0.7.120.297148-000001).

³⁶ Minutes of Audit Committee meeting, dated 26 April 2005 (Doc ID: 0.7.120.57556).

³⁷ Minutes of Audit Committee meeting, dated 31 May 2005 (Doc ID: 0.7.120.56788).

³⁸ Minutes of Audit Committee meeting, dated 9 August 2005 (Doc ID: 0.7.120.57027).

³⁹ Letter from Liam O'Reilly, Financial Regulator, to Michael Walsh, INBS, dated 9 December 2004 (Doc ID: 0.7.120.450640).

for the approval of variations and the issuance of updated CMOs following a variation. A schedule to that letter stated:

“Arising from an initial review of the KPMG report, the high-level concerns arising are as follows:

...

- *A brief analysis would indicate that there is a high number of significant risk components within the commercial loan book:*

- ***Restructuring of Facilities:***

...

- *Prior to a KPMG 2003 management letter earlier this year, [sic] appears that individual lenders were authorising restructuring facilities which exceeded their authorisation level and new facility arrangements were not always signed by all parties”.⁴⁰*

6.41 INBS’s response to the Financial Regulator dated 1 February 2005 stated:

“The issues raised by the report in relation to moratoria and restructured loans are not valid. If a transaction, say a residential development, is not complete or has not reached the stage of completion envisaged at the outset, an extension of the term is practical and expected in the short term. The loan is extended on the basis that it is going well and will come to fruition. The term restructuring is a misnomer in the context of these loans. In order to track moratoria loans we look at what we are involved with in terms of its operation and its success...”.⁴¹

6.42 The Financial Regulator continued to express concern. In a letter dated 29 June 2005⁴², in response to a request for a status report on the progress in implementing the recommendations of the 2004 KPMG Commercial Credit Review, INBS noted that a monthly report on term extensions was submitted to the Board and that all

⁴⁰ Letter from Liam O’Reilly, Financial Regulator, to Michael Walsh, INBS, dated 9 December 2004, page 7 and 8 (Doc ID: 0.7.120.450640).

⁴¹ Letter from Michael Walsh, INBS, to Liam O’Reilly, Financial Regulator, dated 1 February 2005, page 6 (Doc ID: 0.7.120.131433).

⁴² Letter from Michael Walsh, INBS, to Liam O’Reilly, Financial Regulator, dated 29 June 2005 (Doc ID: 0.7.120.17067).

amendments to accounts were made with the agreement of the customer and an “amendment letter” was sent to the customer outlining the amendment.

6.43 The banking supervision division of the Financial Regulator sought further clarification on the 2004 KPMG Commercial Credit Review in a letter dated 14 July 2005:

“...Does the Credit Committee approve all amendments to facilities in excess of individual credit authorities (i.e. in excess of the individual limit and up to €1m, as it is noted that the Board approves amendments in excess of €1m)?

- *Does the “amendment letter” sent by the Society to customers outlining amendment(s) to the original facility require the customer’s written agreement to the amendment? If not, has the Society received legal advice whether the notification is in a form sufficient to presume the customer’s agreement?”⁴³*

6.44 In a response dated 29 July 2005, INBS stated that two members of the Credit Committee approved amendments, that a report on such amendments was submitted to the Board on a monthly basis, and that INBS would seek legal advice as to whether written agreement should be obtained from the customer.⁴⁴

6.45 The Financial Regulator wrote to INBS again on 13 September 2006 requesting a status report.⁴⁵ A detailed response dated 10 November 2006 was submitted by INBS.⁴⁶ A further request for an action plan to address the implementation of recommendations from a number of external reviews was sent on 26 November 2006.⁴⁷ Appendix 1 to this letter listed as an outstanding issue the 2003 KPMG Management Letter recommendation that all amendments to original facility agreements should be signed off by all parties in a new facility agreement. In respect of this recommendation, the “*Current Status*” was stated to be:

“Not to be implemented –

⁴³ Letter from Andrew Guiney, Financial Regulator, to Stan Purcell, INBS, dated 14 July 2005 (Doc ID: 0.7.120.131148).

⁴⁴ Letter from Stan Purcell, INBS, to Andrew Guiney, Financial Regulator, dated 29 July 2005 (Doc ID: 0.7.120.432634).

⁴⁵ Letter from Yvonne Madden, Financial Regulator, to Stan Purcell, INBS, dated 13 September 2006 (Doc ID: 0.7.120.129065).

⁴⁶ Letter from Stan Purcell, INBS, to Yvonne Madden, Financial Regulator, dated 10 November 2006 (Doc ID: 0.7.120.13615).

⁴⁷ Letter from Yvonne Madden, Financial Regulator, to Michael Fingleton, INBS, dated 20 November 2006 (Doc ID: 0.7.120.519059).

*The Society will discuss amendments with the client and send a letter confirming discussions. The Society advised that borrowers would not sign a new agreement. I note however from the Management Letter for 2005 that going forward the Society will request the borrower to sign and return the letter and this will be implemented by Sept 2006. Please clarify this matter”.*⁴⁸

- 6.46 In response, by letter dated 31 January 2007, INBS indicated it had agreed to implement the recommendation and that it requests borrowers to sign and return an amendment letter.⁴⁹

2004 Internal Audit Report⁵⁰

- 6.47 The 2004 Internal Audit Report was prepared by the internal audit department following an internal audit carried out during the period February to April 2004. The 2004 Internal Audit Report highlighted issues with respect to the approval of loans and the CMO process, and it made the following findings in respect of the 20 loan files sampled:

“In 1 (5%) case, a CLA was not signed by commercial lending, was not recommended for approval by the credit committee, and did not have board approval.

...In one of the samples selected, an initial advance was made before the customer had signed the commercial mortgage offer.

*...There was a CMO on every file selected. Only one (5%) did not have a letter of offer signed by commercial lending and the customer. This seems to be an isolated incident”.*⁵¹

- 6.48 The internal audit department made the following recommendations in respect of this finding:

“(5) Advances must not be made without a fully complete and authorised CLA being on file...”

⁴⁸ Letter from Yvonne Madden, Financial Regulator, to Michael Fingleton, INBS, dated 20 November 2006, page 24 (Doc ID: 0.7.120.519059).

⁴⁹ Letter from Michael Fingleton, INBS, to Yvonne Madden, Financial Regulator, dated 31 January 2007, page 9 (Doc ID: 0.7.120.443254).

⁵⁰ 2004 Internal Audit Report (Doc ID: 0.7.120.19474).

⁵¹ 2004 Internal Audit Report, page 15 and 16 (Doc ID: 0.7.120.19474).

(7) Under no circumstances can a loan be advanced before the commercial mortgage offer is signed⁵².

- 6.49 The issues identified in the 2004 Internal Audit Report relate to the following SPC 2 Allegations: SPC 2.2; SPC 2.3; SPC 2.6 and SPC 2.15.
- 6.50 The 2004 Internal Audit Report was discussed at the Audit Committee meeting on 23 November 2004. The minutes of that meeting⁵³ record that *"In relation to the recommendations in the Commercial Lending Audit 2004 (Paper No 4.) the Committee agreed the implementation of some of the recommendations needed senior management authorisation. The Committee asked that, as the recommendations were of different importance, they be divided by level of responsibility for authorising their implementation. The Internal Auditor would prepare a note on recommendations to be dealt with at levels more senior than the department head"*.
- 6.51 A paper⁵⁴ was prepared for the next Audit Committee meeting on 21 December 2004 setting out the matters that were to be escalated to the Board. This paper did not include as a Board level recommendation the recommendation above in respect of CLAs and CMOs.
- 6.52 As noted already, the minutes of the 2004 Audit Committee meetings were circulated but not discussed at the Board meeting held on 21 December 2004.
- 6.53 The minutes of the Audit Committee meetings and the Board meetings for the remainder of the Review Period⁵⁵, did not record any further discussions in relation to the relevant findings from the 2004 Internal Audit Report.
- 6.54 A document prepared by internal audit listing the audits carried out in each quarter of 2004⁵⁶ indicated that the recommendations (that advances must not be made without a fully completed and authorised CLA being on file and that under no circumstances can a loan be advanced before the CMO is signed) had been implemented. However, similar findings appeared in subsequent Contemporaneous Reports, as set out below.

⁵² 2004 Internal Audit Report, page 18 (Doc ID: 0.7.120.19474).

⁵³ Minutes of Audit Committee meeting, dated 23 November 2004 (Doc ID: 0.7.120.56226).

⁵⁴ Commercial Lending Audit Report 2004 – Board Level Recommendations (Doc ID: 0.7.120.430846).

⁵⁵ See Investigation Report, Appendix I, Table 1 and Table 3 (Doc ID: RDU_REL-000000046).

⁵⁶ Head Office Audits 1st Quarter 2004, 2nd Quarter 2004, 3rd Quarter 2004 and 4th Quarter 2004 (Doc ID: 0.7.120.449766).

2004 Belfast Internal Audit Report⁵⁷

- 6.55 The 2004 Belfast Internal Audit Report was prepared by internal audit following a review of the Belfast Branch during November and December 2004. The 2004 Belfast Internal Audit Report made the following finding in respect of CMOs:

*“Two (20%) of the transfers were made before the CMO was signed. This is a serious control weakness, in that the Society has no security over the amount advanced until the CMO is signed”.*⁵⁸

- 6.56 The recommendation from the internal audit department with respect to this finding was emphatic:

*“(2) An advance must not be made until the CMO is signed. The employees authorising any advance transfer must ensure that they have seen the completed CMO prior to giving their authorisation. The Belfast branch must indicate in all email requests for funds transfers that the CMO has been signed”.*⁵⁹

- 6.57 This finding was given a rating of 4 by the internal auditor, which is classified as “Critical” and indicates “*Serious control weakness with a high probability of resulting in significant financial loss, misstatement of financial results, compliance implications or reputational impacts if left unaddressed*”.⁶⁰

- 6.58 The issues identified in the 2004 Belfast Internal Audit Report relate to the following SPC 2 Allegations: SPC 2.15 and SPC 2.16.

- 6.59 The 2004 Belfast Internal Audit Report was discussed at the Audit Committee meeting held on 31 May 2005 and the internal auditor is recorded as having pointed out that on two occasions loan cheques were issued before the letter of offer was signed. Although INBS’s solicitors had the security in place it would have been difficult to enforce without the signed letter of offer. The internal auditor also mentioned the potential over-concentration of lending which was marked in the UK context. The Audit Committee noted this over dependence on the UK manager and agreed that more administrative support was needed in Belfast.⁶¹

⁵⁷ 2004 Belfast Internal Audit Report (Doc ID: 0.7.120.432168).

⁵⁸ 2004 Belfast Internal Audit Report, page 6 (Doc ID: 0.7.120.432168).

⁵⁹ 2004 Belfast Internal Audit Report, page 9 (Doc ID: 0.7.120.432168).

⁶⁰ 2004 Belfast Internal Audit Report, page 10 (Doc ID: 0.7.120.432168).

⁶¹ Minutes of Audit Committee meeting, dated 31 May 2005, page 3 (Doc ID: 0.7.120.56788).

- 6.60 The minutes of the Board meetings held on 31 May 2005⁶² and 21 June 2005⁶³ recorded discussion of strengthening the management in the UK branches. There was no recorded discussion of the other issue raised – that of loans being advanced without CMOs being in place. The minutes of the Board meeting on 31 May 2005 recorded the following: “*The Board discussed strengthening the management of the UK Branches in view of the amount of loan business in these Branches. The Board agreed to discuss the matter further at its [sic] next meeting*”.⁶⁴ The minutes of the Board meeting on 21 June 2005 recorded the following: “*The Board discussed the management of the UK Branches and agreed to recruit an additional lender and to review the administration of the UK Branches in the light of the Internal Audit report*”.⁶⁵
- 6.61 The minutes of the Audit Committee meetings for the remainder of the Review Period did not record any follow-up with Mr Fingleton or any action taken by him on foot of this issue.
- 6.62 The minutes of the Audit Committee meetings and Board meetings for the remainder of the Review Period, did not record any further discussion about the 2004 Belfast Internal Audit Report.
- 6.63 A document prepared by internal audit for each quarter of 2004⁶⁶ records the recommendation that an advance must not be made until the CMO is signed, as “*Implemented*”. Despite this, further findings with respect to CMOs were made in subsequent Contemporaneous Reports, as set out below.

2004 KPMG Management Letter⁶⁷

- 6.64 The 2004 KPMG Management Letter was issued by KPMG on 3 June 2005 following completion of its audit of INBS for the year ended 31 December 2004. The 2004 KPMG Management Letter again identified an issue with respect to variations of loans, specifically commercial lenders varying terms of loans without appropriate approval and without issuing amended CMOs.

⁶² Minutes of Board meeting, dated 31 May 2005 (Doc ID: 0.7.120.32656).

⁶³ Minutes of Board meeting, dated 21 June 2005 (Doc ID: 0.7.120.37131).

⁶⁴ Minutes of Board meeting, dated 31 May 2005, page 15 (Doc ID: 0.7.120.32656).

⁶⁵ Minutes of Board meeting, dated 21 June 2005, page 8 (Doc ID: 0.7.120.37131).

⁶⁶ Head Office Audits 1st Quarter 2004, 2nd Quarter 2004, 3rd Quarter 2004 and 4th Quarter 2004 (Doc ID: 0.7.120.449766).

⁶⁷ 2004 KPMG Management Letter (Doc ID: 0.7.120.55765).

6.65 Following the recommendation in the 2003 KPMG Management Letter, INBS had indicated that it was going to amend its Moratoria Policy to include the KPMG recommendations.

6.66 KPMG made the following recommendation, which it noted was also raised in the 2003 KPMG Management Letter:

"We recommend that the credit committee or Board of Directors note their approval of all commercial facility amendments. This recommendation has been accepted by Management and has been implemented from November 2004.

In addition, all amendments to original facility agreements should result in a new facility agreement that should be signed and appropriately authorised by all parties".⁶⁸

6.67 The Management Response to the recommendation highlighted that *"A monthly report on term extensions with explanations for the extensions is submitted to the Board and at the Boards [sic] request only accounts in excess of €1m are detailed"*. The response also stated: *"All amendments to accounts are made with the agreement of the customer and an 'amendment letter' is sent to the customer outlining the amendment"*.⁶⁹

6.68 KPMG changed its recommendation from the amendments needing to be approved by the Board or the Credit Committee (in the 2003 KPMG Management Letter), to the approval of amendments being noted by the Board or the Credit Committee (in the 2004 KPMG Management Letter). The reference, quoted above, to the recommendation having been implemented from November 2004, is to the Board meeting of that date at which the first moratoria amendments report was laid before the Board.

6.69 The issues identified in the 2004 KPMG Management Letter relate to the following SPC 2 Allegations: SPC 2.7; SPC 2.8; SPC 2.9; SPC 2.10; SPC 2.11; SPC 2.12; and SPC 2.14.

⁶⁸ 2004 KPMG Management Letter, page 10 (Doc ID: 0.7.120.55765).

⁶⁹ 2004 KPMG Management Letter, page 10 (Doc ID: 0.7.120.55765).

- 6.70 A draft of the 2004 KPMG Management Letter was reviewed by both the Audit Committee⁷⁰ and the Board⁷¹ on 31 May 2005. The final version of the 2004 KPMG Management Letter (which contained the same findings, recommendations and Management Responses as recorded in the draft) was discussed “*in detail*” by the Board on 21 June 2005.⁷² It was discussed again at the Audit Committee meeting on 9 August 2005, the minutes⁷³ of which noted that “*The Internal Auditor confirmed that the recommendations in the management letter would be discussed with the specialist service providers who are carrying out internal audits*”. These Audit Committee minutes were circulated to the Board on 6 September 2005.⁷⁴
- 6.71 The internal audit department prepared a document (entitled “*KPMG Management Letter – 31 December 2004*”) for inclusion in the June 2005 Commercial Lending Review.⁷⁵ This document stated, in respect of the recommendation in the 2004 KPMG Management Letter (that the Credit Committee or Board should note their approval of all commercial facility amendments and all amendments to original facility agreements should result in a new facility agreement signed by all parties), that this “*Recommendation has been implemented*”. The June 2005 Commercial Lending Review, relating to the quarter to 30 June 2005, was reviewed at the Board meeting held on 27 September 2005.⁷⁶
- 6.72 There were exchanges between the Financial Regulator and INBS between October and December 2005 in which the Financial Regulator sought updates regarding the implementation of the recommendations in the 2004 KPMG Management Letter. On 20 October 2005⁷⁷ the Financial Regulator wrote to INBS requesting a status report on all the recommendations contained in the 2004 KPMG Management Letter. INBS provided the following status update:

*“A monthly report on term extensions (accounts in excess of €1m) with explanations for extensions is submitted to the Board”.*⁷⁸

⁷⁰ Minutes of Audit Committee meeting, dated 31 May 2005 (Doc ID: 0.7.120.56788).

⁷¹ Minutes of Board meeting, dated 31 May 2005 (Doc ID: 0.7.120.32656).

⁷² Minutes of Board meeting, dated 21 June 2005 (Doc ID: 0.7.120.37131).

⁷³ Minutes of Audit Committee meeting, dated 9 August 2005 (Doc ID: 0.7.120.57027).

⁷⁴ Minutes of Board meeting, dated 6 September 2005 (Doc ID: 0.7.120.6073).

⁷⁵ June 2005 Commercial Lending Review (Doc ID: 0.7.120.42521).

⁷⁶ Minutes of Board meeting, dated 27 September 2005 (Doc ID: 0.7.120.37520).

⁷⁷ Letter from Joyce Sharkey, Financial Regulator, to Ita Rogers, INBS, dated 20 October 2005 (Doc ID: 0.7.120.140157).

⁷⁸ KPMG Management Letter 2004 – Update on Recommendations, dated 21 November 2005, page 4 (Doc ID: 0.7.120.266089-000001), attached to email from Ita Rogers, INBS, to Lisa O'Rourke, Financial Regulator, dated 21 November 2005 (Doc ID: 0.7.120.266089).

6.73 The Financial Regulator followed up with a request for a further update in relation to the recommendation made that the Credit Committee or Board should note their approval of all commercial facility amendments and also that all amendments should result in a new facility signed and authorised by all parties.⁷⁹ A letter from INBS to the Financial Regulator dated 22 December 2005, stated with respect to the recommendation concerning facility amendments being noted by the Credit Committee or Board: *“The management response has been implemented”*. With regard to amendment letters being signed by both parties, INBS responded that the amendment is made with the agreement of both parties and an amendment letter sent to the borrower.⁸⁰

2005 Internal Audit Report⁸¹

6.74 The 2005 Internal Audit Report was prepared by internal audit following its review of INBS’s commercial administration department during May and June 2005. The 2005 Internal Audit Report highlighted issues with respect to the approval of loans and the CMO process. At page 11 of the report, internal audit identified that *“Payout/commercial offer letters could be made without Board or credit committee approval”*. The report stated:

“This area represents a significant area of risk exposure for the Society. A loan must have the necessary authorisation and approval before the funds are released to the Customer; otherwise there is no security in place if they default in payment.

...

Ten files were chosen at random to test whether payouts or commercial offer letters could be made without Board or credit committee approval”.⁸²

6.75 The audit in fact appears to have selected 11 files to randomly test for appropriate approvals. It made the following findings in respect of the sampled loans not having appropriate approval:

⁷⁹ Letter from Joyce Sharkey, Financial Regulator, to Ita Rogers, INBS, dated 2 December 2005 (Doc ID: 0.7.120.135173).

⁸⁰ Letter from Ita Rogers, INBS, to Joyce Sharkey, Financial Regulator, dated 22 December 2005 (Doc ID: 0.7.120.872863).

⁸¹ 2005 Internal Audit Report (Doc ID: 0.7.120.432697).

⁸² 2005 Internal Audit Report, page 11 (Doc ID: 0.7.120.432697).

"...Out of the remaining [10 out of 11] files only 1 (9%) did not have the necessary authorisation on the CLA. However the Letter of Offer is signed and dated before the payout date as evidenced by the Advance Sheet".

"In one case (9%) the date of the Loan drawdown was the same day on which the Board approved the loan. The CLA on file is dated 2 days after the drawdown. This indicates that at the time of drawdown there was no security in place to secure the loan in the case of default.

...

Of the total sample chosen, seven commercial loans (64%) did not have evidence of Board Approval on the CLA".⁸³

6.76 The 2005 Internal Audit Report also made the following finding in respect of CMOs: *"The Offer Letter for one file (9%) was signed but not dated. However the date of the CLA precedes the loan drawdown date".⁸⁴*

6.77 The 2005 Internal Audit Report made the following recommendations in respect of the above findings:

"(9) Care must be taken to ensure all commercial loans receive credit committee and board (if applicable) approval before any monies are advanced to customers. This ensures the correct levels of approval are received for each loan advanced. It reduces the chance that a risky loan could be advanced and the Society would suffer a material loss if there were a default on the loan".

"(10) The customer must sign the commercial mortgage offer before they receive their advance. This will ensure the Society has security for the amount advanced. It also ensures the customer must adhere to the other conditions set out by the offer".⁸⁵

6.78 The rating designated for both of these recommendations was 3 indicating: *"Significant control weakness with a reasonably high possibility of resulting in significant financial loss, misstatement of financial results, compliance implications or reputational impacts*

⁸³ 2005 Internal Audit Report, page 11 and 12 (Doc ID: 0.7.120.432697).

⁸⁴ 2005 Internal Audit Report, page 12 (Doc ID: 0.7.120.432697).

⁸⁵ 2005 Internal Audit Report, page 15 (Doc ID: 0.7.120.432697).

if left unaddressed".⁸⁶ Mr McMenamain was assigned responsibility for both recommendations.

6.79 The issues identified in the 2005 Internal Audit Report relate to the following SPC 2 Allegations: SPC 2.1; SPC 2.2; SPC 2.3; SPC 2.5; SPC 2.6; SPC 2.15 and SPC 2.16.

6.80 The 2005 Internal Audit Report was reviewed at the Audit Committee meeting on 18 October 2005, and the minutes of that meeting record that "*The Board reviewed the audit of commercial administration. The committee emphasised that all the recommendations should be implemented without delay*".⁸⁷

6.81 While this suggests that the 2005 Internal Audit Report had been reviewed by the Board, there was no record in the Board meeting minutes for the Review Period of this report being discussed by the Board. However, the minutes of the Audit Committee meeting on 18 October 2005 were reviewed and discussed at the Board meeting on 22 November 2005.⁸⁸

6.82 The papers prepared for the next Audit Committee meeting on 11 April 2006 included an internal audit log. This log recorded the following recommendations in respect of loans not having appropriate approval and CMOs: "*The Customer must sign the commercial mortgage offer before they receive their advance*" and "*Care must be taken to ensure all commercial loans receive credit committee and board (if applicable) approval before any monies are advanced to customers*". While the implemented column of the internal audit log had a typed "*No*" in respect of these recommendations, the word "*Yes*" appeared in handwriting next to the typed text.⁸⁹ The Inquiry was unable to identify the person who had altered the record.

6.83 The implementation of the recommendation concerning CMOs was followed up on by the internal auditor, Mr Killian McMahon, in an email to Mr McMenamain dated 23 May 2006. He informed Mr McMenamain:

"Tom,

As discussed, all new commercial files going forward must be pre-populated with the following sections: [Administration, Payout, Insurance, Money

⁸⁶ 2005 Internal Audit Report, page 16 (Doc ID: 0.7.120.432697).

⁸⁷ Minutes of Audit Committee meeting, dated 18 October 2005 (Doc ID: 0.7.120.56773).

⁸⁸ Minutes of Board meeting, dated 22 November 2005, page 13 (Doc ID: 0.7.120.37391).

⁸⁹ Internal Audit Log - Audit of Commercial Admin Dept., page 7 (Doc ID: 0.7.120.430789).

Laundering, Solicitor Correspondence, Security Documents and Enquiry & Application]

The attached Commercial Advances Checklist must be completed and retained on each new file...

*Can you email all Commercial Lending staff today with the above directions and cc: me on the email please?"*⁹⁰

- 6.84 A "Signed Loan Offer" was listed as one of the documents to be included in the "Commercial Advances Checklist".⁹¹
- 6.85 Mr McMahon followed this up with a further email on 29 May 2006 asking that this email be sent to commercial lending staff in order to ensure that the new file layout would be in place by 1 June 2006.⁹² There is no evidence from the emails that have been reviewed by the Inquiry that this email was ever sent out by Mr McMEnamin to the commercial lending staff.
- 6.86 The minutes of the Audit Committee meeting on 14 June 2006 recorded the following with respect to the 2005 Internal Audit Report: "*The committee emphasised that all items on the audit of the Commercial Administration Department which have yet to be implemented should continue to be followed up as a matter of urgency*".⁹³ An internal audit log⁹⁴ was also included in the 14 June 2006 Audit Committee meeting papers and the recommendation concerning the approval of commercial loans was recorded as not yet implemented. The recommendation concerning CMOs was recorded as not implemented in typed text, but, similar to the internal audit log included with the papers for the 11 April 2006 Audit Committee meeting, as referred to at paragraph 6.82 above, this had been manually amended as implemented. The papers for the 14 June 2006 meeting also included a "*Review of matters arising at the 11 April 2006 Audit Committee Meeting*"⁹⁵, which recorded that a new Commercial Advances Checklist had been devised and been in use since 23 May 2006 as well as a new pre-populated lending pack for all new commercial files. It also noted that internal audit would audit all files created in June 2006 to ensure the new checklist and lending pack were being used.

⁹⁰ Email from Killian McMahon to Tom McMEnamin dated 23 May 2006 (Doc ID: 0.7.120.254794).

⁹¹ Commercial Advances Checklist (Doc ID: 0.7.120.254794-000001).

⁹² Email from Killian McMahon to Tom McMEnamin dated 29 May 2006 (Doc ID: 0.7.120.254794).

⁹³ Minutes of Audit Committee meeting, dated 14 June 2006 (Doc ID: 0.7.120.56364).

⁹⁴ Audit of Commercial Admin Dept. (Doc ID: 0.7.120.432556).

⁹⁵ Review of matters arising at the 11 April 2006 Audit Committee meeting (Doc ID: 0.7.120.431601).

6.87 The minutes for the Audit Committee meeting held on 25 October 2006⁹⁶ referred to the matters that were discussed at the previous meeting of 14 June 2006 and stated: *“The Internal Auditor said that the recommendations arising from the commercial lending administration audit were 80% complete with two items to be completed by the end of October 2006”*. It is not clear from this statement which recommendations were complete or due to be completed by the end of October 2006, although, as noted above, the recommendation concerning CMOs was recorded as implemented in the audit log included in the papers for the 14 June 2006 Audit Committee meeting.

6.88 The minutes of the various Audit Committee meetings referred to above were circulated at Board meetings held on 14 June 2006⁹⁷, 24 August 2006⁹⁸ and 23 January 2007.⁹⁹ Accordingly, the Board was on notice, from the Audit Committee minutes, of the following: the 2005 Internal Audit Report; the need to address issues in commercial lending administration; and that two items were still to be implemented (as at 25 October 2006). However, there is no record in these Board minutes of the Board making enquiries in relation to these issues. In addition, there is no record in the Audit Committee minutes for the remainder of the Review Period, of the Audit Committee making enquiries in relation to the outstanding items from the 2005 Internal Audit Report.

2006 Belfast Internal Audit Report¹⁰⁰

6.89 The 2006 Belfast Internal Audit Report, which was prepared by internal audit following a review of the Belfast Branch of INBS during January 2006, made a finding with respect to the approval of loans, as follows:

“Loan Approval Testing

From the sample of 10 Accounts, 5 (50%) CLA's [sic] could not be found. In 1 (10%) case of these exceptions, a CLA was not required as the loan was for under the Belfast Manager approval limit. In the remaining 4 cases due to the absence of the CLA it was unknown whether credit committee approval was obtained.

⁹⁶ Minutes of Audit Committee meeting, dated 25 October 2006 (Doc ID: 0.7.120.56874).

⁹⁷ Minutes of Board meeting, dated 14 June 2006 (Doc ID: 0.7.120.8258).

⁹⁸ Minutes of Board meeting, dated 24 August 2006 (Doc ID: 0.7.120.21569).

⁹⁹ Minutes of Board meeting, dated 23 January 2007 (Doc ID: 0.7.120.29587).

¹⁰⁰ 2006 Belfast Internal Audit Report (Doc ID: 0.7.120.432484).

Out of the 5 CLA's, [sic] which were retrieved, only 2 (40%) were signed. Both were over the £500k sanction limit but only 1 had evidence of board approval.

For the CLA's [sic] that were evident 3 did not contain reference to credit committee approval.

Out of the 5 CLA's [sic], which were found, only 1 (20%) had evidence of Board approval.

In all cases of the sample selected, there was reference to the approval by the UK Branch Manager contained in the files held in the Belfast Branch.

In all cases (100%) there was no evidence of MD approval even though the majority of these loans are of a sizeable nature".¹⁰¹

- 6.90 The 2006 Belfast Internal Audit Report made a recommendation in respect of this finding, as follows: ***"A copy of each CLA prepared in Dublin must be kept in Belfast. The CLA must be prepared and approved prior to the loan being advanced. This is imperative for loans exceeding £2m"***.¹⁰²
- 6.91 A "Manager's Sign Off Sheet" dated 12 May 2006¹⁰³ in respect of the 2006 Belfast Internal Audit Report stated "A summary of the audit report together with a copy of this sign-off sheet will be circulated to the Audit Committee and the Managing Director".
- 6.92 The issues identified in the 2006 Belfast Internal Audit Report relate to the following SPC 2 Allegations: SPC 2.1; SPC 2.2; SPC 2.3; SPC 2.5; and SPC 2.6.
- 6.93 The 2006 Belfast Internal Audit Report was discussed at the Audit Committee meeting on 14 June 2006, but the discussion focused on file security and did not address the issue identified above in respect of the approval process for loan advances. The minutes of that meeting¹⁰⁴ suggest that the Audit Committee did not inquire further into or direct action be taken in respect of this finding.
- 6.94 The finding in the 2006 Belfast Internal Audit Report regarding loans without evidence of appropriate approval on the CLAs, was similar to the finding made in the 2005 Internal Audit Report at paragraph 6.74 et seq. above. Accordingly, by the time the 2006 Belfast Internal Audit Report was discussed at the Audit Committee meeting on

¹⁰¹ 2006 Belfast Internal Audit Report, page 11 (Doc ID: 0.7.120.432484).

¹⁰² 2006 Belfast Internal Audit Report, page 12 (Doc ID: 0.7.120.432484).

¹⁰³ Manager's sign off sheet - Belfast Branch Internal Audit Report 2006 (Doc ID: 0.7.120.472444).

¹⁰⁴ Minutes of Audit Committee meeting, dated 14 June 2006 (Doc ID: 0.7.120.56364).

14 June 2006, the Audit Committee had been on notice of an issue in respect of loans being granted without appropriate approval on the CLAs since October of the previous year.

- 6.95 The minutes of the Board meeting held on 24 August 2006¹⁰⁵, indicated that apart from a review of a draft copy of the minutes of the Audit Committee meeting held on 14 June 2006, the 2006 Belfast Internal Audit Report was not discussed by the Board.
- 6.96 The minutes of the subsequent Audit Committee meeting held on 25 October 2006 recorded, in respect of the findings made in the 2006 Belfast Internal Audit Report, that *“The outstanding items on this audit would be followed up again in January 2007”*.¹⁰⁶
- 6.97 A paper prepared for this Audit Committee meeting on 25 October 2006 recorded that: *“A copy of each CLA prepared in Dublin must be kept in Belfast. The CLA must be prepared and approved prior to the loan being advanced. This is imperative for loans exceeding £2m”* and it indicated that this recommendation had not been implemented.¹⁰⁷
- 6.98 The minutes of the next Audit Committee meeting held on 19 December 2006¹⁰⁸ referred to the Audit Committee paper following up on internal audit recommendations, and the Audit Committee asked that the outstanding items on the Belfast audit be dealt with before the audit was complete.¹⁰⁹ The paper included a recommendation that *“A copy of each CLA prepared in Dublin must be kept in Belfast. The CLA must be prepared and approved prior to the loan being advanced. This is imperative for loans exceeding £2m”* and it indicated this had not yet been implemented. The minutes of the 19 December 2006 meeting were circulated at the Board meeting on 23 January 2007¹¹⁰, but there is no record of any follow-up with the Audit Committee or queries about what items were outstanding and why or what action was being taken on foot of the audit. The subsequent Board meeting minutes to the end of the Review Period did not record further discussion about the 2006 Belfast Internal Audit Report.
- 6.99 The minutes of the next Audit Committee meeting held on 13 March 2007¹¹¹ refer to the review of a further Audit Committee paper. This paper included the recommendation with regard to CLAs being kept on file and approved in advance, and

¹⁰⁵ Minutes of Board meeting, dated 24 August 2006 (Doc ID: 0.7.120.21569).

¹⁰⁶ Minutes of Audit Committee meeting, dated 25 October 2006, page 2 (Doc ID: 0.7.120.56874).

¹⁰⁷ Paper No. 3 Audit of Belfast Branch, page 12 No.1 (Doc ID: 0.7.120.431690).

¹⁰⁸ Minutes of Audit Committee meeting, dated 19 December 2006 (Doc ID: 0.7.120.57335).

¹⁰⁹ Paper No. 3 Audit of Belfast Branch, page 4, No. 1 (Doc ID: 0.7.120.432323).

¹¹⁰ Minutes of Board meeting, dated 23 January 2007 (Doc ID: 0.7.120.29587).

¹¹¹ Minutes of Audit Committee meeting, dated 13 March 2007 (Doc ID: 0.7.120.56372).

it indicated this recommendation had been implemented.¹¹² However, similar findings in respect of deficiencies in INBS's approvals process were made in subsequent Contemporaneous Reports, as set out below.

2005 KPMG Management Letter¹¹³

6.100 The 2005 KPMG Management Letter was issued by KPMG on 8 August 2006 and it raised the issue of commercial lenders being able to revise the terms of loans without prior approval and without new signed CMOs being issued. It stated, as follows:

"4.4 Facility amendments

This matter was also raised in the 2003 and 2004 Management Letter...

Due to the nature of the Society's commercial lending there is often a requirement to amend the terms of the original facility agreement with the borrower. Commercial lenders have the authority to revise the terms of the facility including:

- *extending moratorium facilities*
- *changing repayment dates and amounts*

We identified a number of such amendments where no new signed facility letter had been issued or approved within the normal procedures and/or historic approvals had not been up-dated".¹¹⁴

6.101 The 2005 KPMG Management Letter made the following "*Updated recommendation*" acknowledging that adequate procedures had been implemented regarding approval of amendments but that the recommendation regarding new or amended signed CMOs had not been implemented:

"We acknowledge that adequate procedures were implemented in respect of the internal approval of facility amendments however our recommendation regarding obtaining a new/amended signed loan offer has not been implemented.

¹¹² Paper No. 3 Audit of Belfast branch, page 4 (Doc ID: 0.7.120.431422).

¹¹³ 2005 KPMG Management Letter (Doc ID: 0.7.120.55767).

¹¹⁴ 2005 KPMG Management Letter, page 18 (Doc ID: 0.7.120.55767).

Whilst we are aware that the Society informally communicates with the loan counterparties, we recommend that amendments to original facility agreements should result in some form of appropriate documentation that should be signed and authorised by all parties.¹¹⁵

6.102 The INBS “*Updated management response*” dealt with the issue of updated CMOs as follows:

“All amendments to the original facility letter are implemented with prior verbal approval of the borrower. To date any such amendments are advised to the borrower in an ‘amendment letter’ and they were also advised that all other conditions in the original letter of offer remained the same. Going forward the Society will request the borrower to sign and return the letter”.

The “*due date*” was identified as “*September 2006*”.¹¹⁶

6.103 The issues identified in the 2005 KPMG Management Letter relate to the following SPC 2 Allegations: SPC 2.9; SPC 2.11; SPC 2.12; and SPC 2.14.

6.104 The 2005 KPMG Management Letter does not appear to have been discussed at any Audit Committee meetings throughout the remainder of the Review Period, but it was “*reviewed and discussed*” at the Board meeting held on 24 August 2006.¹¹⁷ The minutes of this meeting did not record any particular discussions or the Board making inquiries in relation the issue raised in the 2005 KPMG Management Letter, or whether it had been resolved. It does not appear that there was any further discussion in relation to the issue of updated CMOs being acknowledged by borrowers in any subsequent Board meetings.

6.105 There were a number of exchanges between the Financial Regulator and INBS in relation to the implementation of the recommendations in the 2005 KPMG Management Letter. In particular, in a letter from the Financial Regulator to INBS dated 31 August 2006¹¹⁸, the Financial Regulator sought confirmation regarding the implementation of the recommendation in the 2005 KPMG Management Letter. INBS responded in a letter to the Financial Regulator dated 10 November 2006 indicating that the recommendation was in place, as follows:

¹¹⁵2005 KPMG Management Letter, page 18 (Doc ID: 0.7.120.55767).

¹¹⁶ 2005 KPMG Management Letter, page 18 (Doc ID: 0.7.120.55767).

¹¹⁷ Minutes of Board meeting, dated 24 August 2006 (Doc ID: 0.7.120.21569).

¹¹⁸ Letter from Yvonne Madden, Financial Regulator, to Stan Purcell, INBS, dated 31 August 2006 (Doc ID: 0.7.120.449197).

“4.4 Facility amendments

*All amendments to the original facility letter are implemented with prior verbal approval of the borrower. Such amendments are advised to the borrower in an ‘amendment letter’ and the borrower is also advised that all other conditions in the original letter of offer remain the same. The Society requests the borrower to sign and return the letter. This recommendation is in place”.*¹¹⁹

6.106 In subsequent letters from INBS to the Financial Regulator dated 19 January 2007¹²⁰ and 17 May 2007¹²¹, INBS reiterated that the recommendation was implemented.

6.107 While INBS advised the Financial Regulator that KPMG’s recommendation with respect to updated CMOs had been implemented, the issue was raised again in subsequent Contemporaneous Reports, as set out below.

2007 Belfast Internal Audit Report¹²²

6.108 The 2007 Belfast Internal Audit Report was prepared by internal audit following a review of the Belfast Branch during January 2007. It stated as follows:

“CLA approvals

...the following findings have been noted in respect of 7 out of the remaining 12 files:

- A CLA for £7m had the first advance made on 24/03/06 but was not actually approved by the board until 25/04/2006.*
- A CLA for £1.55m was paid out in full on 25/05/2006 but was not formally approved by the board until 14/06/2006.*
- A CLA for £61m had approx £6m paid out on 27/09/2006, but the total advance was not approved by the board until 25/10/2006.*
- A CLA for £2.225m was paid out in full on 03/10/2006 but was not approved by the board until 25/10/2006.*

¹¹⁹ Letter from Stan Purcell, INBS, to Yvonne Madden, Financial Regulator, dated 10 November 2006, page 3 (Doc ID: 0.7.120.13615).

¹²⁰ Letter from Stan Purcell, INBS, to Yvonne Madden, Financial Regulator, dated 19 January 2007 (Doc ID: 0.7.120.138147).

¹²¹ Letter from Stan Purcell, INBS, to Yvonne Madden, Financial Regulator, dated 17 May 2007 (Doc ID: 0.7.120.137445).

¹²² 2007 Belfast Internal Audit Report (Doc ID: 0.7.120.431666).

- A CLA for £81.125m with approx £7.3m being paid out on 16/10/2006, however the total advance was not approved by the board until 25/10/2006 (first £71m) & 27/10/2006 (remaining £11.125m).
- A CLA for £22m with approx the full amount being paid out on 14/11/2006 but which was not approved by the board until 29/11/2006.
- A CLA for £83.5m with approx £8.6m being paid out on 17/11/2006, however the total advance was not approved by the board until 29/11/2006.

*It should be noted that only in two instances was a copy of the board approved / signed CLA form maintained on the Belfast files. In all other instances, the copy on file is that which was initially prepared by the Commercial Lending department in Dublin”.*¹²³

6.109 The finding in relation to additional advances on loans stated:

“The following findings were noted in respect of the Commercial loan applications (from review of 20 loan account files)...

- *For one loan worth £10m advanced in April 2006, the date per the CLA was noted in error to be 18 October 2004. There is no evidence on the board approval’s file to show that this advance was approved in 2006.*
- *For one loan the amount approved as per the loan application form is £70m but the actual agreed advance was £80.895m. This difference related to a payment in respect of VAT. The Society received a refund of the VAT monies on 11th of September and this was applied to the borrower’s account at that date.*
- *A CLA approved by the board in March 2006 shows an approved advance of £29.5m when the amount actually advanced in April amounted to £34.323m i.e. an excess of £4.823m over the approved amount.*
- *A further CLA, which was approved by the board, approved a sum of £77.5m in December 2006, however the actual agreed advance posted*

¹²³ 2007 Belfast Internal Audit Report, page 9 (Doc ID: 0.7.120.431666).

to the account was £94.35m i.e. an excess of £16.85m over the agreed balance...".¹²⁴

- 6.110 The issues identified in the 2007 Belfast Internal Audit Report relate to the following SPC 2 Allegations: SPC 2.1; SPC 2.2; SPC 2.3; SPC 2.5; SPC 2.6; SPC 2.7; SPC 2.8; SPC 2.13; and SPC 2.15.
- 6.111 While the 2007 Belfast Internal Audit Report was discussed at the Audit Committee meeting held on 6 September 2007, the minutes did not record the Audit Committee inquiring into the issues identified in respect of loan approvals, additional advances and the signing of CMOs, or directing remedial action in respect of these issues.¹²⁵ The minutes for the next two Audit Committee meetings on 27 November 2007¹²⁶ and 17 December 2007¹²⁷ did not record further discussions in respect of the findings of the 2007 Belfast Internal Audit Report.
- 6.112 The minutes of the Audit Committee meeting on 6 September 2007 were reviewed at the Board meeting held on 28 September 2007.¹²⁸ However, the minutes of this Board meeting, and subsequent Board meetings to the end of the Review Period, did not record any discussion of the 2007 Belfast Internal Audit Report by the Board. The Board was aware of the existence of the 2007 Belfast Internal Audit Report (from the Audit Committee meeting minutes dated 6 September 2007) and certain Board members, including Mr Purcell, were privy to the content of the 2007 Belfast Internal Audit Report (having attended the Audit Committee meeting on 6 September 2007). However, there was no record of the Board making inquiries in relation to the serious findings in the 2007 Belfast Internal Audit Report and/or seeking information in relation to what action was or was not being taken on foot of same.
- 6.113 The issues of loans being advanced prior to appropriate approval and being advanced without approval, additional advances being made without appropriate approval, and CMOs not being appropriately signed were raised in numerous subsequent Contemporaneous Reports, as set out below.

¹²⁴ 2007 Belfast Internal Audit Report, page 8 (Doc ID: 0.7.120.431666).

¹²⁵ Minutes of Audit Committee meeting, dated 6 September 2007 (Doc ID: 0.7.120.56361).

¹²⁶ Minutes of Audit Committee meeting, dated 27 November 2007 (Doc ID: 0.7.120.55828).

¹²⁷ Minutes of Audit Committee meeting, dated 17 December 2007 (Doc ID: 0.7.120.58135).

¹²⁸ Minutes of Board meeting, dated 28 September 2007 (Doc ID: 0.7.120.20357).

2007 Internal Audit Report¹²⁹

- 6.114 The 2007 Internal Audit Report was prepared by internal audit following a review of the commercial administration area from September 2007 to December 2007. The 2007 Internal Audit Report made findings with respect to the following: loans being advanced without appropriate approval; loan advances made prior to appropriate approval, and variations (in the form of moratoria extensions) to loans without appropriate approval.
- 6.115 The 2007 Internal Audit Report made the following findings with respect of issues concerning the approvals of loans:

“Loan Approvals

A sample of 10 new commercial loan accounts created in 2007 were selected for testing to ensure ...that the CLA’s [sic] had also been approved and that this had occurred before payout of the actual advance.

The following findings were noted from this testing:

7 of the payouts examined were in respect of Belfast loans.

...

For two advances, there was no evidence of Credit Committee or Board approval from the files.

For one of these loans, there is a CLA, which has been signed by the lenders. Senior management’s approval is noted on the original memo from the Belfast branch manager.

For the remaining loan, there is an unsigned CLA attached to the file but this CLA has been also been [sic] approved by senior management.

For the remaining 8 advances, evidence of credit committee and board approval was noted. However, for 4 of these advances, credit committee approval was subsequent to the date of first payout on the loan.

For the 8 advances noted above, evidence of board approval was noted from the board file. It was noted for 3 of these advances that board approval was

¹²⁹ 2007 Internal Audit Report (Doc ID: 0.7.120.431830).

*formally given after the advance of initial monies. For one advance, board approval was given on the same date as the payout”.*¹³⁰

6.116 The 2007 Internal Audit Report made the following recommendation in respect of this finding:

“All Commercial Loans must receive Credit Committee and Board (where applicable) approval prior to any funds being advanced to customers...”¹³¹

6.117 The 2007 Internal Audit Report also made the following finding concerning approval of variations to moratoria:

“Moratoria

A sample of 20 accounts on moratoria was selected for testing to ensure that the moratoria change had been correctly authorised in line with the policy of the Society. The following findings have been noted from this testing:

- *For one account, the moratoria in place on the account was an extension of the original term per the Letter of Offer. There is a memo attached to the file signed by Tom McMenamin authorising the extension of the moratoria term (but there is no moratoria report).*
- *Only 9 of the accounts had moratoria reports completed and either attached to the mortgage file or maintained in a separate Moratoria file by... the Commercial department. Of these 9 moratoria reports, 7 contained the signature of Tom McMenamin only. The remaining 2 reports had been signed by both Tom McMenamin and John Roche.*
- *For one account it was noted that the moratoria term had not been authorised. However, the borrower on this account is deceased and the account is in the name of his personal representatives.*
- *For another account, it was also noted that there had been no authorisation attached to the file for the moratorium in place. The adjustment on the account for the moratorium arose out of an additional amount, which was advanced on the loan account, at which stage a*

¹³⁰ 2007 Internal Audit Report, pages 9 and 10 (Doc ID: 0.7.120.431830).

¹³¹ 2007 Internal Audit Report, page 13 (Doc ID: 0.7.120.431830).

moratorium term of 1 year was placed on the account. There is no memo on file to support the authorisation of the moratoria but there is a printout of the account where it has been noted".¹³²

6.118 The 2007 Internal Audit Report made the following recommendation in respect of this finding:

"All moratoria changes to accounts must have a completed and authorised change form on file before an amendment can be made to the account".¹³³

6.119 The 2007 Internal Audit Report also made findings with respect to moratoria policy and referred to the lack of clarity regarding the individuals that had authority to approve variations to moratoria.¹³⁴ Of note, INBS's Moratoria Policy was updated in December 2007 amending who had authority to approve variations to moratoria.

6.120 The issues identified in the 2007 Internal Audit Report relate to the following SPC 2 Allegations: SPC 2.1; SPC 2.2; SPC 2.3; SPC 2.5; SPC 2.6; SPC 2.9 and SPC 2.13.

6.121 The 2007 Internal Audit Report was discussed at one Audit Committee meeting held on 28 March 2008. The minutes¹³⁵ of this meeting did not record any discussion of the findings made concerning loans granted without appropriate approval or loan advances made prior to appropriate approval. This is despite the fact that these issues had been raised in reports before the Audit Committee at different times over the previous three years.¹³⁶ The minutes did record that the Audit Committee noted findings in respect of moratoria extensions being granted without appropriate approval, but did not record any steps being taken in respect of this issue (this is despite previous Contemporaneous Reports raising the issue in respect of variations to loans, including variations to moratoria, without appropriate approval).

6.122 The minutes of the Board meeting held on 21 April 2008¹³⁷, indicated that apart from a review of the Audit Committee minutes of 28 March 2008, the 2007 Internal Audit Report was not discussed by the Board. The minutes did not record any queries being

¹³² 2007 Internal Audit Report, page 11 (Doc ID: 0.7.120.431830).

¹³³ 2007 Internal Audit Report, page 13 (Doc ID: 0.7.120.431830).

¹³⁴ 2007 Internal Audit Report, page 12 (Doc ID: 0.7.120.431830).

¹³⁵ Minutes of Audit Committee meeting, dated 28 March 2008 (Doc ID: 0.7.120.56024).

¹³⁶ These issues were raised in the 2005 Internal Audit Report and the 2006 and 2007 Belfast Internal Audit Reports (as detailed above).

¹³⁷ Minutes of Board meeting, dated 21 April 2008 (Doc ID: 0.7.120.7090).

raised by the Board in respect of this report and/or the next steps to be taken in relation to the report's findings.

6.123 The minutes of the Audit Committee meeting held on 26 May 2008¹³⁸ did not record any further consideration of the 2007 Internal Audit Report. These minutes were circulated at the Board meeting held on 24 July 2008 (and so the Board was aware that there was no record of the Audit Committee giving further consideration to the 2007 Internal Audit Report). The minutes of that Board meeting¹³⁹ indicated that the Board did not follow up on the 2007 Internal Audit Report.

6.124 Issues similar to those identified in the 2007 Internal Audit Report in respect of loans being granted without appropriate approval, approval only being obtained after a loan had been drawn down, and variations like moratoria extensions being granted without appropriate approval were identified in subsequent Contemporaneous Reports.

2007 KPMG Management Letter¹⁴⁰

6.125 The 2007 KPMG Management Letter, which was issued on 8 July 2008, made a finding with respect of the approval of loans. As is clear from the above reports, this issue of appropriate approvals not being obtained for loans, as required, had been raised with INBS on numerous occasions previously.

6.126 The 2007 KPMG Management Letter made the following finding:

"1.2 Lending–process

Issue and effect:

KPMG noted to [sic] following issues during testing of loan approvals...

- *there was no evidence of Board/Credit Committee approval for four loan facilities available for review. Each of each of [sic] these facilities were in excess of €1 million".¹⁴¹*

¹³⁸ Minutes of Audit Committee meeting, dated 26 May 2008 (Doc ID: 0.7.120.57529).

¹³⁹ Minutes of Board meeting, dated 24 July 2008 (Doc ID: 0.7.120.8409).

¹⁴⁰ 2007 KPMG Management Letter (Doc ID: 0.7.120.55769).

¹⁴¹ 2007 KPMG Management Letter, page 5 (Doc ID: 0.7.120.55769).

6.127 The 2007 KPMG Management Letter then made the following recommendation:

“KPMG recommends that all loan applications are reviewed in line with the Society’s required documentation without exception”.¹⁴²

6.128 The 2007 KPMG Management Letter set out INBS’s Management Response to the issue, as follows:

“The Credit Committee approve [sic] commercial loans”.¹⁴³

6.129 In relation to this Management Response, it should be noted that, with effect from 17 December 2007 (i.e. the last month of KPMG’s review period for the purposes of its Management Letter), the Credit Committee was authorised to approve all commercial loans without reference to the Board. This Management Response did not, however, appear to respond to the issue that, for the majority of 2007 loans over €1 million required Board approval and that KPMG had identified loans without Board or Credit Committee approval.

6.130 The issues identified in the 2007 KPMG Management Letter relate to the following SPC 2 Allegations: SPC 2.1; SPC 2.2; SPC 2.3; SPC 2.5 and SPC 2.6.

6.131 The minutes of the Board meeting held on 26 May 2008¹⁴⁴, recorded that a draft of the 2007 KPMG Management Letter¹⁴⁵ was discussed by the Board. The draft version reviewed by the Board contained the same findings and recommendations as recorded in the final version, although it did not contain Management Responses to the findings and recommendations. The minutes of the meeting did not record any particular discussion about the 2007 KPMG Management Letter and/or what INBS was going to do about its findings.

6.132 The issue of loans being advanced without appropriate approval was raised again in subsequent Contemporaneous Reports¹⁴⁶, as set out below, which suggests that this issue had not been resolved by the end of the Review Period.

¹⁴² 2007 KPMG Management Letter, page 5 (Doc ID: 0.7.120.55769).

¹⁴³ 2007 KPMG Management Letter, page 5 (Doc ID: 0.7.120.55769).

¹⁴⁴ Minutes of Board meeting, dated 26 May 2008 (Doc ID: 0.7.120.33555).

¹⁴⁵ It has been assumed that reference in the minutes to the “KPMG Management Letter 2008” is to the 2007 KPMG Management Letter which was dated 23 May 2008, as the 2008 KPMG Management Letter was not issued until 3 July 2009. As such, the Board could not have reviewed and discussed that letter at its meeting on 26 May 2008.

¹⁴⁶ The May 2008 Deloitte Review, the 2008 Belfast Internal Audit Report, the September 2008 Deloitte Review, the 2009 Internal Audit Report and the 2009 Deloitte Review.

6.133 The minutes of the Board meetings from 26 May 2008 to 30 September 2008 (i.e. the end of the Review Period), did not record further discussions about the specific findings in the 2007 KPMG Management Letter relevant to SPC 2.

May 2008 Deloitte Review¹⁴⁷

6.134 The May 2008 Deloitte Review, which issued on 26 May 2008, was prepared following internal audit work carried out in the period February 2008 to April 2008.

6.135 It identified issues with respect of the approval of loans, including loans without approval, non-quorate Credit Committee meetings and additional advances without appropriate approval. With respect to the approval process for loans, it stated:

“The Credit Committee terms of reference are not being fully adhered to.

We noted two areas not fully adhered to:

- *Considering and approving/declining all commercial loan applications; and*
- *Considering and approving/declining the residential loan applications where a customer’s exposure to the Society exceeds €1 million.*

No Credit Committee approval was present on a number of reviewed files, mostly relating to loans originating in Belfast.

*In many cases the Commercial Loan Application was approved by only one member of the Credit Committee, while at least two members are required under the terms of reference to approve these loans”.*¹⁴⁸

6.136 The May 2008 Deloitte Review made the following recommendation:

*“The Credit Committee should adhere to its terms of reference and should maintain appropriate record keeping arrangements to demonstrate the required approvals have been made”.*¹⁴⁹

¹⁴⁷ May 2008 Deloitte Review (Doc ID: 0.7.120.431665).

¹⁴⁸ May 2008 Deloitte Review, page 13 (Doc ID: 0.7.120.431665).

¹⁴⁹ May 2008 Deloitte Review, page 13 (Doc ID: 0.7.120.431665).

6.137 The INBS Management Response was:

“The Credit Committee is and will continue to adhere to its terms of reference and will keep appropriate records to demonstrate that the required approvals have been made.

*The Drawdown & Control section, as part of the loan payout process, ensure that all loans are approved in accordance with the commercial and residential mortgage lending policies”.*¹⁵⁰

6.138 The report recorded the deadline for this issue as *“Implemented”*.¹⁵¹

6.139 The issue of loans being granted without appropriate approval had been raised in previous Contemporaneous Reports in 2005, 2006, 2007, as outlined above, and now in 2008.

6.140 The May 2008 Deloitte Review also noted a number of instances where Board approval was not evident for loans in excess of €1 million (which would have been required by the lending policy in operation before 17 December 2007):

“Until December 2007, Board approval was required for all loans in excess of €1m.

*In a number of instances, no Board approval could be located (in either the loan file or the Board minutes) for loans which, according to the lending policy in operation at the time, would have required Board approval”.*¹⁵²

6.141 The May 2008 Deloitte Review made the following recommendation in respect of this finding:

*“While the Board no longer has a role in the approval of loans, the Society should maintain appropriate record keeping arrangements to demonstrate the required approvals have been made in accordance with policy”.*¹⁵³

6.142 The Management Response to this finding and recommendation was: *“Appropriately approved Commercial Loan Applications will be kept on each customer’s loan file, in*

¹⁵⁰ May 2008 Deloitte Review, page 13 (Doc ID: 0.7.120.431665).

¹⁵¹ May 2008 Deloitte Review, page 13 (Doc ID: 0.7.120.431665).

¹⁵² May 2008 Deloitte Review, page 15 (Doc ID: 0.7.120.431665).

¹⁵³ May 2008 Deloitte Review, page 15 (Doc ID: 0.7.120.431665).

*addition to the loan approval being documented in the Credit Committee minutes”, and the deadline for this issue was recorded as “Immediately”.*¹⁵⁴

6.143 The issue of loans being granted without appropriate approval had been raised in five previous Contemporaneous Reports, the 2005 Internal Audit Report and 2007 Internal Audit Report, the 2006 and 2007 Belfast Internal Audit Reports and the 2007 KPMG Management Letter.

6.144 The May 2008 Deloitte Review also noted issues in relation to a variation being made to a loan and additional advances on loans without appropriate approvals. It made a recommendation that INBS should either adhere to the position set out in policy, that any amendments which are made to the terms of a loan receive approval from Credit Committee, or that it considers whether non-material changes to loans could be made without the approval of the Credit Committee and document this in its policy.¹⁵⁵

6.145 Of note, similar issues to those identified in this finding had been raised in previous Contemporaneous Reports. Furthermore, the appropriate approvals would already have been required by the policies in operation at the time. The May 2008 Deloitte Review recorded the following INBS Management Response to the finding and recommendation:

*“Going forward, all amendments to the original terms of a loan will have Credit Committee approval prior to loan payout”.*¹⁵⁶

6.146 The May 2008 Deloitte Review made a further finding of instances where CMOs were being issued prior to appropriate approval by the Credit Committee or Board:

*“In addition, in several instances, we noted that the date of the letter of offer was earlier than Credit Committee/Board approvals, as applicable”.*¹⁵⁷

6.147 The recommendation in respect of this finding was:

*“A loan offer forms an integral part of the contract. The application process, including the completion of the CLA, should be undertaken before a signed loan offer is issued”.*¹⁵⁸

¹⁵⁴ May 2008 Deloitte Review, page 15 (Doc ID: 0.7.120.431665).

¹⁵⁵ May 2008 Deloitte Review, page 16 (Doc ID: 0.7.120.431665).

¹⁵⁶ May 2008 Deloitte Review, page 16 (Doc ID: 0.7.120.431665).

¹⁵⁷ May 2008 Deloitte Review, page 18 (Doc ID: 0.7.120.431665).

¹⁵⁸ May 2008 Deloitte Review, page 18 (Doc ID: 0.7.120.431665).

6.148 The INBS Management Response to this finding and recommendation was that *“The application process (including Commercial Loan Application completion) will be undertaken before a Loan Offer is issued”*.¹⁵⁹

6.149 The issues identified in the May 2008 Deloitte Review relate to the following SPC 2 Allegations: SPC 2.1; SPC 2.2; SPC 2.3; SPC 2.4; SPC 2.5; SPC 2.6; SPC 2.7; SPC 2.8; SPC 2.9; SPC 2.10; SPC 2.11; SPC 2.14; and SPC 2.16.

6.150 A draft of the May 2008 Deloitte Review was reviewed at the Board meeting on 21 April 2008¹⁶⁰, and the findings, recommendations and Management Response in this draft were the same as in the final version, which was circulated at the Audit Committee meeting on 26 May 2008. The minutes of the Audit Committee meeting recorded the Audit Committee’s view with regard to the recommendations in the May 2008 Deloitte Review. The minutes recorded the following discussion:

“The committee’s view was that the recommendations must be implemented now. In addition a process will be introduced to ensure that the findings have been properly implemented and remain in force on a continuing basis.

The committee noted that the report indicated the recommendations arising from the seven “priority one” findings have been implemented.

These critical issues which are classified as important matters requiring urgent attention at a senior management or board level are:

1. *Adherence to Credit Committee Terms of Reference.*
2. *Board approval not on file.*
3. *Amendments to approved loans do not follow best practice.*
4. *The loans approved procedures are not performed in the correct sequence.*
5. *Documentation supporting loan approval is not complete.*
6. *LTV for related parties.*
7. *Documentation supporting residential lending is incomplete.*

¹⁵⁹ May 2008 Deloitte Review, page 18 (Doc ID: 0.7.120.431665).

¹⁶⁰ Minutes of Board meeting, dated 21 April 2008 (Doc ID: 0.7.120.7090).

The committee agreed that in order to obtain assurance that these recommendations (As well as the other recommendations under the categories “Important matters requiring attention at an appropriate level” and “Routine Matters”) were implemented and continued to be in place, the Internal Auditor should report to the committee by the end of July 2008 and also again at the end of January 2009 on the quality of the initial and continuing implementation of all fourteen recommendations.

*In addition the report should contain a review of the operation of the credit committee in the previous six months especially with regard to frequency of and attendance at meetings, documentation, details recorded in the minutes and a view on the quality of its operations measured against industry standards with recommendations for improvement”.*¹⁶¹

- 6.151 The minutes of the Audit Committee meeting on 26 May 2008 were noted at the Board meeting held on 24 July 2008¹⁶², however the Board meeting minutes did not record any consideration of the May 2008 Deloitte Review or the Audit Committee’s discussion on same.
- 6.152 INBS took certain steps to follow up on the implementation of the recommendations in the May 2008 Deloitte Review. In an email from the internal auditor to Mr McCollum, dated 17 April 2008, Mr McMahon informed Mr McCollum of the recommendations made by Deloitte. This email stated:

“Deloitte have finished their review of the Society’s commercial lending processes and have made a number of recommendations. There are no overly onerous new procedures to be implemented but can you ensure the following practices are followed going forward please.

I have attached a copy of the Commercial Advances Checklist as this has to be completed for all files going forward. You can fax this to Daniel Dempsey when a payout is requested.

1. *Appropriately approved Commercial Loan Applications must be kept on each customer’s loan file.*

¹⁶¹ Minutes of Audit Committee meeting, dated 26 May 2008, page 2 and 3 (Doc ID: 0.7.120.57529).

¹⁶² Minutes of Board meeting, dated 24 July 2008 (Doc ID: 0.7.120.8409).

2. *All amendments to the original terms of a loan must have Credit Committee approval prior to loan payout.*
3. *The application process (including Commercial Loan Application completion) will be undertaken before a Loan Offer is issued.*
4. *All commercial files must have a fully complete and signed Commercial Advances Checklist (new version attached) on file. From Monday, 21/4/08, a loan will not be paid out without this completed checklist being on file...".*¹⁶³

6.153 In a letter to the Financial Regulator¹⁶⁴, INBS confirmed that the Audit Committee had considered the May 2008 Deloitte Review and the letter set out the Audit Committee's view on the recommendations, as outlined in the minutes of the Audit Committee meeting on 26 May 2008 above. The letter noted that the internal auditor would report at the end of July 2008 and again at the end of January 2009 on the implementation of Deloitte's recommendations.

6.154 The Financial Regulator responded to this letter on 30 July 2008, requesting that the Board of INBS be involved in ensuring the implementation of the recommendations.¹⁶⁵

6.155 The July 2008 update that had been directed by the Audit Committee was emailed to the Board on 31 July 2008.¹⁶⁶ This update report listed 14 recommendations four of which are relevant to SPC 2. With respect to the recommendation that the Credit Committee should adhere to its terms of reference and should maintain appropriate record keeping arrangements to demonstrate the required approvals have been made, the update report indicated that this had been implemented since 1 May 2008. Similarly, the recommendation that INBS should maintain appropriate record keeping arrangements to demonstrate the required approvals had been made in accordance with policy, was designated as having been implemented since 1 May 2008. The recommendation that the Credit Committee or Board must approve variations was also designated as implemented from 1 May 2008. The final recommendation of relevance to SPC 2, i.e. that the application process, including the completion of a CLA, must be

¹⁶³ Email from Killian McMahon to Gary McCollum dated 17 April 2008 (Doc ID: 0.7.120.146169).

¹⁶⁴ Letter from Stan Purcell, INBS, to Yvonne Madden, Financial Regulator, dated 25 June 2008 (Doc ID: 0.7.120.131950).

¹⁶⁵ Letter from Con Horan, Financial Regulator, to Michael Walsh, INBS, dated 30 July 2008 (Doc ID: 0.7.120.140262).

¹⁶⁶ Email from Killian McMahon to various INBS directors, dated 31 July 2008 (Doc ID: 0.7.120.293425) attaching Deloitte Lending Review Recommendation Update, dated 31 July 2008 (Doc ID: 0.7.120.293425-000002).

undertaken before a signed loan offer was issued, was designated as implemented from 1 May 2008.¹⁶⁷

- 6.156 The minutes of the next Audit Committee meeting held on 12 September 2008¹⁶⁸ did not refer to the contents of the 31 July 2008 internal audit update report. The issues identified in the recommendations regarding the approval process for loan advances and variations to loans were repeated in the subsequent Deloitte review. Internal audit also conducted an operational overview of the Credit Committee in July 2008¹⁶⁹ (as requested by the Audit Committee) and this was discussed at the Audit Committee meeting on 12 September 2008. Regarding the Audit Committee's request for a further internal audit report by the end of January 2009, it appears that part of this update was provided to the Board on 4 December 2008.¹⁷⁰ In addition, internal audit produced a further report on the operation of the Credit Committee in January 2009, as per the Audit Committee's request.¹⁷¹
- 6.157 There were further exchanges between INBS and the Financial Regulator in September and November 2008, in which INBS confirmed that it would provide a monthly update on the implementation of Deloitte's recommendations starting after the Board meeting to be held on 12 September 2008.¹⁷² However, in a letter dated 14 November 2008¹⁷³ the Financial Regulator wrote to INBS requesting that this monthly update be provided, indicating that this had not been done.
- 6.158 While the update provided by internal audit in July 2008 indicated that all of the recommendations from the May 2008 Deloitte Review had been implemented, these issues, which had been raised in previous Contemporaneous Reports, arose again in subsequent Contemporaneous Reports, as set out below, indicating that they were ongoing issues which INBS had not resolved. Furthermore, the correspondence between INBS and the Financial Regulator indicated that the implementation of the recommendations from the May 2008 Deloitte Review was an issue of concern to the Financial Regulator.

¹⁶⁷ Deloitte Lending Review Recommendation Update, dated 31 July 2008 (Doc ID: 0.7.120.293425-000002).

¹⁶⁸ Minutes of Audit Committee meeting, dated 12 September 2008 (Doc ID: 0.7.120.56436).

¹⁶⁹ 2008 Internal Audit Report (Doc ID: 0.7.120.431377).

¹⁷⁰ Memorandum from Killian McMahon to the Board and Chief Executive, dated 4 December 2008 (Doc ID: 0.7.120.749985).

¹⁷¹ 2009 Internal Audit Report (Doc ID: 0.7.120.509678).

¹⁷² Letter from Michael Walsh, INBS, to Con Horan, Financial Regulator, dated 5 September 2008 (Doc ID: 0.7.120.136957).

¹⁷³ Letter from Yvonne Madden, Financial Regulator, to Stan Purcell, INBS, dated 14 November 2008 (Doc ID: 0.7.120.133629).

2008 Belfast Internal Audit Report¹⁷⁴

6.159 The 2008 Belfast Internal Audit Report was issued in July 2008 following an internal audit of the Belfast Branch conducted during January 2008.¹⁷⁵ It made the following findings in relation to the approval of loans:

“The following exceptions were noted in the examination of the approvals obtained for a sample of 20 loans:

- *In one case, the approval of the Credit Committee was obtained after the initial Board approval. The name of the borrower and the loan amount were subsequently changed and these changes were reapproved by senior management.*
- *In 11 cases (55%), board approval was obtained after the loan had been paid out. In one instance, board approval was obtained 51 days after the initial payout. For 9 of these loans, credit committee approval had also been obtained after the loan had been paid out. For the remaining two loans, credit committee approval had been obtained prior to payout.*
- *In all 20 cases (100%), the loan payouts were not approved by two of the Society’s authorised loan signatories.*

*All of the above loans examined were approved prior to the introduction of the revised Commercial Mortgage Lending Policy introduced on 1 December 2007”.*¹⁷⁶

6.160 The 2008 Belfast Internal Audit Report then made the following recommendation in respect of this finding:

“The Belfast branch manager must ensure that the appropriate approvals have been obtained for each loan advance prior to any funds being paid out to the customer.

It is the responsibility of the Drawdown and Control section to ensure that all approvals have been obtained prior to actual loan payout.

¹⁷⁴ 2008 Belfast Internal Audit Report (Doc ID: 0.7.120.431794).

¹⁷⁵ The fieldwork for this audit was completed by 21 April 2008.

¹⁷⁶ 2008 Belfast Internal Audit Report, page 11 (Doc ID: 0.7.120.431794).

- 6.161 Mr McCollum completed a management action plan¹⁷⁸ with respect to the findings identified in the 2008 Belfast Internal Audit Report and it recorded the Management Response to the recommendation from the 2008 Belfast Internal Audit Report as “*Already implemented*”.
- 6.162 Similar findings in respect of the timing of approval of loans had been made in previous Contemporaneous Reports.
- 6.163 The issues identified in the 2008 Belfast Internal Audit Report relate to the following SPC 2 Allegations: SPC 2.1; SPC 2.2; SPC 2.3; SPC 2.5; SPC 2.6; SPC 2.13; and SPC 2.16.
- 6.164 The 2008 Belfast Internal Audit Report was discussed at the Audit Committee meeting held on 12 September 2008.¹⁷⁹ The minutes of that meeting recorded the following: “*The Committee noted the main weaknesses in the control environment. The internal auditor said the recommendations were being worked on and a number were already in place*”. The minutes did not record the Audit Committee making any further inquiries in relation to this matter. In particular the committee did not query why the issues of the timing of approval of loans and loans being advanced without proper approvals (which had been raised as issues in the 2007 Internal Audit Report and the 2007 Belfast Internal Audit Report) were arising again.
- 6.165 The minutes of the Audit Committee meeting on 12 September 2008 were discussed at the Board meeting held on 12 December 2008.¹⁸⁰ The minutes of the Board meeting did not record the Board seeking any further information or taking any action in relation to the weaknesses in the control environment identified in the Audit Committee meeting minutes.
- 6.166 The next Audit Committee meeting held on 4 November 2008¹⁸¹ occurred outside the Review Period, but it can be noted that the minutes did not record any follow up by the Audit Committee in relation to the findings in the 2008 Belfast Internal Audit Report. The minutes of that Audit Committee meeting were circulated at the Board meeting held on 12 December 2008¹⁸², and the minutes of that Board meeting indicated that

¹⁷⁷ 2008 Belfast Internal Audit Report, page 11 (Doc ID: 0.7.120.431794).

¹⁷⁸ Belfast Management Action Plan 2008 Audit (Doc ID: 0.7.120.449943).

¹⁷⁹ Minutes of Audit Committee meeting, dated 12 September 2008 (Doc ID: 0.7.120.56436).

¹⁸⁰ Minutes of Board meeting, dated 12 December 2008 (Doc ID: 0.7.120.21207).

¹⁸¹ Minutes of Audit Committee meeting, dated 4 November 2008 (Doc ID: 0.7.120.56063).

¹⁸² Minutes of Board meeting, dated 12 December 2008 (Doc ID: 0.7.120.21207).

the Board did not seek any further information on what action was being taken on foot of the 2008 Belfast Internal Audit Report.

2008 Internal Audit Report¹⁸³

6.167 The 2008 Internal Audit Report was prepared by the internal audit department at the request of the Audit Committee in light of recurring failings and recommendations identified in the May 2008 Deloitte Review.

6.168 The 2008 Internal Audit Report made findings with respect to the approval of loans (including with respect to an additional advance not being appropriately approved and the adequacy of the consideration given to loans by the Credit Committee). It made the following findings:

“All 39 agreed advances exceeding €1 million entered on Summit between 1/1/08 and 29/6/08 were tested to ensure the correct approvals were received before payout. The following exceptions were noted:

- *Three loan payouts were made for a different amount to the approved amount. However, two of the payouts were for a lesser amount and the other payout exceeded the approved amount because the admin fee was added to the loan.*
- *Five approval exceptions were noted. Two of these exceptions were authorised by a signed Commercial Loan Application and three were authorised by a signed Payout Approval sheet. Only two of the approval exceptions were in compliance with the Credit Committee Terms of Reference”*.¹⁸⁴

6.169 The 2008 Internal Audit Report made the following recommendation in respect of this finding: *“All loan payouts must be made in accordance with Society policy”*.¹⁸⁵

6.170 The 2008 Internal Audit Report also identified shortcomings in the Credit Committee’s decision-making process, stating that *“The Credit Committee members receive minimal documentation prior to each meeting. They... only receive the Commercial Loan Application at the actual meeting”*, and it recommended that Credit Committee members be given information at least 24 hours prior to the meeting, with a deadline

¹⁸³ 2008 Internal Audit Report (Doc ID: 0.7.120.431377).

¹⁸⁴ 2008 Internal Audit Report, page 7 (Doc ID: 0.7.120.431377).

¹⁸⁵ 2008 Internal Audit Report, page 7 (Doc ID: 0.7.120.431377).

for implementation of 31 August 2008.¹⁸⁶ However, this issue was raised again in the 2009 Internal Audit Report.

- 6.171 The issues identified in the 2008 Internal Audit Report relate to the following SPC 2 Allegations: SPC 2.1; SPC 2.2; SPC 2.4; SPC 2.5; and SPC 2.9.
- 6.172 The 2008 Internal Audit Report was circulated to the Audit Committee on 31 July 2008 and copied to Mr Purcell¹⁸⁷, and was noted at the Audit Committee meeting held on 12 September 2008.¹⁸⁸ The minutes of that meeting record (in relation to the 2008 Internal Audit Report) that “*The Internal Auditor noted that the approval process was working well but three exceptions were too many. There should be no more than one per year*”. The minutes did not record any further discussion on the issue of compliance with INBS’s loan approval process.
- 6.173 The subsequent Audit Committee meeting held on 4 November 2008¹⁸⁹ occurred outside the Review Period, but it can be noted that these minutes did not record any follow up by the Audit Committee in relation to the findings of the 2008 Internal Audit Report. That meeting did, however, consider the subsequent September 2008 Deloitte Review which was the follow-on to the May 2008 Deloitte Review, which itself had prompted the preparation of the 2008 Internal Audit Report.
- 6.174 The minutes of the Audit Committee meetings on 12 September 2008 and 4 November 2008 were discussed at the Board meeting held on 12 December 2008.¹⁹⁰ The minutes of that Board meeting indicated that while the Board was aware of the 2008 Internal Audit Report from the Audit Committee minutes, it did not seek any further information in relation to the 2008 Internal Audit Report or the findings made in it.

September 2008 Deloitte Review¹⁹¹

- 6.175 The September 2008 Deloitte Review, which issued on 11 November 2008, identified outstanding findings from the May 2008 Deloitte Review and recorded updated Management Responses, as well as reporting new findings.

¹⁸⁶ 2008 Internal Audit Report, page 6 (Doc ID: 0.7.120.431377).

¹⁸⁷ Email from Killian McMahon dated 31 July 2008 to Michael Walsh, Terence Cooney and David Brophy, copying Stan Purcell (Doc ID: 0.7.120.293425).

¹⁸⁸ Minutes of Audit Committee meeting, dated 12 September 2008 (Doc ID: 0.7.120.56436).

¹⁸⁹ Minutes of Audit Committee meeting, dated 4 November 2008 (Doc ID: 0.7.120.56063).

¹⁹⁰ Minutes of Board meeting, dated 12 December 2008 (Doc ID: 0.7.120.21207).

¹⁹¹ September 2008 Deloitte Review (Doc ID: 0.7.120.430877).

6.176 Outstanding Findings

- (a) The September 2008 Deloitte Review repeated the finding from the May 2008 Deloitte Review that loans were not being appropriately approved with the recommendation that the Credit Committee should adhere to its terms of reference. INBS repeated its Management Response that the Credit Committee “...is and would continue to adhere to its terms of reference ...”.¹⁹²
- (b) The September 2008 Deloitte Review also repeated the finding from the May 2008 Deloitte Review regarding variations and additional advances to loans without appropriate approval. It stated:

“We noted several instances during our audit where we believe lending good practice standards were not fully met”.

It then cited instances including: an interest rate manually changed and signed off by the chief executive; a loan amount increased with the approval of the chief executive, and in several cases it noted a discrepancy between the amount of the loan approved by the Board or Credit Committee.¹⁹³

Deloitte repeated its recommendation that INBS should either change its policy or ensure that any amendments receive appropriate approval. The INBS Management Response indicated that INBS had taken some steps to deal with four particular loans and committed to ensuring that variations received appropriate approval.¹⁹⁴

- (c) The September 2008 Deloitte Review also repeated the finding that appeared in the May 2008 Deloitte Review with respect to CMOs being issued before approval, as follows:

“We observed in several cases, that the application date on approved Commercial Loan Applications (CLAs) was later than the letter of offer signed by the customer.

¹⁹² September 2008 Deloitte Review, page 13 (Doc ID: 0.7.120.430877).

¹⁹³ September 2008 Deloitte Review, page 14 (Doc ID: 0.7.120.430877).

¹⁹⁴ September 2008 Deloitte Review, page 14 (Doc ID: 0.7.120.430877).

In addition, in several instances, we noted that the date of the letter of offer was earlier than Credit Committee/Board approvals, as applicable".¹⁹⁵

The recommendation from the previous review was repeated, as follows:

"This issue was raised during our last review and remains open. From our current review we found further instances of Loan Offers being issued prior to Credit Committee approval.

A loan offers [sic] forms an integral part of the contract. The application process, including the completion of a CLA, should be undertaken before a signed loan offer is issued".¹⁹⁶

The INBS Management Response confirmed that management would ensure approval had been obtained before a CMO was issued.¹⁹⁷ Notwithstanding this assurance, this issue was raised again in the February 2009 Deloitte Review.

6.177 New Findings

- (d) The September 2008 Deloitte Review made a finding concerning variations to the term of loans where moratoria extensions were being granted without appropriate approval and a recommendation that the Credit Committee adhere to all provisions in the commercial and residential lending policies. The INBS Management Response confirmed that INBS would ensure that moratoria extensions received appropriate Credit Committee approval.¹⁹⁸ A similar issue was raised in the February 2009 Deloitte Review.
- (e) The September 2008 Deloitte Review made a finding that, contrary to policy requirement that CMOs be signed by two members of the commercial lending department, CMOs in the Belfast Branch were only being signed by one person, and it made a recommendation that the Belfast Branch should ensure that all CMOs are reviewed and signed by two authorised personnel. The INBS Management Response was that two members of the branch (one of whom would be the Belfast Branch manager, Mr McCollum) would sign all future loan

¹⁹⁵ September 2008 Deloitte Review, page 18 (Doc ID: 0.7.120.430877).

¹⁹⁶ September 2008 Deloitte Review, page 18 (Doc ID: 0.7.120.430877).

¹⁹⁷ September 2008 Deloitte Review, page 18 (Doc ID: 0.7.120.430877).

¹⁹⁸ September 2008 Deloitte Review, page 29 (Doc ID: 0.7.120.430877).

advances from the Belfast Branch.¹⁹⁹ This issue had been raised in the 2007 Belfast Internal Audit Report.

- 6.178 The issues identified in the September 2008 Deloitte Review relate to the following SPC 2 Allegations: SPC 2.1; SPC 2.2; SPC 2.3; SPC 2.4; SPC 2.5; SPC 2.6; SPC 2.7; SPC 2.8; SPC 2.9; SPC 2.12; SPC 2.13; SPC 2.14; SPC 2.15; and SPC 2.16.
- 6.179 A draft of the September 2008 Deloitte Review was discussed at the Audit Committee meeting held on 4 November 2008.²⁰⁰ The minutes of that meeting noted that the Audit Committee was disappointed with the progress in implementing the recommendations from the May 2008 Deloitte Review and sought a report from the internal auditor setting out why certain recommendations had not been addressed and the status of same.
- 6.180 On 4 December 2008, the internal auditor, Mr McMahon, sent a memorandum to the Board and the chief executive²⁰¹ listing the five recommendations from the September 2008 Deloitte Review (relating to the three outstanding findings and the two new findings). In relation to the outstanding findings and recommendations, Mr McMahon stated:

"No. 1 (May 08) & 4 (Sep 08)

Recommendation Heading

Adherence to Credit Committee terms of reference

Reason(s) for recommendation

This related to loans being advanced without credit committee approval.

Current Status

Internal Audit believes that the Credit Committee is adhering to its Terms of Reference. However, a number of loans are being advanced based on the Chief Executive's approval only and therefore, the Credit Committee is not involved in the approval process.

¹⁹⁹ September 2008 Deloitte Review, page 34 (Doc ID: 0.7.120.430877).

²⁰⁰ Minutes of Audit Committee meeting, dated 4 November 2008 (Doc ID: 0.7.120.56063).

²⁰¹ Memorandum from Killian McMahon to the Board and chief executive dated 4 December 2008 (Doc ID: 0.7.120.749985).

Internal Audit has spoken to the Drawdown & Control section again about approval exceptions and a new person has been placed in charge of the section.

IA will follow up on the implementation status of this recommendation in February 2009. In order to ensure the recommendation is implemented, IA will need to sample a number of new loans and as there has been very little new lending in recent months IA needs to wait until a sufficient number of new loans have been advanced before it can begin testing.

No 3 (May 08) & 5 (Sep 08)

Recommendation Heading

Amendments to approved loans do not follow best practice

Reason(s) for recommendation

Amendments to loan offers were not being approved by the Credit Committee

Current Status

This recommendation was scheduled for implementation on 31/10/08

IA will follow up on the implementation status of this recommendation in February 2009

The Society believes all amendments to Commercial Mortgage Offers should be approved by the Credit Committee

No.4 (May 08) & 12 (Sep08)

Recommendation Heading

Loan approval procedures not being performed in the correct sequence

Reason(s) for recommendation

Loan offers were still being issued prior to credit committee approval

Current status

This recommendation was scheduled for implementation on 31/10/08

IA will follow up on the implementation status of this recommendation in February 2009

The majority of these exceptions relate to commercial mortgage offers approved from the Society's Belfast Office".²⁰²

- 6.181 As outlined above, the September 2008 Deloitte Review made new recommendations relating to the Credit Committee approving all exceptions to lending policy moratoria extensions. In his memorandum, Mr McMahon indicated the "*Current Status*" of this recommendation was that although the Credit Committee had approved extensions from November 2008, residential exceptions were approved by the chief executive only.²⁰³
- 6.182 The other new recommendation was that loan offers from the Belfast Branch should be signed by two persons. In Mr McMahon's memorandum, this was designated as implemented.²⁰⁴
- 6.183 At the Board meeting held on 12 December 2008, the Board noted: the memorandum dated 4 December 2008; the Audit Committee meeting minutes dated 4 November 2008; and a request from the Financial Regulator for the Board's view on the September 2008 Deloitte Review.²⁰⁵
- 6.184 In a letter dated 12 December 2008²⁰⁶, INBS wrote to the Financial Regulator setting out the Board's view on the findings in the May 2008 Deloitte Review and the September 2008 Deloitte Review, which had been requested by telephone by the Financial Regulator. In particular, the letter stated the following:
- (a) In relation to the finding regarding approval of loans and adherence to the Credit Committee terms of reference, INBS stated that the Credit Committee was adhering to its terms of reference, but that too many pay outs were being made using the exception approval process. Insofar as this may be taken to refer to the urgent credit decision approval process, it should be noted that any such urgent approval had to be notified to the Credit Committee as an

²⁰² Memorandum from Killian McMahon to the Board and chief executive dated 4 December 2008, pages 1 and 2 (Doc ID: 0.7.120.749985).

²⁰³ Memorandum from Killian McMahon to the Board and chief executive dated 4 December 2008, page 5 (Doc ID: 0.7.120.749985).

²⁰⁴ Memorandum from Killian McMahon to the Board and chief executive dated 4 December 2008, page 6 (Doc ID: 0.7.120.749985).

²⁰⁵ Minutes of Board meeting, dated 12 December 2008 (Doc ID: 0.7.120.21207).

²⁰⁶ Letter from Stan Purcell, INBS, to Yvonne Madden, Financial Regulator, dated 12 December 2008, page 2 (Doc ID: 0.7.120.309719-000001).

exception as soon as possible thereafter.²⁰⁷ No such exception notification was recorded in the meeting minutes of the Credit Committee.

- (b) In relation to the finding that amendments to the approved loans did not follow best practice, INBS committed to presenting all loan term amendments to the Credit Committee for its approval.
- (c) In relation to the finding that CMOs were issued prior to approval, it stated that Deloitte was unable to test whether the recommendations had been implemented due to the lack of new additional loans advanced in the intermittent period.
- (d) In relation to the finding on the signing of Belfast CMOs, it stated that the recommendation had been implemented and all future UK CMOs would be signed by at least two appropriate staff members.

6.185 The Financial Regulator wrote to INBS on 23 December 2008²⁰⁸ and stated:

“The internal audit reviews of lending by Deloitte in 2008 exacerbated our concerns with regard to credit risk management, having found that certain issues previously raised by Deloitte and the Financial Regulator remained, while further issues also were identified”.

6.186 The Financial Regulator set out a number of measures it required INBS to take, as follows:

“The Financial Regulator is concerned that issues previously raised by Deloitte in its initial internal audit Report of May 2008 remain, despite management assurances that these have been resolved, and that further issues pointing to weaknesses in credit risk management have emerged.

With regard to INBS’ letter to the Financial Regulator dated 12 December 2008 outlining the Board’s views on the Deloitte Commercial and Residential Lending review, the Financial Regulator notes that the Board is not satisfied with the progress in implementing the recommendations. However, we are concerned that a further follow-up review is necessary to confirm whether a number of outstanding recommendations have been implemented.

²⁰⁷ INBS Credit Committee, Terms of Reference, dated 1 December 2007 (Doc ID: 0.7.120.26675).

²⁰⁸ Letter from Bernard Sheridan, Financial Regulator, to Michael Fingleton, INBS, dated 23 December 2008 and copied to Michael Walsh (Doc ID: 0.7.120.140276).

INBS is required to fully implement and address all Deloitte's recommendations. The Financial Regulator requires the Board to follow up on the resolution of these recommendations on a monthly basis, with a monthly report to be considered by the Board in this regard and submitted to the Financial Regulator. INBS is required to conduct a follow-up audit in February 2009, Deloitte is to be engaged and the resultant report is to be submitted to the Board and the Financial Regulator by the end of February 2009.

The Financial Regulator is also concerned that Deloitte's September Report identified that the Board of INBS is not exercising a credit risk management role, particularly in the current environment. In this regard:

- The Board of INBS is required to consider, in advance, for approval/decline... all commercial loans... This requirement applies to all loans advanced by the Society immediately and applies to existing facilities/committed facilities already approved.*

...²⁰⁹

6.187 This letter from the Financial Regulator was reviewed by the Audit Committee at a meeting held on 28 January 2009²¹⁰ and by the Board at the meeting on 23 January 2009.²¹¹

Contemporaneous Reports issued after Review Period

2009 Internal Audit Report²¹²

6.188 The 2009 Internal Audit Report was carried out for the period July 2008 to 15 December 2008 by the internal audit department at the request of the Audit Committee, in light of the recurrence of findings and recommendations made in the May 2008 Deloitte Review (and therefore it partially falls within the Review Period). This was the second such review conducted by internal audit, the first being the 2008 Internal Audit Report.

²⁰⁹ Letter from Bernard Sheridan, Financial Regulator, to Michael Fingleton, INBS, dated 23 December 2008 and copied to Michael Walsh, page 6 and 7 (Doc ID: 0.7.120.140276).

²¹⁰ Minutes of Audit Committee meeting, dated 28 January 2009 (Doc ID: 0.7.120.56256).

²¹¹ Minutes of Board meeting, dated 23 January 2009 (Doc ID: 0.7.120.314000-000002).

²¹² 2009 Internal Audit Report (Doc ID: 0.7.120.509678).

6.189 The 2009 Internal Audit Report made the following findings and recommendations:

- (a) A finding in relation to additional advances being made without appropriate approval and a recommendation that if a customer sought to borrow an additional amount "*the Credit Committee must approve the total application amount*". The Management Response to this recommendation was "*Agreed*".²¹³
- (b) A finding in relation to loans being advanced without appropriate Credit Committee approval in compliance with INBS's policies.
- (c) A finding in relation to an advance being made without signed documentation and a recommendation that "*all commercial advances are referred to the Credit Committee*". The Management Response stated that the "*Drawdown & Control section will ensure that there is proper approval for all payouts*".²¹⁴
- (d) A finding with respect to the adequacy of the consideration given by the Credit Committee to UK lending and a recommendation that the UK general manager participate in Credit Committee meetings where Belfast loans were presented. The Management Response was that the "*UK General Manager will attend in future and UK loans will be presented by him*".²¹⁵
- (e) A finding with respect to the Credit Committee only receiving minimal documentation prior to meetings and a recommendation that the committee members should receive information at least 24 hours in advance of the meeting. The Management Response confirmed that the CLAs were being presented to each member at least 24 hours in advance.²¹⁶

6.190 The issues identified in the 2009 Internal Audit Report relate to the following SPC 2 Allegations: SPC 2.1; SPC 2.2; SPC 2.7; SPC 2.13; SPC 2.15; and SPC 2.16.

6.191 The 2009 Internal Audit Report was considered by the Audit Committee at a meeting on 28 January 2009. The minutes noted that internal audit's overall conclusion did not reflect well on the Credit Committee:

"The Internal Audit said the overall conclusion did not reflect well on the Credit Committee. The Committee only met five times between July and December

²¹³ 2009 Internal Audit Report, page 6 (Doc ID: 0.7.120.509678).

²¹⁴ 2009 Internal Audit Report, page 8 (Doc ID: 0.7.120.509678).

²¹⁵ 2009 Internal Audit Report, page 4 (Doc ID: 0.7.120.509678).

²¹⁶ 2009 Internal Audit Report, page 5 (Doc ID: 0.7.120.509678).

2008. *The Committee is meeting more regularly now. The Committee is not getting enough documentation and documents were presented on the date of the meeting.*

The Internal Auditor was requested to send this audit report to the Credit Committee members and ask for comments and confirmation following review at a Credit Committee meeting".²¹⁷

This meeting was also attended by the Financial Regulator.

6.192 Board meetings took place on 6 February 2009²¹⁸ and 13 February 2009²¹⁹, however it appears from the minutes of these meetings that the minutes of the Audit Committee meeting held on 28 January 2009 were not circulated to the Board and the 2009 Internal Audit Report was not specifically discussed at these meetings. It is not known whether these were circulated or discussed at any subsequent Board meeting after the Review Period as the minutes of those meetings were not before the Inquiry.

2009 Deloitte Review²²⁰

6.193 The 2009 Deloitte Review made similar findings to those identified in previous Contemporaneous Reports in respect of approval of loans, variations to loans and issues with CMOs. It was issued on 6 March 2009, after the Review Period, and therefore demonstrates that these issues had not been resolved during the Review Period.

(a) Funds advanced without appropriate approval²²¹

(i) The 2009 Deloitte Review identified the following outstanding finding: *"The Credit Committee terms of reference are not being fully adhered to"* and identified additional instances where appropriate approval was not obtained from the Credit Committee.

(ii) The 2009 Deloitte Review then made the following recommendation in respect of this finding: *"This issue was raised during our review in May 2008 and remains open. A follow-up review conducted by the Society's own Internal Audit function found continued exceptions to policy. The*

²¹⁷ Minutes of Audit Committee meeting, dated 28 January 2009, page 5 (Doc ID: 0.7.120.56256).

²¹⁸ Minutes of Board meeting, dated 6 February 2009 (Doc ID: 0.7.120.314000-000003).

²¹⁹ Minutes of Board meeting, dated 13 February 2009 (Doc ID: 0.7.120.314000-000001).

²²⁰ 2009 Deloitte Review (Doc ID: 0.7.120.508410).

²²¹ 2009 Deloitte Review, page 11 (Doc ID: 0.7.120.508410).

Credit Committee should adhere to its terms of reference and should maintain appropriate record keeping arrangements to demonstrate the required approvals have been made”.

- (iii) The Management Response, which was the same as that set out in the May 2008 and September 2008 Deloitte Reviews, stated: *“The Credit Committee is and will continue to adhere to its terms of reference and will keep appropriate records to demonstrate that the required approvals have been made. The Drawdown and Control section, as part of the loan payout process, ensure that all loans are approved in accordance with the Commercial and Residential lending policies”.*
- (b) Variations to terms of loans without appropriate approval²²²
 - (i) The 2009 Deloitte Review identified an outstanding finding regarding moratoria approvals, stating: *“The Society’s policy states that all decisions relating to the provision of moratoria extensions must be approved by the Credit Committee. On investigation we found that this is not the case”* and it identified additional instances where *“moratoria and term extensions were communicated to customers in advance of being granted by the credit committee”* as well as instances where *“term extensions were granted without approval from the Credit committee”.*
 - (ii) It made the following recommendation in respect of this finding: *“This issue was raised during our review in September 2008 and remains open. The Credit Committees [sic] should adhere to all requirements as stipulated in both the Commercial and Residential lending policies”.*
 - (iii) The Management Response was: *“Management will ensure that all exceptions to the Society’s Commercial and Residential lending policies and moratoria and term extensions have received the appropriate Credit Committee approvals prior to funds being paid out”.*
- (c) CMOs issuing before approval²²³
 - (i) The 2009 Deloitte Review identified an outstanding finding regarding loan approval procedures not being performed in the correct sequence,

²²² 2009 Deloitte Review, page 18 (Doc ID: 0.7.120.508410).

²²³ 2009 Deloitte Review, page 15 (Doc ID: 0.7.120.508410).

stating “We observed in several cases, that the application date on approved Commercial Loan Applications (CLAs) was later than the letter of offer signed by the customer. In addition, in several instances, we noted that the date of the letter of offer was earlier than Credit Committee / Board approvals, as applicable” and it identified additional instances where loan offers were issued prior to Credit Committee approval.

- (ii) The 2009 Deloitte Review made the following recommendation in respect of this finding: “*This issue was raised during our review in May 2008 and remains open. From our current review. [sic] we found further instances of Loan Offers being issued prior to Credit Committee approval. A loan offers [sic] forms an integral part of the contract. The application process, including the completion of a CLA, should be undertaken before a signed loan offer is issued*”.
- (iii) The Management Response was the same as that set out in the May 2008 and September 2008 Deloitte Reviews, stating: “*Management will continue to ensure that the application process (including the CLA and Credit Committee approval) has been undertaken before a Loan Offer has been issued*”.

6.194 The issues addressed in the 2009 Deloitte Review relate to the following SPC 2 Allegations: SPC 2.1; SPC 2.2; SPC 2.5; SPC 2.9; and SPC 2.13.

6.195 The above issues of loans being advanced without appropriate approval, variations being made without appropriate approval and CMOs being issued prior to approval, were all raised in numerous previous Contemporaneous Reports, and the fact that they were still arising in the 2009 Deloitte Review suggests that any steps taken to resolve them were not adequate or effective. While correspondence was exchanged by the Financial Regulator and INBS during 2009 in relation to the implementation of recommendations from the 2009 Deloitte Review, the above recommendations were not addressed in this correspondence.

Corporate governance documentation and Financial Regulator Correspondence

6.196 Credit Committee and Board meeting minutes and packs are referred to as appropriate in the above paragraphs. Financial Regulator Correspondence is also referred to as it

arises in the preceding paragraphs and is set out in greater detail in Chapter 12 of this Findings Report.

Interview evidence, Section 41A Responses and witness evidence

6.197 The Inquiry sought evidence from former employees of INBS to establish whether the findings outlined in the Contemporaneous Reports were consistent with their experience of commercial lending in INBS. One of the difficulties in assessing this evidence was that the breaches of policy alleged in respect of SPC 2 were, in the vast majority of cases, associated with commercial lending from the Belfast Branch. The commercial lender in charge of that office, Mr McCollum, was a named Person Concerned in this Inquiry. As outlined in Chapter 1, he entered into a settlement agreement with the Central Bank on 10 June 2021, the day before the commencement of the Context Hearings. Mr McCollum provided an opening statement at the commencement of the Loan Hearings, but he did not attend as a witness in the Context Hearings and, as a UK citizen, could not be compelled to do so.

The following evidence was considered by the Inquiry:

Brian Fitzgibbon

6.198 Mr Fitzgibbon²²⁴ provided a response, dated 28 February 2012, to the Central Bank's Section 41A Notice.²²⁵ He had been asked by the Central Bank in the Section 41A Notice to provide details regarding the operation of the Credit Committee. He responded:

*"In respect to Mr Michael Fingleton, if he pre-approved a loan there would be little or no discussion. In some cases the monies were already advanced".*²²⁶

6.199 He was also asked to confirm in what circumstances the Credit Committee was not required to consider a loan, and he stated:

*"This was not a CC with any real authority, I was of the belief that it was something established to satisfy regulator/auditors requirements".*²²⁷

²²⁴ Mr Fitzgibbon held the following roles in INBS: head of branch development from January 2002 to July 2006; head of commercial from October 2004 to April 2005; and head of residential lending from July 2006 to July 2008. He was a member of the Credit Committee from 19 July 2006 to the end of the Review Period.

²²⁵ Brian Fitzgibbon Section 41A response dated 28 February 2012 (Doc ID: 0.7.120.57228).

²²⁶ Brian Fitzgibbon Section 41A response dated 28 February 2012, page 4 of 8 (Doc ID: 0.7.120.57228).

²²⁷ Brian Fitzgibbon Section 41A response dated 28 February 2012, page 4 of 8 (Doc ID: 0.7.120.57228).

6.200 Mr Fitzgibbon was further asked in the Section 41A Notice to outline his view on the level of adherence to credit policies and consideration of credit risk in relation to loans approved by INBS. Mr Fitzgibbon responded:

*“For a new customer credit risk requirements would generally be adhered to, but this was not the case for established or favoured customers”.*²²⁸

6.201 Mr Fitzgibbon was asked in the Section 41A Notice whether he was aware of anyone raising concerns about the significant level of credit approvals being granted which constituted exceptions to lending policy. He responded:

*“In my time the only information I gained was that Mr Michael Walsh (Chairman) was concerned as Mr Michael Fingleton wanted all CC papers to the Board to be/seem in order as Mr Walsh was giving him a hard time. Therefore In my opinion the Board were being deceived as there were several cases where CC papers went to the Board for approval and the money was gone already”.*²²⁹

6.202 Mr Fitzgibbon provided a witness statement to the Inquiry, dated 14 December 2020, in respect of SPCs 1 to 4. In it Mr Fitzgibbon said:

“For preferred borrowers I cannot recall any meaningful discussion and/or analysis of the loan facility seeking approval. All applications that had the backing of Mr Fingleton were approved without recourse to LTV’s counterparty risk.

*Loan applications from outside the favoured were debated and credit risk issues were discussed”.*²³⁰

6.203 Mr Fitzgibbon gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 11 June 2021. He was asked to elaborate on his Section 41A Responses. In particular he was asked about his reference to “*money being needed*” and he stated:

“where a borrower wants the money to close out a deal, it may be an auction... in some circumstances the money was already gone, it was gone. It would have

²²⁸ Brian Fitzgibbon Section 41A response dated 28 February 2012, page 4 of 8 (Doc ID: 0.7.120.57228).

²²⁹ Brian Fitzgibbon Section 41A response dated 28 February 2012, page 5 of 8 and 6 of 8 (Doc ID: 0.7.120.57228).

²³⁰ Witness Statement of Brian Fitzgibbon, dated 14 December 2020, page 3 (Doc ID: RDU_REL541-000000001).

*been a personal telephone call to Mr. Fingleton and that money would have been advanced".*²³¹

6.204 Mr Fitzgibbon was asked whether the Credit Committee raised issues with being asked to approve the relevant lending and he stated:

*"There would have been discussions. I definitely remember Mr. Noonan being somewhat uncomfortable that this practice was going on. But, no, there was no uproar or we'll fight our corner as A Credit Committee, because Mr Fingleton was a member of the Credit Committee in my time, but he never attended one meeting in my time there".*²³²

Martin Noonan

6.205 Although Mr Fitzgibbon in his oral evidence to the Inquiry (outlined above) recalled Mr Noonan²³³ being uncomfortable about the practice in the Credit Committee, Mr Noonan himself did not testify to this. In his response to the Central Bank's Section 41A Notice, Mr Noonan stated:

*"I believe that, in the main, there was adherence to credit policies and consideration of risk in relation to loans approved by CC. The Society's main loan business was property finance and in some situations there was an over-reliance on the value of the security rather than the ability [sic] to be able to repay from cash flows and/or either MPF's [Michael Fingleton] view of the credit or on the customers strong past track record".*²³⁴

6.206 Mr Noonan provided a witness statement to the Inquiry, dated 22 April 2021, in respect of the SPC 1 to 4 module, in which he stated:

"...From the time I joined Credit Committee (July 2006?) All monies advanced through the INBS office in Dublin should have had a CLA prepared before monies were advanced. The exception to this was CLA's emanating from the Belfast Office where the CLA's were kept in Belfast and the monies issued through INBS Administration Department in Belfast. Belfast carried out their

²³¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 97 line 29 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

²³² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 98 line 10 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

²³³ Mr Noonan was residential mortgage administration manager from 2002 to 2005 and was responsible for commercial mortgage administration from mid-2005. He was a member of the Credit Committee from mid-2007 to end-2008.

²³⁴ Martin Noonan Section 41A Response, dated 1 March 2012, page 2 (Doc ID: 0.7.120.56690).

own administration. Commercial Administration in Dublin had no input into Belfast Loans.

(B) All Loans were authorised by Michael Fingleton (MPF) and the relevant Lending Manager.

(C) Loans emanating from Belfast were discussed by GMCollum [sic] (GMCC) with MPF before an application was prepared and then GMCC would prepare the CLA for approval firstly by MPF and then brought to Credit Committee (CC) by GMCC. GMCC would present directly in person to CC or would be called by telephone during CC to outline why the loan should be approved.

...

(A) I can only speak from when I was on CC but I'm not aware that monies were advanced prior to CC being asked to consider a facility.

(B) During my time in charge of Commercial Administration, I am not aware of any monies paid by the Society in the absence of such approval. I can only assume that authority for such payments were authorised by MPF and the relevant lending Manager".²³⁵

6.207 Mr Noonan gave evidence to the Inquiry during the Context Hearing on 17 June 2021. He was asked about the allegations that there were instances where either CMOs were issued, or in some instances loans were advanced, prior to those loans having been considered by the Credit Committee. It was put to Mr Noonan that this would arise where there may have been a CLA but it was simply presented to the Credit Committee with either the CMO already issued or funds already drawn down. Mr Noonan responded "*That's not my understanding*".²³⁶

6.208 Mr Noonan attended 34 meetings of the Credit Committee between January 2005 and February 2009.

Darragh Daly

6.209 Mr Daly²³⁷ gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 16 June 2021. He was referred to his previous evidence to the Inquiry (in the SPC 5

²³⁵ Witness Statement of Martin Noonan, dated 22 April 2021 (Doc ID: RDU_REL576-000000002).

²³⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 17 June 2021, page 31 (Doc ID: RDU_FT_SPC1-4_D22-000000001).

²³⁷ Mr Daly was a member of the Credit Committee until July 2006, when he was appointed credit risk manager.

module) in relation to there being occasions when the Credit Committee was asked to approve loans that had already been advanced, and he stated:

*"I recall saying that, yes, yeah... I do have recollection of that happening, not very often, but I recall the senior lender making reference to this fact".*²³⁸

6.210 He was asked how that might have arisen and he responded:

*"...there were times when an opportunity came up and speed was of the essence, and it's my understanding that it was in those instances where it may have been approved and then subsequently brought to Credit Committee".*²³⁹

6.211 He went on to say it would have been approved by "either Tom or Gary and Michael Fingleton". In responding to whether they were subjected to any greater scrutiny or particular consideration at Credit Committee meetings he said: "No greater scrutiny, but they would have been subject to the same considerations and questions that would have been raised of any case".²⁴⁰

6.212 He was asked if he recalled applications to extend loans being brought before the Credit Committee to which he responded "No".²⁴¹ It should be noted that although Mr Daly was a member of the Credit Committee from 1 August 2004 to 18 July 2006, an on-site inspection by the Financial Regulator revealed that he had only attended two of 27 meetings between May 2005 and May 2006.²⁴²

Shane McGowan

6.213 Mr McGowan²⁴³ attended 55 of the 60 Credit Committee meetings between October 2005 and the conclusion of the Review Period. He was not a member of the Credit Committee during that time but worked in the commercial lending department and attended in that capacity.

²³⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 16 June 2021, page 37 line 20 et seq. (Doc ID: RDU_FT_SPC1-4_D21-000000001).

²³⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 16 June 2021, page 38 line 8 et seq. (Doc ID: RDU_FT_SPC1-4_D21-000000001).

²⁴⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 16 June 2021, page 38 line 15 et seq. (Doc ID: RDU_FT_SPC1-4_D21-000000001).

²⁴¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 16 June 2021, page 39 line 20 (Doc ID: RDU_FT_SPC1-4_D21-000000001).

²⁴² Letter from Yvonne Madden, Financial Regulator, to Michael Fingleton, INBS, dated 20 November 2006, page 12 (Doc ID: 0.7.120.519059).

²⁴³ Mr McGowan worked as an administrator in the commercial lending department from October 2005 and as a commercial lender from October 2008.

6.214 Mr McGowan gave evidence to the Inquiry during the Context Hearing on 16 June 2021, and he was questioned on whether he was ever asked to prepare a CLA where funds had already been advanced to the borrower. He stated:

*“Yes, I was, yeah, I can recall... I can recall that all right”.*²⁴⁴

6.215 He said that in the particular circumstances he had tried to go through the proper procedure but the funds were needed urgently and he was told that the paperwork could follow the advance. He stated as follows:

*“At the time for that particular borrower, that direction would have come from... It was either the MD or the CEO at the time, so Michael Fingleton at that point in time, to get these monies out to this particular borrower, yeah, that’s from my recollection”.*²⁴⁵

Alan Deering

6.216 In his interview by Authorised Officers of the Central Bank on 28 February 2013, Mr Deering²⁴⁶ was asked about discussions on individual loan applications in the Credit Committee meetings. Mr Deering reiterated the evidence he gave during this interview when giving evidence to the Inquiry during the SPC 5 module.²⁴⁷ He said that in his opinion it would already have been discussed by senior management prior to presentation at the Credit Committee meeting. He said discussions were short *“but generally speaking that application was in effect it was already discussed and once it gets to there you know it’s going to be a positive outcome or a preapproved outcome at that stage”.*²⁴⁸

6.217 During his interview, Mr Deering said that he had assumed that there was a separate Credit Committee in relation to loans originating in the UK and Belfast. Speaking of UK applications he stated:

“They would have gone through — we would have no involvement with the UK applications. Generally the Irish unit in Dublin was in charge of Irish loans and

²⁴⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 16 June 2021, page 108 line 28 (Doc ID: RDU_FT_SPC1-4_D21-00000001).

²⁴⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 16 June 2021, page 109 line 15 (Doc ID: RDU_FT_SPC1-4_D21-00000001).

²⁴⁶ Mr Deering was a commercial lender in INBS from March 2007 and was a member of the Credit Committee from late 2007 to November 2008.

²⁴⁷ Transcript SPC 5 Inquiry Hearing, dated 12 April 2018, see for example page 43 and page 120 (Doc ID: RDU_FT_D26-00000001).

²⁴⁸ Transcript of Interview of Alan Deering, dated 28 February 2013, page 30 line 29 et seq. (Doc ID: 0.7.120.683765).

*the UK was in charge of the, it was London and Belfast office, they looked after those applications. So we'd have no involvement or we'd have no idea of that market. Certainly in our Credit Committee there may have been a couple of UK applications passed through it but they wouldn't be discussed at our level because we were effectively — they were put into our applications mainly because they missed the Credit Committee in London or Belfast. I'm not too sure. We had no involvement with the UK or London or that process. It was originally my understanding that they actually have their own Credit Committee but subsequently I learned that they were going through our Credit Committee procedure...".*²⁴⁹

6.218 When questioned further he confirmed that as far as he was aware Belfast and UK loans did not go through the Credit Committee. He said that from late 2007 they may have come through more frequently, but prior to that he did not recall any UK applications coming through the Credit Committee process.²⁵⁰ Mr Deering confirmed this interview evidence in the course of his evidence during the SPC 5 module, when he reiterated his belief that Belfast and UK loans had a separate Credit Committee and did not come before the Credit Committee that he attended.²⁵¹

6.219 Mr Deering also confirmed during his interview that additional advances, referred to as DAAs, were advanced without approval of the Credit Committee. He said they had to be signed by the Managing Director but not the Credit Committee.²⁵²

6.220 Mr Deering gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 23 June 2021. He was referred to evidence he had given previously in the SPC 5 module about advances that were made to customers before Credit Committee approval. He said that would happen if an urgent decision had to be made and the Managing Director would approve it. He was then asked if there was anyone else who would authorise loans and advances to borrowers in advance of consideration by the Credit Committee to which he answered "no, no". Mr Deering was then questioned on the process around DAAs and he said these often arose where INBS would provide

²⁴⁹ Transcript of Interview of Alan Deering, dated 28 February 2013, page 23 line 4 et seq. (Doc ID: 0.7.120.683765).

²⁵⁰ Transcript of Interview of Alan Deering, dated 28 February 2013, page 23 line 24 et seq. (Doc ID: 0.7.120.683765).

²⁵¹ Transcript SPC 5 Inquiry Hearing, dated 12 April 2018, page 120 line 6 (Doc ID: RDU_FT_D26-00000001).

²⁵² Transcript of Interview of Alan Deering, dated 28 February 2013, page 62 line 5 et seq. (Doc ID: 0.7.120.683765).

temporary or overdraft facilities without preparing a new CLA, and it would be signed off by Mr Fingleton and by Mr McMenamin.²⁵³

6.221 Mr Deering was asked, in his experience, if funding was advanced on an exceptional urgent basis, would an application ultimately be brought forward to the Credit Committee in respect of the advance, albeit the advance had already been provided. Mr Deering responded “*Not in all cases, because again it was a temporary arrangement, it was short-term, it was seen as exception – you were adding on to their existing loan without providing, without providing a new facility*”.²⁵⁴

Patricia McChesney²⁵⁵

6.222 The only witness heard by the Inquiry who had worked at the Belfast Branch during the Review Period was Ms McChesney. She was questioned on the allegation that CMOs were being issued prior to being approved internally within INBS. It was also put to her that in some instances funds were advanced prior to CMOs being signed and in certain instances CMOs were not signed at all. Ms McChesney responded that she could only recall this happening “*if say, for instance, the document was held to order by the Society’s solicitor. But I would be confident in most cases we would have had a signed letter of offer*”. Ms McChesney was further questioned on the meaning of “*held to order*” and was asked whether it meant that “*you could have an instance where the Commercial Mortgage offer would be issued. The funds would be advanced. You wouldn’t have received back a signed commercial Mortgage Offer from the borrower, but you would have confidence that it had been signed and was simply held by the Society’s solicitor*” to which she responded “*on very, very rare occasions, that would be my recollection*”.²⁵⁶

Vincent Reilly

6.223 Mr Reilly was the partner in KPMG with responsibility for the audit of the financial statements of INBS for most of the Review Period.

²⁵³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 23 June 2021, page 45 line 3 et seq. (Doc ID: RDU_FT_SPC1-4_D24-000000001).

²⁵⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 23 June 2021, page 48 line 26 et seq. (Doc ID: RDU_FT_SPC1-4_D24-000000001).

²⁵⁵ Ms McChesney held the position of office supervisor and UK money laundering reporting officer in the Belfast Branch during the Review Period, reporting to Mr McCollum.

²⁵⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 22 June 2021, page 46 line 22 et seq. (Doc ID: RDU_FT_SPC1-4_D23-000000001).

- 6.224 Mr Reilly was examined in relation to extracts from KPMG’s various Management Letters that were appended to his witness statement, dated 30 October 2020.²⁵⁷ Mr Reilly confirmed that these were prepared as a by-product of the audit and were provided to INBS management for their own consideration.²⁵⁸
- 6.225 Mr Reilly was examined on an observation made by KPMG in the 2003 KPMG Management Letter²⁵⁹ under the heading “*Origination Procedure*”. This stated that a “*completion checklist is required to be completed prior to the disbursement of all loans*” and that “*A number of cases came to our attention where listed items on the checklist including security valuations and facility agreements had not been received, but these facilities had been disbursed*”. In the context of the implication of this, it noted: “*failure to fully complete the checklist may result in inappropriate or unauthorised disbursements that could result in future loss to the Society*”.²⁶⁰
- 6.226 Mr Reilly was asked to describe what was meant by “*unauthorised disbursements could result in future loss to the Society*”. He explained that he was referring to the fact that a payment may have been made by INBS to a borrower, “*but there isn’t you know, appropriate paperwork in place. So in the event of a dispute or any issue, the Society may be at a loss*”. He was asked whether the implication of this is that “*there’d be no contractual arrangement in place for the Society to rely upon?*”, and Mr Reilly responded “*Potentially*”.²⁶¹
- 6.227 Mr Reilly was asked about facility agreements referring in particular to the observation²⁶² that “*During our audit, it was noted that the commercial lenders have the authority to revise the terms of the facility, including extending moratorium facilities, amending interest rates on accounts, changing repayment dates and amounts without prior approval from the Credit Committee or Board of Directors and without new signed facility agreements being issued*”. It was noted by the LPT that in the 2004 KPMG Commercial Credit Review that was produced in October 2004 there is a similar observation by KPMG. The LPT further noted that it could be seen again in the 2004

²⁵⁷ Witness Statement of Vincent Reilly, dated 30 October 2020 (Doc ID: RDU_REI518-000000013) and Appendix to the Fourth Statement of Vincent Reilly (Doc ID: RDU_REL518-000000014).

²⁵⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 24 June 2021, page 32 line 6 (Doc ID: RDU_FT_SPC1-4_D25-000000001).

²⁵⁹ Appendix to the Fourth Statement of Vincent Reilly, page 1, second column (Doc ID: RDU_REL518-000000014).

²⁶⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 24 June 2021, page 33 line 6 et seq. (Doc ID: RDU_FT_SPC1-4_D25-000000001).

²⁶¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 24 June 2021, page 35 line 3 et seq. (Doc ID: RDU_FT_SPC1-4_D25-000000001).

²⁶² Appendix to the Fourth Statement of Vincent Reilly, page 2, second column (Doc ID: RDU_REL518-000000014).

KPMG Management Letter. It was then put to Mr Reilly that essentially within the space of approximately a 12 month period, an observation in relation to facility amendments had been made three times by KPMG. Mr Reilly responded "*That's correct*".²⁶³

6.228 Mr Reilly was asked about the importance or implication of that observation, and was referred to the "*implication*" as set out in the third column²⁶⁴ as follows: "*Failure of lenders to seek approval from the Credit Committee for facility amendments and issue new signed facility agreements could result in inappropriate or unauthorised amendments that may increase the risk of future loss to the Society*". Mr Reilly explained: "*Well, for example, you have to ask yourself why is the facility being amended? So, is it because there is an issue with the repayment date? And by extending it, you know, was that – you know, would that be the right course of action? You know, maybe they should enforce the security. But that's really a decision for the Credit Committee and maybe somebody more senior than the lender to make, because the lenders can be quite close potentially to the – Commercial Lending Manager can be closer to their clients, so having an extra source of approval, particularly given the amounts involved, would be very important*".²⁶⁵

6.229 Mr Reilly further stated "...you'd imagine that you could go to the Credit Committee or to the Board if you needed to seek additional approval, given that all the ones over a million were approved by the Board. And then again the paperwork should have been in place as well".²⁶⁶

6.230 Mr Reilly was referred to the "*recommendation*" in the fourth column²⁶⁷ that stated: "*The Society should maintain an exception report that details all accounts that have been amended and highlights the nature of the amendment which should be highlighted to the Credit Committee*", and was asked what he meant by that. Mr Reilly stated: "*I mean that, you know, if we walked into the Society to do the audit and I wanted to know, for example, all the loans that had been extended and amended during the year there should be one report that I could look at or go to... our recommendation is that there should be a separate report maintained that would highlight in one place all the amendments to these loan facilities*". The LPT noted the

²⁶³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 24 June 2021, page 45 line 28 et seq. (Doc ID: RDU_FT_SPC1-4_D25-000000001).

²⁶⁴ Appendix to the Fourth Statement of Vincent Reilly, page 2, third column (Doc ID: RDU_REL518-000000014).

²⁶⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 24 June 2021, page 48 line 4 (Doc ID: RDU_FT_SPC1-4_D25-000000001).

²⁶⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 24 June 2021, page 49 line 10 (Doc ID: RDU_FT_SPC1-4_D25-000000001).

²⁶⁷ Appendix to the Fourth Statement of Vincent Reilly, page 2, fourth column (Doc ID: RDU_REL518-000000014).

Management Response: *“The Society’s Moratoria Policy will be amended to include this recommendation”*.²⁶⁸

6.231 Mr Reilly was then referred to the updated recommendation²⁶⁹ in the 2005 KPMG Management Letter which stated: *“We acknowledge that adequate procedures were implemented in respect of the internal approval of facility amendments. However our recommendation regarding obtaining a new or amended signed loan offer has not been implemented”*. Mr Reilly explained: *“So, my interpretation, just from reading my own words, if you will, is that, you know, we might have seen the Credit Committee or Board approvals of the extension or changes, but the actual paperwork that might support that in terms of formal signed loan offers hadn’t been implemented”*.²⁷⁰

6.232 Mr Reilly was referred to the 2007 KPMG Management Letter²⁷¹ which stated: *“There is no evidence of Board Credit Committee approval for four loan facilities... each of these facilities were in excess of €1 million”*. He was asked what the concern was, to which Mr Reilly responded *“Authorisation”*.²⁷²

6.233 On the question of risk to INBS, Mr Reilly stated: *“...the risk is that the loans were disbursed to a borrower without the appropriate authorisation approval by the – by those charged with governance. And sorry, there was a procedure that anything over 1million should be approved by the Board”*. He said he expected INBS to adhere to that policy.²⁷³

Tom McMenamin

6.234 Mr McMenamin was the INBS head of commercial lending in the Republic of Ireland throughout the Review Period. He provided a comprehensive sworn witness statement for the SPC 1 to 4 module and was not required to attend for oral evidence.²⁷⁴ Mr McMenamin stated, in respect of loans being advanced prior to a CLA, that it would occasionally happen on the instructions of Mr Fingleton. He said the CLA would be subsequently prepared. However, he emphasised that he could only speak for Irish

²⁶⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 24 June 2021, page 50 line 1 et seq. (Doc ID: RDU_FT_SPC1-4_D25-000000001).

²⁶⁹ Appendix to the Fourth Statement of Vincent Reilly, page 2, fourth column (Doc ID: RDU_REL518-000000014).

²⁷⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 24 June 2021, page 54 line 2 et seq. (Doc ID: RDU_FT_SPC1-4_D25-000000001).

²⁷¹ Appendix to the Fourth Statement of Vincent Reilly, page 10, second column (Doc ID: RDU_REL518-000000014).

²⁷² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 24 June 2021, page 72 line 23 et seq. (Doc ID: RDU_FT_SPC1-4_D25-000000001).

²⁷³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 24 June 2021, page 73 line 1 et seq. (Doc ID: RDU_FT_SPC1-4_D25-000000001).

²⁷⁴ Sworn Witness Statement of Tom McMenamin, dated 6 July 2021 (Doc ID: RDU_REL611-000000001).

loans and that all the instances cited in the Loan Sample, bar one, emanated from the Belfast Branch. He also indicated that there were chronic staff shortages in the commercial lending department.

6.235 On the specific issues raised by SPC 2 he stated:

"I am painfully aware that the issues continued to arise in contemporaneous reports. Report of the Authorised Officers states that for 17 loans in the loan sample, it is suspected that funds were advanced where Credit Committee recommendations for approval and Board approval, was not obtained, as required, and without compliance with the Society's urgent credit decision approval procedures. Of the 17 loans, one originated in Dublin. The report further states that for 16 loans in the loan sample, it is suspected that funds were advanced prior to the meeting of the Credit Committee, at which loans were approved or recommended for approval, and without compliance of [sic] INBS's urgent credit decision approval procedures. Of the 16 loans, 3 originated in Dublin. Report further states that for 24 loans in the loan sample, it is suspected that funds were advanced prior to approval by the Board and without compliance with the Society's urgent credit decision approval procedures. Of the 24 loans, 7 originated in Dublin.

I can categorically state that in respect of the [sic] those loans for the Dublin Head Office ...I am not aware of the procedures in place for Belfast... in each and every case the decision to advance the funds would only have been taken with the prior approval of the Managing Director. I can further state that for my entire tenure in INBS I never took a decision or issued a directive for loan monies to be advanced/released without the express and prior approval of Credit Committee, Managing Director or the Board".²⁷⁵

6.236 Mr McMenemy said that he was aware of the policy requirements relating to approval of commercial loans, variations to commercial loans and CMOs. He stated:

"The Policies, insofar as they related to the portfolios of the commercial lenders, would have been observed save for the very rare exception, and in these instances prior verbal approval would have been offered by Credit Committee or the Managing Director. The same, however, cannot be said in quite a number of instances of those loans being processed through Credit Committee.

²⁷⁵ Sworn Witness Statement of Tom McMenemy, dated 6 July 2021, page 2 and 3 (Doc ID: RDU_REL611-000000001).

Due to pressure from clients for immediate drawdown of funds, the Managing Director would on occasions issued verbal approval for such transactions, with remedial compliance procedures being undertaken retrospectively... Mr Fingleton did not address the matter of urgent credit decision approval procedures. I cannot recall an instance where no remedial action was taken".

6.237 Mr McMenamin concluded his sworn statement by stating:

"It is with the greatest regret that I have to say the level of support given to me by Senior Management in carrying out my role fell well short of what was required. A chronic staff shortage persisted in Commercial Lending from an early stage, with many and varied representations to Mr Fingleton in this regard being dismissed out of hand. What was most disappointing however, was the indifference/lack of will of the Audit Committee and The Board to take steps to remedy this.

In an act of frustration at staffing requests being ignored, I insisted on the Internal Auditor bringing this forward to Audit Committee whose membership included Board Members. I was subsequently advised that the staffing difficulties in Commercial Lending had indeed been discussed and that a Board member was assigned to raise the issue with Mr Fingleton.

I was, as a consequence, hopeful of the Board acting positively, particularly given the recurring policy contraventions appearing in audit reports/lending reviews... regrettably, no action was taken to alleviate the problems, and the chaotic staffing situation continued".²⁷⁶

Killian McMahon

6.238 Mr McMahon was internal auditor of INBS from 2004 to 2008. He gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 2 July 2021. He stated that internal audit looked to see if INBS was implementing its policies and whether there were control weaknesses or gaps in its procedures.²⁷⁷ He said he would have spoken with Mr McMenamin about implementing recommendations.

²⁷⁶ Sworn Witness Statement of Tom McMenamin, dated 6 July 2021, page 4 and 5 (Doc ID: RDU_REL611-000000001).

²⁷⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 15 line 13 et seq. (Doc ID: RDU_FT_SPC1-4_D30-000000001).

6.239 Mr McMahon confirmed that he undertook to improve the internal audit function when he took over as acting head in 2004. He said he would have done that with the support of the directors and the Audit Committee. With respect to serious exceptions that he might find in his audit, he stated:

*"...even where we found exceptions, you know, that were serious, I would go to invariably Stan, and we would -- you know, and I would say, listen, what's the best way to deal with this, because certain things were -- as we got on into the crisis, were sensitive and, you know, you'd have to let the directors know where there are -- where you have noticed control weaknesses or serious control weaknesses".*²⁷⁸

6.240 Mr McMahon was asked about Mr Purcell's role as an attendee at Audit Committee meetings. He said that Mr Purcell engaged with the matters being discussed by the Audit Committee and that other Audit Committee members would "refer to Mr. Purcell where they needed more information, or how a recommendation could be implemented". He indicated they referred to Mr Purcell because he was an executive director who was there on a day to day basis.²⁷⁹ He was further asked "was it your recollection that the non-executive directors would turn to him [Mr Purcell] in relation to the implementation of recommendations?" and he responded, as follows:

*"Certain recommendations because, as I say, normally the responsibility was the department manager. I suppose later on where there were a number of recommendations not implemented, they may turn and say, listen, you know, can you talk to the person involved? But again, you know, I can't remember specific conversations".*²⁸⁰

6.241 Mr McMahon stated, in relation to concerns raised in the Financial Regulator's correspondence, that this was taken very seriously but that it was not for internal audit to implement recommendations. He said that would have been crossing a line and that it was for the business managers to implement recommendations in their various

²⁷⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 64 line 29 et seq. (Doc ID: RDU_FT_SPC1-4_D30-000000001).

²⁷⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 66 line 20 et seq. (Doc ID: RDU_FT_SPC1-4_D30-000000001).

²⁸⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 67 line 16 et seq. (Doc ID: RDU_FT_SPC1-4_D30-000000001).

departments.²⁸¹ He said that he was aware that recommendations had not been implemented:

"I am aware that there were deficiencies in the files, and it's something we didn't -- you know, we didn't fix until the NAMA unit came in, and that was 2010, but we kept beating that drum to try and get completeness of documentation on files".²⁸²

6.242 Mr McMahon was asked about his finding in the 2006 Belfast Internal Audit Report that monies were being paid out without a CLA on file. He said that because Belfast CLAs were prepared in Dublin, the Belfast Branch wouldn't necessarily check whether the approvals were there before the loans went out. The following exchange then took place:

"Q. And if they couldn't be sure the necessary approvals were obtained, Mr. McMahon, how was it that the monies were advanced?"

A. This is a repeated control weakness we have raised where invariably it may be on the approval of one person, you know, sometimes the Managing Director, that loans would be advanced, but the documentation and/or approvals, you know, hadn't been obtained or completed beforehand.

...

...if we are advancing money without necessary approvals, we could -- you know, money could go out that wasn't approved and that could be a loss to the Society".²⁸³

6.243 Mr McMahon explained that this was elevated to a Board level recommendation because if something was a policy that had been recommended by the Board and was not being implemented, then the Board needed to take responsibility for either ensuring its implementation or amending the policy.²⁸⁴

6.244 Mr McMahon indicated, in respect of recommendations coming up repeatedly, that he would have discussed implementation with Mr McMenamin and Mr McCollum,

²⁸¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 84 line 13 et seq. (Doc ID: RDU_FT_SPC1-4_D30-000000001).

²⁸² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 90 line 12 et seq. (Doc ID: RDU_FT_SPC1-4_D30-000000001).

²⁸³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 108 line 14 et seq. (Doc ID: RDU_FT_SPC1-4_D30-000000001).

²⁸⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 109 line 19 et seq. (Doc ID: RDU_FT_SPC1-4_D30-000000001).

however implementation was difficult because of staff shortages. He was asked whether the Management Response could not simply have stated that more staff was needed, and he said:

“That wasn’t the culture of the Society at the time. It wouldn’t – – you know, because they couldn’t be – – you know, they would have had to get senior management approval for same. So the culture was we say we’ll do it and we may do it”.

He further stated:

“Well, my responsibility was to try and encourage implementation of these recommendations. So I would have sat down with Mr. McMEnamin on numerous occasions and he would have explained the challenges, you know, and some he did try, but he just didn’t get – – he may not – – and you’ll have to talk to him on this, because I don’t want to put words in his mouth, but you know, he needed, he needed more help. And he may not – – you know, he may not have got approval from senior management. But, you know, as internal audit you would love to go and implement changes yourself, but you can’t, all you can do is re-raise, re-raise. And towards the end, I mean, we obviously worked with some of the new people to get these implemented where there was an appetite and there was bandwidth to do this”.

He was asked: *“So... these were all things that could easily be done?”* and he responded: *“They could ... if the resources were invested in, yes”.*²⁸⁵

6.245 Mr McMahan said that ultimately it was a decision for senior management and in the case of commercial lending that was Mr Fingleton. He stated: *“But ultimately, to get, to get resources – – and remember the Society had this famous cost/income ratio back in the day where it was one of the lowest in Europe, to get resources, you know, had to go through the Executive director in charge, which would have been Mr Fingleton for these – – for commercial lending”.*²⁸⁶

6.246 Mr McMahan said that it was not all a question of resources. He said that some of the recommendations could have been implemented but they *“just weren’t. It wasn’t the*

²⁸⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 120 line 24 et seq. (Doc ID: RDU_FT_SPC1-4_D30-000000001).

²⁸⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 123 line 24 et seq. (Doc ID: RDU_FT_SPC1-4_D30-000000001).

*focus. Lending was the focus, you know, money – – you know, lending as much as we could basically”.*²⁸⁷

6.247 Mr McMahon said that the commercial lending department did not carry out their responsibilities appropriately. He said it was a matter of resourcing as well as INBS’s focus on lending, and that there were not enough people with a control focus.²⁸⁸

David Brophy

6.248 Mr Brophy was non-executive director of INBS from February 2006 to the end of the Review Period and was a member of the Audit Committee throughout that time. Mr Brophy was asked to provide a witness statement to the Inquiry prior to attending to give oral evidence with respect to the SPC 1 to 4 module. He was asked specifically to address the fact that concerns relevant to SPCs 1 to 4 had been raised in multiple Contemporaneous Reports. He stated:

*“the non-executive directors always gave clear instructions to implement recommendations such as the ones outlined in these reports. These instructions were given to the Chief Executive and the Finance Director, being the two senior management executives who are permanently on the Board. Instructions would also have been given to the Internal Auditor (by way of the Audit Committee process) and through him to the relevant line managers responsible for the specific issues highlighted. ... From a non-executive director perspective, we gave clear instructions and were entitled to rely on the commitments by management that they would be carried out”.*²⁸⁹

6.249 In relation to the allegation that loans were drawn down before Credit Committee and/or Board approval, Mr Brophy stated:

“By definition, when a CLA (covering a specific loan recommended by management) was presented to the Board for approval, advancing the loan was dependent on the Board approving it first. That was the clear policy and the limit for approval (a very low euro 1 million compared to tens of millions in the other Irish Financial Institutions at the time) was deliberately set at euro 1m to maximise the Board’s scrutiny of loans before any advance. A) I am not

²⁸⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 125 line 19 et seq. (Doc ID: RDU_FT_SPC1-4_D30-000000001).

²⁸⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 132 line 9 et seq. (Doc ID: RDU_FT_SPC1-4_D30-000000001).

²⁸⁹ Witness Statement No. 4 of David Brophy, dated 27 November 2020, page 1 and 2 (Doc ID: RDU_REL532-000000006).

*aware of any Board pre-approved circumstances where a loan could be advanced without Credit Committee and Board Approval. I have no recollection of any. B) I don't recall management raising the issue or bringing specific instances to our attention. If management did (and they may well have done so on occasion; albeit, I can't recall one), the Board would certainly have expressed very strong concerns over such a fundamental breach of policy and standard procedure. In addition, by definition, the non-executive members of the Board could not have been aware of such an instance unless it was brought to our attention".*²⁹⁰

6.250 Mr Brophy further stated in his witness statement that whilst he would have been aware of policy in broad terms, it would not have been an expectation that a non-executive director would check each individual CLA for compliance with policy. He stated: *"Management were expected to prepare CLAs appropriately, in accordance with policy, and to highlight any exceptions. If such an exception was highlighted, it was within the Board's discretion to still approve an individual loan as an exception".*²⁹¹

6.251 Mr Brophy gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 29 June 2021. He confirmed that the Board would not have scrutinised every CLA in detail and would have expected that if the loan contained an exception to policy, that that exception would be notified to the Board.

6.252 Mr Brophy said that he was not surprised to hear that all loans presented to the Board were approved, stating: *"But no, it wouldn't necessarily surprise me, because by definition a Credit Committee, you know, a loan coming to the Board should already have been through a fairly extensive process".*²⁹²

6.253 Mr Brophy was asked about the delegation of powers to Mr Fingleton which was provided for in Board meeting minutes as far back as 1981. The delegation had been amended over the years with the most recent iteration dating from 1997. Mr Brophy said that he had become aware of this delegation in the course of the Inquiry but was not certain if he was aware of it at the time. He said that as far as he was concerned, all loans and all elements of loans including interest rates, security and all other issues,

²⁹⁰ Witness Statement No. 4 of David Brophy, dated 27 November 2020, page 5 (Doc ID: RDU_REL532-000000006).

²⁹¹ Witness Statement No. 4 of David Brophy, dated 27 November 2020, page 2 (Doc ID: RDU_REL532-000000006).

²⁹² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 29 June 2021, page 24 line 22 et seq. (Doc ID: RDU_FT_SPC1-4_D27-000000001).

were required to be approved by the Board and were in practice presented to the Board for approval.²⁹³

6.254 Mr Brophy was asked about the audit process and KPMG Management Letters. He said that the Audit Committee was a very important function from the non-executive directors' perspective. He said that the Audit Committee clearly wanted all issues addressed, but he acknowledged that not everything was addressed as quickly as they would like.²⁹⁴

6.255 Mr Brophy was asked "*Was there any expectation or understanding that when the Audit Committee indicated that certain things were to be dealt with, or were to be prioritised, or were to be addressed, was there any understanding that part of the reason why Mr. Purcell was there was to ensure on the part of management that that was done*". He stated:

"No, I think, that would be a bit unfair. You know, the Internal Auditor, he is the Internal Auditor, and it's his role to try to get the matter addressed and resolved with the specific executive.

*Having said that, you know, the finance director is on the main Board, he is the finance director. So in that capacity he ultimately has certain responsibilities as well, both as finance director, but also as a director on the Board".*²⁹⁵

6.256 Mr Brophy said that it was the job of the internal auditor to follow up on matters and ensure that they were addressed, "*And it would have been up to, you know, Stan or the chief executive to support that, to support the Internal Auditor in his work as the non-execs did*".²⁹⁶

6.257 Mr Brophy was asked about loans emanating from the Belfast Branch. He said that because of the importance of UK lending, the Belfast Branch was a very important focus of the Audit Committee's work. He had no sense of it being in any way independent and that loans issued by Belfast would have come to the Board for approval in the same way as a loan to be issued out of the Dublin office.²⁹⁷ He

²⁹³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 29 June 2021, page 29 line 1 et seq. (Doc ID: RDU_FT_SPC1-4_D27-000000001).

²⁹⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 29 June 2021, page 43 line 1 et seq. (Doc ID: RDU_FT_SPC1-4_D27-000000001).

²⁹⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 29 June 2021, page 52 line 29 et seq. (Doc ID: RDU_FT_SPC1-4_D27-000000001).

²⁹⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 29 June 2021, page 55 line 11 et seq. (Doc ID: RDU_FT_SPC1-4_D27-000000001).

²⁹⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 29 June 2021, page 67 line 3 et seq. (Doc ID: RDU_FT_SPC1-4_D27-000000001).

acknowledged the findings of the Belfast Internal Audit Reports and said that the Audit Committee continuously sought to have recommendations implemented. He said that one of the priorities was to achieve a trade sale and in that context it was impractical to threaten to remove the chief executive, and it was never called for by the Central Bank. *“So, ...other than insisting – – you know, continuing to request to get commitments from the finance director and the chief executive that these things will be dealt with, there wasn’t much else we could do to be honest in that sense, almost short of sort of sacking one or both of the individuals.*

...

I mean, I have previously acknowledged that there was a level of frustration. You can imagine that frustration yourself from reading the sequence of the reports.

*There were genuine resource issues. There was constant encouragement get additional resources in. Constant pushing to deal with these matters. And again, you know, both an encouragement at the time from the Central Bank to continue to do this and an acknowledgement that it actually was getting better”.*²⁹⁸

6.258 Mr Brophy was asked about correspondence with the Financial Regulator. He said that the Regulator had access to everything within INBS and had the ability to ask whatever it wanted to ask.²⁹⁹

6.259 Mr Purcell suggested to Mr Brophy that responsibility for implementing KPMG Management Letter recommendations rested with the credit risk department. He said that that department reported to Mr Fingleton and that he, Mr Purcell, did not have responsibility for that. Mr Brophy responded:

*“Yeah, I think, Stan, I was trying to be careful and fair in my description. I still am of the view that, by the nature of the titles and the rules, senior executives have, you know, an overriding, in the way as the Board did, have an overriding responsibility for monitoring and various other things”.*³⁰⁰

²⁹⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 29 June 2021, page 99 line 22 et seq. (Doc ID: RDU_FT_SPC1-4_D27-000000001).

²⁹⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 29 June 2021, page 126 line 3 et seq. (Doc ID: RDU_FT_SPC1-4_D27-000000001).

³⁰⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 29 June 2021, page 137 line 9 et seq. (Doc ID: RDU_FT_SPC1-4_D27-000000001).

Michael Walsh

- 6.260 Dr Walsh was non-executive director and chairman of INBS's Board from May 2001 until February 2009. Prior to attending to give oral evidence to the Inquiry, Dr Walsh provided a witness statement to the Inquiry.³⁰¹ This witness statement provided an important overview of the context in which INBS operated and the aims of INBS. He was critical of the failure on the part of the Financial Regulator to bring in legislation that would have allowed a sale of INBS. He said that assurances had been given by the Regulator that appropriate legislation would be introduced since he took over as chairman in 2001, but despite continued assurances in the years 2002 to 2006, the legislation was not passed. Dr Walsh said that from 2007 INBS's strategic objective moved from the pursuit of a trade sale to one of building liquidity, minimising lending and focusing on recruiting new Board members and senior executives to cater for the future of INBS as an independent entity.
- 6.261 In his witness statement, Dr Walsh defended the record of INBS and stated that the true cost of the loan write down was approximately €2 billion and not the €5.4 billion cited by the Central Bank. This is an issue that is not within the remit of this Inquiry to investigate and it is set out here in order to provide an overview of the context for the Investigation, as Dr Walsh saw it.
- 6.262 The Inquiry had posed a number of questions which it requested that Dr Walsh address in his witness statement.
- 6.263 Dr Walsh was asked about concerns relevant to SPC 2 that were raised repeatedly in Contemporaneous Reports. He said that the Board and the Audit Committee directed the executive directors to ensure that all of the recommendations in audit reports or reviews were implemented. He stated: "*There was an expectation on my part that this was implemented*".³⁰²
- 6.264 Dr Walsh addressed the chain of correspondence with the Financial Regulator between 2004 and 2007 addressing issues raised in the KPMG Management Letters and the two Deloitte reports. He stated in his witness statement:

"The Board of the Society was very focussed on all correspondence addressed to it by the Central Bank. The Board required the Executive to maintain a

³⁰¹ Witness Statement of Michael Walsh, dated 12 November 2020 (Doc ID: RDU_REL525-000000013).

³⁰² Witness Statement of Michael Walsh, dated 12 November 2020, page 11 Question 1a. (Doc ID: RDU_REL525-000000013).

*completely open relationship with the Central Bank. The Board equally required the Executive to implement all recommendations be they from the Central Bank or audit reports or reviews, be they internal or external”.*³⁰³

6.265 Another question Dr Walsh was asked to address in his witness statement was, in what circumstances a loan could be advanced without Credit Committee or Board approval. He stated:

*“In the period prior to December 2007, other than under urgent credit decision approval procedures, no loan above the required threshold should have been issued in advance of both Credit Committee and Board approval. At no stage was the Board made aware, if such was the case, that a loan which it was considering had already been issued. This issue was particularly addressed in the KPMG Management letter for 2006 which was issued in June 2007”.*³⁰⁴

6.266 Dr Walsh provided oral evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 1 July 2021. He was asked what would be different in how INBS was managed if it was being prepared for a trade sale and if it was just operating as normal. He stated:

*“Obviously in the context of a trade sale you’d be very focused on getting things done as fast as possible so as to ensure that, you know, the Society or whatever the company was, was in the best condition for that trade sale”.*³⁰⁵

6.267 Dr Walsh also said that there was a view within the Central Bank, a view the Board would have shared, that the Managing Director was an important part of that sale process because he had been identified with INBS from the early 1970s. Dr Walsh also mentioned the importance of the vendor’s due diligence process and he said that it would be important from the perspective of a trade sale that INBS was in good order.³⁰⁶

6.268 Dr Walsh was asked about the nature of commercial lending in INBS and, in particular, the observation by Deloitte that it was relationship based. He said that although relationship banking gave the Board a lot of confidence, in that they would have known

³⁰³ Witness Statement of Michael Walsh, dated 12 November 2020, page 23 Question 10 (Doc ID: RDU_REL525-000000013).

³⁰⁴ Witness Statement of Michael Walsh, dated 12 November 2020, page 25 Question 11a. (Doc ID: RDU_REL525-000000013).

³⁰⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 11 line 13 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

³⁰⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 12 line 4 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

the individuals requiring the loans, it did not provide a basis for not complying with structures or policies that had been agreed by the Board.³⁰⁷

6.269 Dr Walsh described the approval process for commercial lending. He said that Mr Fingleton would present the loan and the Board members could question any element of it. He said sometimes this would be a query about a missing document or a signature and, he continued:

“for example, if a document came which hadn’t been signed off by the Credit Committee, the query would have been automatically raised as to whether or not the document or the loan had actually gone to the Credit Committee, whether or not it had been approved by the Credit Committee and whether it had been recommended. And, you know, obviously the confirmations were then given by the Managing Director”.

He was asked:

“So there may not have been a formal record of a Credit Committee approval, but if Mr Fingleton assured you that in fact it had been approved by the Credit Committee, that was – – that was sufficient, for instance?, and he responded: “Yeah, well, we had no reason to doubt the integrity of Mr Fingleton...”.”³⁰⁸

6.270 Dr Walsh was asked about the fact that during the Review Period, no loan had been refused by the Board. He said given that the Credit Committee had already reviewed and recommended the loans and the Managing Director was aware of the detail of individual loans, that would not have been surprising. He said that there were occasions where loans would have been sent back for a variation on terms or a review, but that was noted in the minutes.³⁰⁹

6.271 Dr Walsh had given evidence to the Inquiry in the SPC 5 module in relation to the Contemporaneous Reports, subsequent Financial Regulator communication and the Board response. During his evidence in the SPC 1 to 4 Context Hearing, he was reminded of evidence he had given in the SPC 5 module where he had discussed assurances given by management that recommendations in the KPMG Management Letters and in the Deloitte reports had been implemented. He had said that when

³⁰⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 16 line 21 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

³⁰⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 28 line 15 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

³⁰⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 31 line 15 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

management presented a recommendation as having been implemented, the Board accepted the word of management unless it had reason not to, and had stated:

“...corporate governance would never work if you could not rely on the executive. I mean, if you believe the executive are dishonest or untrustworthy or anything, you know, by definition, you have only one choice and that is to remove them. There was any suggestion of any such dishonesty or anything in relation to either of the executive directors. So, by definition, in such circumstances you accept their word”.

Dr Walsh confirmed that this remained his view of the position.³¹⁰

6.272 Dr Walsh was asked about Audit Committee meetings and, in particular, Mr Purcell's attendance at these meetings. He stated:

“Well, in a formal sense, he was there you know, as The Company Secretary to record matters.

Obviously from an... Audit Committee point of view, you know, we saw Mr Purcell's attendance as being valuable because, you know, Mr. Purcell obviously, as Finance Director, was charged with the controls or responsibility for the controls in the Society.

So, you know, where there were issues, it was valuable to have him there. It was also valuable to have him there in the context of ensuring maximum support for the Internal Auditor.

...

*I think where the Audit Committee, you know, shall we say, so the value of Mr Purcell beyond the Company Secretary role, was that, as the Finance Director you know, with the roles that the Finance Director actually has, you know, he was getting kind of first hand, you know, knowledge. But also he was, I suppose, you know, as really the second most senior person in the organisation there as somebody who could give probably greater weight to the Internal Auditor”.*³¹¹

³¹⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 42 line 2 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

³¹¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 47 line 22 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

6.273 Dr Walsh was asked at what point did he have reason not to accept the word of management when they were telling him that recommendations had been implemented, when he could see the recommendations had in fact not been implemented. Dr Walsh was referred to the example of the recommendation in the 2003 KPMG Management Letter that a completion checklist should be completed prior to the disbursement of all loans. Management Response to this recommendation, dated April 2004, was that a checklist was currently completed and would be updated to comply with the recommendation. Notwithstanding this the May 2008 Deloitte Review made a similar finding. Dr Walsh said that the issue of checklists before loan disbursement was something that both external advisers and internal advisers felt needed to be done. Dr Walsh acknowledged that it was “*clearly very disturbing*” that this issue had not been properly addressed following the 2003 KPMG Management Letter. Dr Walsh was asked about the Audit Committee meeting on 26 May 2008.³¹² The minutes for that meeting noted that the Audit Committee required outstanding recommendations to be implemented and further required that there should be a report at the end of July 2008 and again at the end of January 2009 “*on the quality of the initial and continuing implementation of all 14 recommendations*”. Dr Walsh was asked whether this indicated that he could no longer accept management assurances. He stated:

“...I mean, the practical reality was that we were being assured – – you know, I mean if you look at those Level 1 recommendations, we were being assured that they had already been implemented, or immediately implemented.

Now, we had really received those types of assurances before, and despite having received them before, you know, they would actually reappear and, you know, you have actually alluded to some of them already.

So from a Board point of view, you know, I mean, it was getting increasingly frustrating, because these weren't difficult things to actually do; they were sensible things to be doing. And, you know, it just required, you know, management to be a little bit more diligent, you know, and, you know, shall we say, in the light of that frustration where we were told today that things have been done, you know, the question really is: well, will the same statement be true in two weeks' time or two months' time or a year's time?

³¹² Minutes of Audit Committee meeting, dated 26 May 2008 (Doc ID: 0.7.120.57529).

*And we just felt at that stage that, look, we have been told these things have been done, so let's make sure they are not only done, but continue to be done... from a Board point of view we were basically saying... two months' time we want an update which actually tells us that, you know, what Deloitte are telling us has already been done or implemented as part of their report actually is continuing to be done, and that we haven't move that step backwards again".*³¹³

6.274 Dr Walsh said that this approach applied equally to the Credit Committee, where a lot of issues had arisen. He stated:

*"...the Board basically was telling the Internal Auditor not only do you make sure that the Deloitte's recommendations have actually been continuously implemented rather than implemented on the day, but also we want to know that the Credit Committee is functioning the way it's supposed to function".*³¹⁴

6.275 Dr Walsh was asked why these matters, which in his view were not difficult to do and only required some diligence on the part of management, were not being done. He said that he could not really answer the question but that it was very clear that the direction coming from the Board was that these things were to be done and done on a continuous basis. He said that he did not believe that there was a failure on the part of the Board to properly communicate their directions to the executive. He also said that he did not think it was because of a lack of resources within INBS.³¹⁵

6.276 The Inquiry Members sought further explanation from Dr Walsh on his observations regarding Mr Purcell's attendance at Audit Committee meetings and how it was helpful in relation to the controls in INBS. Dr Walsh stated:

"... clearly as Finance Director, ...you are the person who is primarily responsible for , let's call it, the books and records of the Society.

You know, obviously from, you know, a formal compliance point of view, you know, we met with KPMG every year, but, you know, KPMG always had suggestions for improvements...

³¹³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 50 line 8 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

³¹⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 59 line 12 (Doc ID: RDU_FT_SPC1-4_D29-000000001).

³¹⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 59 line 19 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

But I would have thought that within the role of the Finance Director, you know, you are concerned always to ensure that there is wide as set of controls as possible within any organisation. And it's in that context that I think participation is very valuable".³¹⁶

6.277 Dr Walsh was asked whether Mr Purcell had responsibility for controls in relation to commercial lending, and the following exchange took place with the Inquiry Members:

"A. Well, in the sense that, you know, while he may not be directly responsible for the controls of commercial lending, or indeed any other areas where there would be direct line executives actually responsible for implementation, I would think that the Finance Director in any organisation would want to know what was actually happening in terms of control implementation.

MS. MCGOLDRICK: And is that because the Finance Director would be in a position to influence improvement in those controls where they were suggested by, for example, external auditors?

A. Well, you would certainly hope so, provided they had the appropriate support from other management".³¹⁷

6.278 Dr Walsh was asked about the evidence from the loan files. It was put to him that there were two striking elements from the Loan Sample. The first was that the sums of money advanced from the Belfast Branch were very large indeed, and the second was that there were a large number of loans that had no CLA, or in respect of which the CLA was drawn up after monies had been advanced, or Board approval was obtained after money had already been paid out. He was asked by the Inquiry Members if he was aware of that and he stated:

"I think, by definition, ... if something came to the Board, you know, we believe it was coming to the Board in good faith. We were never informed that money had already left the building".³¹⁸

6.279 Dr Walsh was asked if he was aware of the understanding, amongst some witnesses that the Inquiry had heard from, that the Managing Director could waive policy

³¹⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 86 line 18 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

³¹⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 88 line 4 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

³¹⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 92 line 5 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

requirements. He stated that there was an “urgent cases” process whereby the Managing Director and two members of the Credit Committee could authorise the payment in advance, but they were required to bring these back to the Board and notify the Board that that had actually happened. He stated that “At no stage did that occur”. He further stated:

“No. I mean the management had no authority to actually waive Board policy, you know. And, you know, to put it in context, I mean, Board policy came on the basis of documents prepared by the Executive, recommended to the Board, adopted by the Board”.

Dr Walsh stated that if a particular policy was not working at a practical level, it was open to management to come to the Board and propose changes, but at no stage did that happen.³¹⁹

Liam O’Reilly

6.280 Dr O’Reilly was chief executive of the Financial Regulator from May 2003 to the end of January 2006. Dr O’Reilly provided a witness statement to the Inquiry in which he stated:

*“As a principles-based institution, the Financial Regulator’s view was that it was the INBS board’s responsibility to ensure that any concerns raised by the Financial Regulator were addressed”.*³²⁰

6.281 In his witness statement, Dr O’Reilly said that whilst he had no detailed recollection of responses to letters sent by him or meetings held by him with the INBS Board chairman in the period May 2003 to May 2004, he could say that in relation to this period:

*“The Financial Regulator had long-standing difficulties in ensuring that this institution “(INBS)” complied in the areas of corporate governance and risk control of commercial lending”.*³²¹

³¹⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 93 line 11 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

³²⁰ Witness Statement of Liam O’Reilly, dated 23 November 2020, page 2 (Doc ID: RDU_REL538-000000001).

³²¹ Witness Statement of Liam O’Reilly, dated 23 November 2020, page 2 (Doc ID: RDU_REL538-000000001).

6.282 Dr O'Reilly had been asked to address in his witness statement whether he was concerned at the repetition of the same issues throughout the Review Period. He stated:

"Yes, the repeated problems in the area of commercial lending stemming from corporate governance issues gave concern.

*It was hoped that the Commercial Lending Review of 2004 which ensued from the KPMG Management letter of 2003 would provide results. Some progress seemed to have been made in 2005 but problems remained".*³²²

6.283 Dr O'Reilly gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 25 June 2021. He was asked about the concerns expressed by the Financial Regulator in relation to the issue of moratorium facilities, which came up in the course of quite a lot of correspondence in 2005. Dr O'Reilly stated:

*"Yes. Our first letter actually was issued on 9 December 2004, and it was -- we had continued correspondence, I would say, until April 2005, about all these matters, including the moratorium facilities, and meetings with INBS emphasising the need to rectify the matters concerned, and the letter of March, which also asked them to rectify the matters. And finally in April, a letter saying -- asking for a commitment and getting a commitment from INBS that they would fulfil all these recommendations".*³²³

6.284 Dr O'Reilly was referred to the recommendations outlined by KPMG in the 2003 KPMG Management Letter. KPMG recommended that the Credit Committee or Board should approve all amendments to facilities in excess of individual credit authorities. KPMG also recommended that all amendments to original facility agreements should result in a new facility agreement signed by all parties. Finally, KPMG recommended that INBS should maintain an exception report that detailed all accounts that had been amended and highlighted the nature of the amendment that should be provided to the Credit Committee. The LPT noted that the Management Response to this request from the Financial Regulator to implement the KPMG recommendations was:

"The Society's Moratoria Policy will be amended to include this recommendation.

³²² Witness Statement of Liam O'Reilly, dated 23 November 2020, page 5 (Doc ID: RDU_REL538-000000001).

³²³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 15 line 19 et seq. (Doc ID: RDU_FT_SPC1-4_D26-000000001).

*A report will be produced along the line suggested in the recommendation”.*³²⁴

6.285 Dr O’Reilly was asked whether the Regulator had achieved the action that it required in relation to KPMG’s recommendation. Dr O’Reilly stated:

*“Well, certainly not up to the time that the credit review was written by KPMG. And after that I am really not familiar enough with the recommendations. That would be something that would have been followed up by the banking supervision department”.*³²⁵

6.286 Referring to a meeting between INBS and the Financial Regulator attended by Dr O’Reilly on 3 December 2004³²⁶, Dr O’Reilly indicated that a concern of the Regulator was that control mitigants were not adequate in INBS and that controls needed to be put in place.

6.287 Dr O’Reilly confirmed that the finding in the 2003 KPMG Management Letter, that individual lenders were authorising restructuring facilities which exceeded their authorisation and without new facility arrangements signed by all parties being issued, was an important issue as far as the Regulator was concerned.³²⁷

6.288 Referring to the letter of response from INBS to the Financial Regulator’s letter dated 9 December 2004, which response was dated 1 February 2005³²⁸, Dr O’Reilly stated:

“Well, I was just disappointed in the degree of sanguineness, is that the word, on the part of the Board. They seemed to be very relaxed and was disappointed with the response. And it can be seen from my response in... 22nd March... that we really weren’t happy with the letter.

...

³²⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 17 line 6 et seq. (Doc ID: RDU_FT_SPC1-4_D26-000000001).

³²⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 18 line 27 et seq. (Doc ID: RDU_FT_SPC1-4_D26-000000001).

³²⁶ Record of meeting between Financial Regulator and INBS dated 3 December 2004 (Doc ID: AD-0.7.120.1127973).

³²⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 47 line 25 et seq. (Doc ID: RDU_FT_SPC1-4_D26-000000001).

³²⁸ Letter from Michael Walsh, INBS, to Liam O’Reilly, Financial Regulator, dated 1 February 2005 (Doc ID: 0.7.120.131433).

*Yes, and as I said, we were, I suppose, disappointed, at the degree of seriousness in which they were taking matters. And there was a kickback or a push back against KPMG recommendations”.*³²⁹

6.289 Dr O’Reilly was referred to INBS’s response to this letter on 31 March 2005³³⁰, which purported to set out the credit risk strategy of INBS going forward, and Dr O’Reilly stated:

“Really, I suppose, I felt at the time that the major issues that need to be dealt with – it is up to the Society to decide their strategy, which is what this letter purported to be, a strategy in relation to commercial lending.

What I felt was that the major objective really should be for the Regulator that if they wanted to follow this strategy, which is up to them, that they should follow the recommendations that were made in the KPMG report.

*And in that regard another letter issued from them... on the 8th April, I think, which set out the undertakings that they were making not alone under the following of the recommendations, but also in relation to the Internal Audit strength and what they intended to do about it”.*³³¹

6.290 Dr O’Reilly was asked whether this letter dated 8 April 2005 was the commercial lending review that the Financial Regulator had been told would be with them by the end of March 2005. He stated:

“Yes. Was it what I expected? I think -- you know, even at this remove, I would have said there should have been a little more fulsome, not more than a little bit more... But at that stage we were in the business of rolling a stone up a hill really, a bolder [sic] up a hill trying to get things done, and the major objective was to make sure that the risk mitigants were in place to whatever they were doing.

...

³²⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 53 line 3 et seq. (Doc ID: RDU_FT_SPC1-4_D26-000000001).

³³⁰ Letter from Michael Walsh, INBS, to Liam O’Reilly, Financial Regulator, dated 31 March 2005 (Doc ID: 0.7.120.10935).

³³¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 56 line 18 et seq. (Doc ID: RDU_FT_SPC1-4_D26-000000001).

...And, I suppose, in retrospect, it was weak".³³²

6.291 The LPT noted that in that letter INBS stated in relation to the KPMG recommendations:

"The Board of the Society is fully committed to implementing those recommendations and has made substantial progress to date".³³³

Dr O'Reilly said that the response from INBS did not deal with specific recommendations and that a progress report on actual action was sought by the Financial Regulator. He said that by the time he left his position as Financial Regulator, he believed some progress was being made in relation to commercial lending.³³⁴

Mr Purcell's evidence to the Inquiry

6.292 Mr Purcell gave evidence to the Inquiry on the final day of the SPC 1 to 4 Context Hearings on 21 July 2021. Mr Purcell's evidence in relation to SPC 1 has already been outlined in Chapter 5 and much of that evidence can apply with equal validity to SPC 2. It is briefly outlined again in respect of the allegations relating to SPC 2.

6.293 In advance of attending the oral hearings in respect of SPCs 1 to 4, Mr Purcell provided a witness statement to the Inquiry, dated 5 March 2021.³³⁵ In respect of the SPC 2 Allegations outlined and particularised in the Investigation Report, Mr Purcell stated:

Paragraph 7.962

I deny I participated in the alleged commission by INBS of SPC's 2(a), 2(b) and 2(c) with respect to the instances set out in paragraph 7.962 of the Investigation Report.

Paragraphs 7.966 and 7.967

The Managing Director was the link between the Credit Committee and the Board. Mr Fingleton was a member of the Credit Committee during the review

³³² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 57 line 21 et seq. (Doc ID: RDU_FT_SPC1-4_D26-000000001).

³³³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 59 line 1 et seq. (Doc ID: RDU_FT_SPC1-4_D26-000000001).

³³⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 59 line 24 et seq. (Doc ID: RDU_FT_SPC1-4_D26-000000001).

³³⁵ Witness Statement of John S Purcell, dated 5 March 2021 (Doc ID: RDU_REL562-000000003).

period and presented the CLA's recommended by the Credit Committee to the Board for approval.

I was not a member of the Credit Committee at any stage.

When the board approved a commercial loan application (CLA), I signed and dated the CLA and gave the signed document to Tom McMEnamin after each board meeting.

I, as Secretary of the Society, communicated any issues raised by the board of directors that referred to the credit committee by issuing signed instructions. An example of this is an internal memorandum dated 9 October 2006 (0.7.120.719572).

Paragraph 7.968

All the lending area managers reported to the Managing Director. The lending area managers were responsible for implementing KPMG's management letter recommendations relating to commercial lending.

This responsibility is set out in letters to the Financial Regulator dated 19 January 2007 (0.7.120.138147) and 17 May 2007(0.7.120.137445) as well as the Terms of Reference of the Credit Risk department which was signed by the Managing Director and submitted to the Board and the Financial Regulator. (0.7.120.13615 - attachment to the letter).

Paragraph 7.969

I was not responsible for following up on the implementation of internal audit recommendations that related to the commercial lending.

A document was produced by the Internal Auditor in 2008, Recommendations not implemented in a timely manner. (0.7.120.56461) This document, which was part of a section 41a response by the Internal Auditor (page 839 of the Investigation Report), set out the lending area managers responsible for implementing internal audit recommendations and Michael Fingleton as the Executive Director responsible.

The minutes of the Audit Committee meeting held on 31 May 2005 (0.7.120.56788) state on page one "The question of the appointment of a

Lending Compliance officer would be discussed with the Managing Director". In 2006 the Managing Director refused to appoint a lending compliance officer.

The Internal Auditor was the point of contact with Deloitte who provided internal audit services.

Paragraphs 7.971 and 7.972

I deny the allegations made in paragraphs 7.971 and 7.972.

Paragraph 7.971

The Internal Auditor followed up on the implementation of internal audit recommendations.

The audit committee and the board were informed of action taken by management in response to findings made in certain contemporaneous reports. These findings related to approval of loans, variations to loans and commercial mortgage offers (CMO's).

The audit committee and the board were informed by internal audit reports and responses by INBS to KPMG recommendations. INBS's responses were included in KPMG's management letters. The board and the audit committee were sent copies of letters to the Financial Regulator reporting progress on actions taken by management on findings made in reports.

The lending area managers and the Managing Director were responsible for ensuring that any representations made to the external auditors on lending area recommendations were accurate.

Paragraph 7.972

It was the duty of the commercial lending managers and the Managing Director to ensure that appropriate actions were taken to address issues in respect of approval of loans, variations to loans and CMO's.

Consideration of loans by the Board (Page 962 of the Investigation Report)

- 1. Board minutes recorded the loans that were approved.*

It was not the practice to record in the board minutes a loan that was withdrawn because it would not be approved.

2. *The board discussed the commercial loan applications (CLA's) presented to it by the Managing Director. It was not the practice to record in the minutes the discussion on the CLA's.*
3. *David Brophy said in his witness statement dated 27 November 2020 (RDU_REL522-000000006) "The board monitored all aspects of the business to the best of its ability. It was very active in this by way of monthly board meetings which had no time limit but lasted until all matters before it had been addressed".*
4. *Many of the loan applications considered at board meetings were repeat business (and similar types of loans) with people INBS had successfully lent to in the past. Many of the loans were additional loans for projects that were ongoing.*
5. *Michael Walsh said "At virtually every Board meeting I and the other non-executive directors, as part of the full board, reviewed a number of commercial loan applications. As a consequence, I and my fellow directors were in a position to make decisions in relation to individual loans. I believe that this was appropriate given the deep knowledge of individual borrowers held by Executive Management". (Paragraph 8.582 of the Investigation Report".³³⁶*

6.294 At the commencement of his oral evidence, Mr Purcell agreed with the proposition that effective management of credit risk was vital to the long-term success of any credit institution and that credit risk involved implementation of effective controls in relation to a number of matters including loan approval and loan advancement. He also agreed with the proposition that policies, along with personnel and organisational structure, were central to the process of risk control in the context of loan approval in particular.³³⁷

6.295 Mr Purcell was asked about the letter dated 9 December 2004 from Dr O'Reilly, chief executive of the Financial Regulator, to Dr Walsh, chairman of INBS. This letter expressed concern at "*the significant shift in the risk profile of INBSs overall loan portfolio in a relatively short period of time*" and further stated that:

³³⁶ Witness Statement of John S Purcell, dated 5 March 2021, page 9 to 12 (Doc ID: RDU_REL562-000000003).

³³⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 10 line 15 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

*“While it is a matter for a credit institutions’ board and management to decide upon the business activities it engages in, it is essential that there are appropriate policies, procedures, resources, internal controls and reporting structures in place commensurate with the risk arising from these activities which are sufficient to effectively manage, monitor and control that risk”.*³³⁸

6.296 Mr Purcell said that he agreed with that statement from the Regulator. He said he also agreed with the statement from the Regulator that whilst INBS’s activities had changed significantly, the control mitigants had not kept pace with that change. He said he had used similar wording in a memorandum he prepared in relation to the creation of the credit risk department. He was then asked whether he agreed that a central problem for INBS was that the control mitigants had not kept pace with the change in INBS’s business during the Review Period. He stated:

*“There was a need for that to happen, yes. I mean in relation to saying it entirely -- yeah, the control mitigants did need to be established and to be developed in line with the business, yes they did. And -- there would have been work carried out in relation to that following that letter”.*³³⁹

6.297 Mr Purcell was asked if he agreed that it was a feature of the Review Period that control mitigants were just not keeping pace. Mr Purcell responded:

*“Well, the intention was to have control mitigants that did keep in pace, but, I mean, events maybe proved that there were times when maybe they didn’t keep up for one reason or another, maybe such as people leaving and other work to be done. But the intention was to establish control mitigants to manage the business”.*³⁴⁰

6.298 Mr Purcell acknowledged that there were a series of reports that raised issues time and again. He stated:

“I mean, I take it you are referring to things like audit reports that brought up recommendations, yes. Yes, there was audit reports, there is no doubt about that, that brought up recommendations in relation to certain areas, and they were brought up again when maybe, let’s say, enough wasn’t done in relation

³³⁸ Letter from Liam O’Reilly, Financial Regulator, to Michael Walsh, INBS, dated 9 December 2004, page 3 (Doc ID: 0.7.120.450640).

³³⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 14 line 23 et seq. (Doc ID: RDU_FT_SPC1-4_D31-00000001).

³⁴⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 16 line 21 et seq. (Doc ID: RDU_FT_SPC1-4_D31-00000001).

to that particular point. But there was – I mean the Credit Risk Department was established to address some of those recommendations, as the documents will disclose".³⁴¹

6.299 Mr Purcell referred to the organisation structure in the KPMG due diligence report, the Project Harmony Report, in order to explain his responsibilities within INBS.³⁴² He identified the areas that were his responsibility as finance director and he was asked whether he was concerned or worried about how other parts of the business were working. He stated that he was concerned with his own areas and that he had no responsibility or authority in relation to aspects of commercial lending such as developing policies. He said that developing policies in relation to commercial lending was the responsibility of Mr Fingleton. He further stated:

"I was responsible for implementing audit recommendations and other recommendations that related to the areas that reported to me.

In other words, if the recommendation related to, let's say, an aspect of financial reporting, that would be allocated to the manager in charge of that and he would carry out the recommendation and I would be responsible for ensuring that that was reported upon and carried out".³⁴³

6.300 Mr Purcell said that although there had been a compliance function in INBS since 2003 which reported directly to him, it was the internal auditor who was responsible for ensuring compliance with policy.³⁴⁴

6.301 In relation to the establishment of a credit risk department, Mr Purcell said that he had suggested this in a paper dated 1 May 2003 to Mr Fingleton in which he set out the need for what he called "*enhanced commercial administration*" in the light of a number of things that were coming down the line. This department was eventually set up in July 2006. Mr Purcell said he had hoped it would be set up sooner, and the following exchange took place:

³⁴¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 17 line 8 (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁴² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 17 line 23 (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁴³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 18 line 25 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁴⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 23 line 9 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

"A. Yeah, there was, as I said, between October 2004 and 2006, the commercial administration section under Brian Fitzgibbon.

Q. Sure, which you agree with me is at best a rudimentary--

A. Well, it had a role at that stage and it carried out a role. I mean that department, if circumstances had allowed, that department might have been taking on more roles, it could have been expanded, it might eventually had become the Credit Risk Department, but at that stage it was doing a role described by Mr. Fitzgibbon".³⁴⁵

6.302 Mr Purcell confirmed that he was the main point of contact with the Regulator and would have seen most of the Regulatory Correspondence, other than possibly that which went directly to the commercial lending department. The following exchange then took place:

"Q. ...But what, I think, we can agree, Mr. Purcell, is that you had good oversight of the entire relationship with the Regulator?

A. I had a fair – yes, I had oversight of the relationship. I could see what the relationship was, yeah.

Q. And therefore, if the Regulator was raising issues, you knew that they were being raised, isn't that right?

A. Well, I mean, in letters to me and in letters to other directors, I knew what the Regulator was saying, yes.

Q. And you knew what the Regulator was happy or unhappy with, isn't that right?

A. Yeah, I would have known issues that were raised, of course, yeah.

...

I was a member of the Board, yes.

...

³⁴⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 24 line 14 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

Q. And like any Board member, you are responsible for ensuring that the society is properly run, isn't that correct?

...

A. As a director, yeah, as a Board member, the management had control of the Society, it was under the Board of Directors.

...

Q. ...So one of the things that you are responsible for, or were responsible for as a Board member, was to oversee the Society's control and risk management framework, isn't that right?

...as a Board member, you are responsible for the entire business of the Society; that includes overseeing its control and risk management framework, that's part of your job?

A. It is, yeah, as a collective Board, the Board was responsible".³⁴⁶

6.303 As an attendee at the Audit Committee meetings, Mr Purcell also received and was aware of the various Contemporaneous Reports, specifically the internal audit reports, the KPMG Management Letters and the Deloitte reports.

6.304 He stated that he was aware of issues coming up repeatedly in Contemporaneous Reports and in correspondence with the Financial Regulator. He stated:

"...I was aware of issues raised by the Financial Regulator, I was aware of other issues raised by the internal audit, external audit and other matters as well that were looming, and that's why I sought from Michael Fingleton, because it was his decision, he was the one with the authority and the responsibility, that a Credit Risk Department would be set up. I started to seek that with a memo dated, I am fairly certain -- it was 1st May 2003, and I asked Mr. Fingleton to establish a department that will carry out enhanced mortgage administration.

So, I mean, my reaction to that was to seek that the commercial lending area would establish a Credit Risk Function".³⁴⁷

³⁴⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 27 line 3 et seq. (Doc ID: RDU_FT_SPC1-4_D31-00000001).

³⁴⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 33 line 15 et seq. (Doc ID: RDU_FT_SPC1-4_D31-00000001).

6.305 One recurring issue, which arises in the context of SPC 2, was the recurrence of a finding that CMOs were varied without a new CMO being issued. This was identified by the LPT as an example of the kind of issue raised in Contemporaneous Reports. This issue was first raised in the 2003 KPMG Management Letter and, although an attempt was made to deal with the issue in 2006, it was still raised as an issue in the May 2008 Deloitte Review. Mr Purcell was asked whether, as a Board member, he had responsibility to ensure that policy was observed. He stated:

"It is important. Yeah, the Board of Directors is in charge and it acts through the executive responsible. Those particular reports were presented, and within those reports there were – – there was follow-up carried out by the Internal Auditor, and much of that follow-up was reported to each Audit Committee meeting, and it was reported in many cases that things were implemented, they were 80% implemented and various stage of work was being done on it".³⁴⁸

6.306 Mr Purcell was asked about his overall responsibility as a Board member and he stated, as follows:

"A. ...my duties as an executive were confined to my own area. I was a part of the Board of Directors which was responsible for the management of the Society. And.... the management and the carrying out of the management was delegated to the managing director and people were appointed by him.

Q. Sure. But just so we're clear, Mr. Purcell, and I don't think you are unclear about it, but you were aware the policy provisions were being breached. You were a Board member. It's part of your responsibility to ensure that that isn't repeated at the very least, isn't that right?

A. Yeah. Yes, and the actual – – I mean the carrying out and the direct responsibility for matters that related to commercial lending rested with other people.

Q Mr. Purcell, with respect, I am not sure that's correct. There are certainly executives who are directly responsible for it, but ultimately the business of the Society rests with the Board, isn't that right?

³⁴⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 34 line 18 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

A. *That's right, I'm not denying that, but I'm making the point because it is important in this context, that what I have said, various people had various authorities and responsibilities.*

Q. *...when you were made aware of breaches of policy, as a Board member, it was your responsibility, at the very least, to take steps to ensure that there was no reputation [sic] of that breach?*

A. *Well, the steps that we were taking was when findings and recommendations were made, there was a process for following up those recommendations and there were people whose role -- and it is written out in many documents -- that was to implement those policies.*

When it came to lending, all of those people ultimately reported to Michael Fingleton. Michael Fingleton was over those areas. You know, he was the person who was over -- and he also had the sight. So the oversight primarily rested with Michael Fingleton. You may say the Internal Auditor had sight of what was going on because he was doing audits, but all of that area, and with the responsibility and authority, rested in we'll say within four or five people.

...

I was a member of the Board, and I am not denying that, that I was responsible for the management. And as a Board member I did deal with certain things, and I mean I did seek action to be taken that was designed to deal with all these matters -- and the main action I sought was to get Michael Fingleton to agree to appoint a Credit Risk Department... That was an effective way of starting and getting things done".³⁴⁹

6.307 Mr Purcell was referred to a number of INBS policies. In relation to the April 2003 Credit Risk Policy he contended that this policy gave guidance but that ultimately loans were assessed on a case by case basis and were subject to whatever view was taken by the Board. In this regard, he referred to the penultimate paragraph of the policy which stated:

"There would be occasions where a proposal would not fit the criteria set out herein. However, under the circumstances the proposal would be prepared for

³⁴⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 39 line 24 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

a submission to senior management by a senior commercial lender or the homes loan manager".³⁵⁰

- 6.308 It was put to Mr Purcell that the purpose of the April 2003 Credit Risk Policy was set out in its opening sentence, which stated: "*The purpose of this credit policy is to provide a set of guidelines to ensure... That all credits put forward meet minimum pre-agreed standards*".³⁵¹
- 6.309 In relation to the SPC 2 Allegations, Mr Purcell agreed that if money was advanced without being recommended by the Credit Committee or approved by the Board or not in accordance with any urgent credit decision approval procedure, such an advance would be a breach of policy.³⁵²
- 6.310 Mr Purcell also agreed that where variations to a loan were made, these variations needed to comply with policy. Any variations that were not in accordance with policy were a breach of that policy.³⁵³
- 6.311 Mr Purcell was then referred to the third broad allegation heading in relation to SPC 2, which related to the issuing of a CMO prior to a recommendation or approval or not in accordance with same, or not being appropriately signed. Mr Purcell agreed that it was "*basic to lending*" that money should not be handed out until a document setting out the terms was in place. Any breach of this was, Mr Purcell agreed, a breach of policy.³⁵⁴
- 6.312 The LPT referred to Mr Purcell's contention that the April 2003 Credit Risk Policy, the 28 February 2007 Commercial Mortgage Lending Policy and the 27 June 2007 Credit Risk Management Policy did not set down firm policies, but rather gave guidance so that loans were assessed on a case by case basis and were ultimately subject to whatever view was taken by the Board. Mr Purcell confirmed that this was his point of view.³⁵⁵
- 6.313 It was put to Mr Purcell that there were three elements to the system set up in relation to the policies applicable in INBS. Firstly, there was a set of policies that set out

³⁵⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 92 line 22 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁵¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 94 line 4 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁵² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 52 line 26 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁵³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 54 line 2 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁵⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 54 line 14 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁵⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 92 line 22 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

minimum pre-agreed standards. Secondly, there were cases where those minimum pre-agreed standards were not met but where it may nevertheless be desirable to lend. Thirdly, if that was the case, there was an exceptions policy that had to be met.³⁵⁶

6.314 Mr Purcell did not agree with the further proposition put to him that failure to meet any of the standards set by the commercial lending policy necessarily brought into play the exceptions policy. He said that once something was put into the CLA and was recommended to the Board, and the Board approved it, that could not be seen as a breach of policy. He said this was particularly the case in respect of the requirement for personal guarantees from directors of private companies. He said the security was on the face of the CLA and once the CLA had been accepted by the Board, it was not an exception. The following exchange then took place:

“Q. What’s the point of the exception policy, Mr. Purcell?”

A. The point of the exceptions policy would be if there was a very large, or a significant move away from the guidelines and the policy.

Q. Does it say that?”

*A. No, but you just asked me, maybe that’s my view of it”.*³⁵⁷

6.315 The exceptions procedure was set out in the terms of reference of the Credit Committee. The 16 October 2003 Commercial Credit Committee Terms of Reference stated that exceptions must be signed off by two members of the Credit Committee and reported for approval to the Board.

6.316 The terms of reference also provided for urgent credit decision approval procedures, stating that they must be signed off by two members of the Credit Committee and must be approved by the Managing Director. Mr Purcell stated that that requirement did not involve the Board documenting any such approvals. Mr Purcell said that he was not sure what the terms of reference meant, when it stated *“Any loan so approved should be signed off by the Credit Committee and the Board as soon as practicable”*. He stated:

“Yeah, signed off by the Credit Committee, but I’m not sure -- I mean is that just approved by the Credit Committee, again accepted by the Credit

³⁵⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 95 line 14 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁵⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 97 line 16 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

*Committee and accepted by the Board as soon practicable. I'm not sure if it calls forth for any documentation to be created".*³⁵⁸

6.317 Mr Purcell addressed a point raised by Mr McMEnamin in his witness statement to the Inquiry. Mr McMEnamin had stated that he did not have the staff to implement audit recommendations. He said that Mr Fingleton would not agree to get more staff, and that Mr McMahan, the internal auditor, was aware of the staff shortage but did not bring it to the attention of the Audit Committee because he did not think that the chairman would sway the Managing Director to take on more staff. Mr Purcell said that the Audit Committee should have been informed of Mr McMEnamin's concerns and "*if the Audit Committee members had been aware of that at an early date, that would be a significant factor in dealing with reoccurrence of matters*".³⁵⁹

6.318 Mr Purcell also referred to the evidence given by Mr McMahan, who had stated:

"The culture was — this is in relation to implementation recommendations — the culture was we will say we'll do it, and we may do it. Management responses indicated agreement...with the recommendation and a willingness to implement.

*However, for a number of recommendations, the recommendation was not implemented in time or the risk may not have been sufficiently mitigated by the new procedures introduced".*³⁶⁰

Mr Purcell made the point that the Audit Committee should have been informed by Mr McMahan that implementation was not being adequately carried out.³⁶¹

6.319 Mr Purcell referred again to Mr McMEnamin's witness statement and, in particular, the statement that directives and interventions by Mr Fingleton caused the non-adherence to the Credit Committee terms of reference and non-implementation of audit recommendations. He said this meant that the audit and implementation of recommendations was undermined by the Managing Director, who had the authority and the responsibility for oversight in this area. Mr Purcell stated:

³⁵⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 105 line 1 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁵⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 121 line 1 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁶⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 122 line 12 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁶¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 123 line 3 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

*“Again I say, the Audit Committee should have been informed of these directives and interventions. And these interventions were most likely the reasons why it was said in 2008 that the Credit Committee was adhering to its terms of reference, but there were too many exceptions”.*³⁶²

6.320 Mr Purcell summarised the position, as follows:

*“So, it appears that oversight was not carried out, and the Audit Committee should have been informed if sight [sic] was to have been carried out properly”.*³⁶³

6.321 He added:

*“Well, what I’m saying there was there was a decision made by the Internal Auditor not to inform, which I think was a very fundamental thing that he should have done, given that in 2008, especially, and even earlier, the Audit Committee were very frustrated that things were re-occurring. So, I think, that was something very important that was not done”.*³⁶⁴

6.322 Mr Purcell said that although he was conscious of persistent breaches of policies throughout the Review Period he was also informed that recommendations were being implemented and that matters were being worked on. He did however acknowledge that breaches kept recurring and they should not have recurred.³⁶⁵

6.323 The Inquiry notes that the 2004 Internal Audit Report³⁶⁶, prepared by the internal audit department, highlighted the need for increased staff. It stated: *“Staff levels should be increased as a matter of urgency”*. It identified that under-resourcing of the section and loss of critical staff was *“unsatisfactory”*.³⁶⁷ The recommendation was repeated under the heading *“Recommendations”* and the audit stated that the recommendation should be implemented immediately.

³⁶² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 123 line 11 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁶³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 124 line 13 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁶⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 125 line 4 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁶⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 145 (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁶⁶ 2004 Internal Audit Report (Doc ID: 0.7.120.430900).

³⁶⁷ 2004 Internal Audit Report, page 9 (Doc ID: 0.7.120.430900).

6.324 The 2005 Internal Audit Report³⁶⁸ also specifically identified inadequate staff levels.³⁶⁹ It stated that during busy periods between September and January, three administrative staff members in the commercial lending department was not adequate. It stated: “*Staff levels should be reviewed on a regular basis in relation to the work demands placed on the department*”.

6.325 The LPT brought Mr Purcell through the Contemporaneous Reports that made findings in relation to CMOs, as follows:

- (a) The LPT referred to the 2004 Internal Audit Report³⁷⁰ which recommended that “*Under no circumstances can a loan be advanced before the Commercial Mortgage Offer is signed*”. Mr Purcell referred to Mr Con Power’s evidence that the Audit Committee were most concerned with this finding and sought an assurance from the Managing Director that this would never happen again.³⁷¹
- (b) The LPT referred to the 2004 Belfast Internal Audit Report³⁷², which recommended: “*An advance must not be made until the CMO is signed*”. They further noted that the minutes of the Audit Committee meeting on 31 May 2005³⁷³ recorded that “*The Internal Auditor pointed out that on two occasions loan cheques were issued before the letter of offer was signed*”.³⁷⁴
- (c) The LPT asked Mr Purcell whether he agreed that further findings in respect of the same matters were made in subsequent reports, including the 2007 Belfast Internal Audit Report, the May 2008 Deloitte Review, the September 2008 Deloitte Review and the follow-up 2009 Deloitte Review. Mr Purcell responded “*...yes, there was reoccurrence of earlier recommendations, yes. And I would also point out that that report informed the Audit Committee that they were implemented and it did say who was responsible, that’s where the authority and responsibility lay*”.³⁷⁵

6.326 Mr Purcell was asked if this persistent history of failure was something he was personally aware of, to which he responded “*I was aware and I was informed as --*

³⁶⁸ 2005 Internal Audit Report (Doc ID: 0.7.120.432697).

³⁶⁹ 2005 Internal Audit Report, page 13 (Doc ID: 0.7.120.432697).

³⁷⁰ 2004 Internal Audit Report (Doc ID: 0.7.120.19474).

³⁷¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 134 line 24 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁷² 2004 Belfast Internal Audit Report (Doc ID: 0.7.120.432168).

³⁷³ Minutes of Audit Committee meeting dated 31 May 2005 (Doc ID: 0.7.120.56788).

³⁷⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 141 line 26 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁷⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 143 line 13 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

*when I attended the Audit Committee meetings that action was being taken and things were being implemented”.*³⁷⁶

6.327 At the conclusion of his evidence, Mr Purcell was asked by the Inquiry Members about the Belfast Branch and whether he was surprised at what was happening in Belfast. He stated: *“Yes, I have, I have been surprised”*. He was then asked: *“And did you have any idea at the time that Belfast was an outlier in terms of complying with policy?”*, and he responded *“I was only informed by what I saw in the documents, like internal audit reports. I mean internal audit reports was...what was there. I hadn’t any other knowledge”*.³⁷⁷

6.328 He was then asked by the Inquiry Members whether the Belfast Branch had ever arisen as an issue with the Audit Committee or with the chairperson. He said he did not recall any discussion other than a concern about the small number of people employed there, and he stated *“But Belfast was basically, and always was, reporting to Michael Fingleton”*.³⁷⁸

6.329 He was also asked by the Inquiry Members whether it seemed a bit extraordinary that the Belfast Branch was operating almost as an independent republic. The following exchange took place:

“Q. ...does it not seem a bit extraordinary to you that it [Belfast] was operating as almost an independent republic in all of this?”

A. A lot of things now, you know, are there in front of me, right. At the time I didn’t have the insight I have now.

...

I did not have. No, I thought -- remember, at the time what would have been said was how successful Belfast was. If you look at Killian’s audit reports, one of the things in it when he gives his findings he goes on about the quality -- this is in the audit report – he mentioned about the great quality of business coming from Belfast.

³⁷⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 160 line 27 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁷⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 167 line 22 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁷⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 168 line 12 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

I mean there was flooding into the Society a lot of successful arrangement fees being received. I mean Belfast was not regarded as, you know, maybe one might regard it now given what we're looking at, it was regarded as a successful story run by Fingleton and by Gary McCollum".³⁷⁹

6.330 Mr Purcell said he did not have high visibility over what happened in the Belfast Branch and a lot of what he heard in the course of the Inquiry was news to him.³⁸⁰

Mr Purcell's closing submissions

6.331 Mr Purcell provided closing submissions to the Inquiry dated 22 October 2021.³⁸¹ These submissions were to be read in conjunction with the following four documents:

- (a) Opening statement dated 30 October 2020 (Specific loans) ("Ref.1").
- (b) Witness statement dated 5 March 2021 (Context Hearing) ("Ref.2").
- (c) Response statement dated 22 April 2021 (Specific loans) ("Ref.3").
- (d) Opening statement dated 11 June 2021 (Context Hearing) ("Ref.4").

6.332 The Inquiry has outlined these submissions in Chapter 2 of this Findings Report. In respect of SPC 2, these submissions stated:

"SPC 2 Context (Ref.2 pages 9 to 12)

Paragraphs 7.966 and 7.967

The Managing Director was the link between the Credit Committee and the Board. Mr Fingleton was a member of the Credit Committee during the review period and presented the CLA's recommended by the Credit Committee to the Board for approval.

Paragraph 7.968

All the lending area managers reported to the Managing Director. The lending area managers were responsible for implementing KPMG's management letter recommendations relating to commercial lending.

³⁷⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 169 line 19 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁸⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 170 line 21 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

³⁸¹ Closing Submissions of John S Purcell, dated 22 October 2021 (Doc ID: RDU_REL623-000000016).

Paragraph 7.969

I was not responsible for following up on the implementation of internal audit recommendations that related to the commercial lending.

Paragraphs 7.971 and 7.972

I deny the allegations made in paragraphs 7.971 and 7.972.

Paragraph 7.971

The lending area managers and the Managing Director were responsible for ensuring that any representations made to the external auditors on lending area recommendations were accurate.

Paragraph 7.972

It was the duty of the commercial lending managers and the Managing Director to ensure that appropriate actions were taken to address issues in respect of approval of loans, variations to loans and CMO's".

INQUIRY FINDINGS

- 6.333 The three individual SPCs relating to SPC 2 are set out in full at paragraph 6.4 above and the SPC 2 Allegations are set out at paragraph 6.8 above.
- 6.334 As noted at paragraph 6.9 above, the SPC 2 Allegations of non-compliance by INBS with its internal policies can be grouped under the following three headings:
- (a) Failure to ensure that commercial loans were approved in accordance with internal policies and procedures.
 - (b) Failure to ensure that variations to commercial loans were approved in accordance with internal policies and procedures.
 - (c) Failure to ensure that CMOs were in compliance with its internal policies and procedures.
- 6.335 The Inquiry has made its findings under these three broad headings below. In making its findings, the Inquiry first identify the SPC 2 Allegations captured under the relevant heading. It then considers the evidence relevant to those SPC 2 Allegations and makes findings as to: (a) whether the breaches identified in the SPC 2 Allegations have been

proven as against INBS; (b) whether any non-compliance proven against INBS amounts to commission of the relevant legislative provisions and condition on INBS's authorisation identified in SPCs 2(a), 2(b) and 2(c); and (c) whether Mr Purcell participated in any breaches and commission by INBS that were found to have occurred.

FAILURE TO ENSURE THAT COMMERCIAL LOANS WERE APPROVED IN ACCORDANCE WITH INTERNAL POLICIES AND PROCEDURES

Relevant SPC 2 Allegations: SPC 2.1, SPC 2.2, SPC 2.3, SPC 2.5 and SPC 2.6

6.336 The above five SPC 2 Allegations relate to the approval process for commercial loans. They relate to allegations that loan approval was either not obtained at all or was obtained after loans and/or funds had already been advanced. The policy provisions that were suspected of having been breached in these SPC 2 Allegations are set out in the table included at Appendix 12.

Loan File Analysis

6.337 The Inquiry has summarised below the five SPC 2 Allegations and the findings made by it in respect of these SPC 2 Allegations.

SPC 2.1

6.338 SPC 2.1 concerned nine loans where it was suspected that funds were advanced without the Credit Committee approving or recommending the loan for approval and without compliance with INBS's urgent credit decision approval procedures (however Board approval was obtained for eight of the nine loans, as required).

6.339 All nine loans originated from the Belfast Branch of INBS.

6.340 The Inquiry found that of the nine loans in respect of which this allegation was made, five of the loans were not approved or recommended for approval by the Credit Committee and were not approved in compliance with the urgent credit decision approval procedures. These findings were based primarily on an examination of the Credit Committee minutes during the Review Period, which provided no evidence that the relevant loan facilities, or for one loan the additional advance, were considered by the Credit Committee or, if considered, were recommended for approval by the Credit Committee.

6.341 For four loans, the Inquiry found that the allegation in SPC 2.1 was not sufficiently supported by the documentation.

6.342 The five loans which were found to be in breach of SPC 2.1 were a mix of sterling and euro facilities totalling approximately €60.15 million. They were spread across three customers.³⁸² One customer was advanced three facilities totalling approximately £51 million.³⁸³

SPC 2.2

6.343 SPC 2.2 concerned 15 loans where it was suspected that funds were advanced where the Credit Committee did not recommend the loan for approval or approve the loan and the Board did not approve the loan (as required), and without compliance with INBS's urgent credit decision approval procedures.

6.344 The Inquiry examined 13 of the 15³⁸⁴ loans in respect of this allegation. 12 of these loans originated from the Belfast Branch of INBS and one loan originated from the Dublin office.

6.345 The Inquiry found that of the 13 loans in respect of which this allegation was made, the allegation was proven in respect of 12 of the loans. These findings were based primarily on an examination of the packs and minutes from meetings of the Credit Committee and the Board during the Review Period. The Inquiry found that there was no evidence that the Credit Committee approved the loans or recommended them for approval, no evidence that the Board approved the loans and no evidence of compliance with any urgent credit decision approval procedure.

6.346 For one loan, the Inquiry found that SPC 2.2 was not sufficiently supported by the documentation.

6.347 The 12 loans found to be in breach of SPC 2.2 were a mix of sterling and euro facilities totalling approximately €161 million. They were spread across three customers. One

³⁸² [REDACTED].

³⁸³ [REDACTED].

³⁸⁴ One of the Loan Specific Allegations, relating to Loan Account: [REDACTED] (Customer and Borrower: [REDACTED]) concerned an INBS Only Loan Allegation. Accordingly, it was not opened during the Loan Hearings and has not been considered by the Inquiry. The second Loan Specific Allegation, relating to Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]) was not opened during the Loan Hearings, in error, and accordingly has not been considered by the Inquiry.

customer³⁸⁵ was advanced seven facilities exceeding £90 million in total. Another customer³⁸⁶ was advanced four facilities exceeding £42 million in total.

SPC 2.3

6.348 SPC 2.3 concerns one loan where it is suspected that funds were advanced where Board approval was not obtained (as required) and without compliance with INBS's urgent credit decision approval procedures. This loan originated from the Belfast Branch of INBS.

6.349 The Inquiry found that the allegation was proven in respect of this loan. These findings were based on an examination of the date of the drawdown, which predated the new December 2007 Credit Committee Terms of Reference and thus required Board approval for the loan. The Credit Committee and Board meeting minutes did not show evidence of an adherence to the urgent credit decision approval procedures.

6.350 The loan which was found to be in breach of the SPC 2.3 was in the amount of €7 million.

SPC 2.5

6.351 SPC 2.5 concerns 16 loans where it is suspected that funds were advanced prior to a meeting of a quorate Credit Committee at which the loans were approved or recommended for approval and without compliance with INBS's urgent credit decision approval procedures.

6.352 The Inquiry examined 13 of the 16 loans.³⁸⁷ The 13 loans originated from the Belfast Branch of INBS.

6.353 The Inquiry found that the allegation was proven in all 13 loans examined by it. These findings were based primarily on an examination of the consolidated loan files, Credit Committee and Board meeting minutes.

6.354 The 13 loans which were found to be in breach of SPC 2.5 were a mix of sterling and euro facilities totalling approximately €325 million. They were spread across three

³⁸⁵ [REDACTED]

³⁸⁶ [REDACTED]

³⁸⁷ The Inquiry excluded the following three loans from its analysis in circumstances where these loans concerned INBS Only Loan Allegations and therefore were not opened during the Loan Hearings: Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]); Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]); and Loan Account: [REDACTED] (Customer and Borrower: [REDACTED]).

customers. One customer³⁸⁸ was advanced five facilities totalling approximately £253 million.

SPC 2.6

6.355 SPC 2.6 alleged, of the 65 loans that required and had Board approval, it is suspected that for 24 of these loans funds were advanced prior to Board approval and without compliance with INBS's urgent credit decision approval procedures.

6.356 The Inquiry examined 17³⁸⁹ loans in respect of this allegation. The 17 loans originated from the Belfast Branch of INBS.

6.357 The Inquiry found that the allegation was proven in respect of the 17 loans examined by it. These findings were based primarily on an examination of the consolidated loan file and Credit Committee and Board meeting minutes.

6.358 The 17 loans which were found to be in breach of SPC 2.6 were a mix of sterling and euro facilities totalling approximately €404 million. They were spread across four customers. One customer³⁹⁰ was advanced six facilities totalling approximately £318.4 million.

Contemporaneous Reports

6.359 The conduct that was the subject of these five SPC 2 Allegations was raised in Contemporaneous Reports during the Review Period. Full details of these Contemporaneous Reports are outlined above. In ease of the reader, the Inquiry has summarised below the findings and recommendations made in the Contemporaneous Reports relevant to these five SPC 2 Allegations.

2004 Internal Audit Report

6.360 This report found one loan (out of a sample of 20) was advanced without Credit Committee or Board approval or a signed CLA. The report recommended that "*Advances must not be made without a fully complete and authorised CLA being on*

³⁸⁸ [REDACTED]

³⁸⁹ The Inquiry excluded the following seven loans from its analysis in circumstances where these loans concerned INBS Only Loan Allegations and therefore were not opened during the Loan Hearings: Loan Account: [REDACTED] (Customer and Borrower: [REDACTED]); and Loan Account: [REDACTED] (Customer and Borrower: [REDACTED]).

³⁹⁰ [REDACTED]

file". The follow-up paper prepared by internal audit identified this recommendation as implemented.

2005 Internal Audit Report

- 6.361 This report made similar findings to the previous report notwithstanding the designation of the recommendation as being implemented by the internal auditor. Seven commercial loans (64% of the sample) did not have evidence of Board approval on the CLA.
- 6.362 This audit report recommended that "*Care must be taken to ensure all commercial loans receive credit committee and (if applicable) board approval before any monies are advanced to customers*". As indicated above, the audit log entitled "*Audit of Commercial Administration*" shows a typed in "*No*" crossed out and "*Yes*" inserted in writing in respect of this recommendation.

2006 Belfast Internal Audit Report

- 6.363 This report made a finding that out of ten accounts, three did not contain a reference to Credit Committee approval and out of five CLAs reviewed, only one had evidence of Board approval. It recommended that CLAs should be kept on the Belfast file.

2007 Belfast Internal Audit Report

- 6.364 This report made significant findings in relation to very large sums of money paid out in advance of or in the absence of Board approval. These are set out in detail at paragraphs 6.108 and 6.109 above but the level of findings identified in the audit of money being advanced without Board approval or prior to Board approval is striking. This audit report was considered by the Audit Committee and the Board, but there is no evidence from the minutes of those meetings that the findings raised any particular concerns at either meeting.

2007 Internal Audit Report

- 6.365 This report noted that out of ten loans examined, two had no evidence of Credit Committee or Board approval. Of the remaining eight loans, in four of these advances were made prior to Credit Committee approval. It was also noted that of these eight advances Board approval was given after the advance of the initial monies in three loans. From the Audit Committee meeting minutes, it does not appear that this finding was specifically discussed.

2007 KPMG Management Letter

- 6.366 This report identified four loans where there was no evidence of Credit Committee or Board approval. The Management Response was "*The Credit Committee approve [sic] commercial loans*". The minutes of the Board meeting which reviewed this Management Letter recorded no particular discussion of the finding.
- 6.367 From 17 December 2007, the Board no longer approved loans and such approval was, from that date onwards, the preserve of the Credit Committee.

May 2008 Deloitte Review

- 6.368 This report made a finding that no Credit Committee approval was present "*on a number of reviewed files, mostly relating to loans originating in Belfast*". The recommendation that such approvals should be recorded was noted as "*Implemented*" in the Management Response.

2008 Belfast Internal Audit Report

- 6.369 This report made a finding that in one case (from a sample of 20), Credit Committee approval was obtained after Board approval. It found that in 11 cases (55%), Board approval was obtained after the loan had been paid out and in nine of these cases Credit Committee approval had been obtained after the loan had been paid out. As outlined above, the internal audit response was that it was the responsibility of the drawdown and control section to ensure that all approvals have been obtained prior to actual loan payout. Management designated this finding as "*Already Implemented*".

2008 Internal Audit Report

- 6.370 This report made findings in relation to monies advanced in excess of Credit Committee approval and, in the case of three loans, monies advanced without Credit Committee approval.

September 2008 Deloitte Review

- 6.371 This report repeated the finding from the May 2008 Deloitte Review, that the Credit Committee did not consider and approve or decline all CLAs. The report noted that this issue had been raised in the May 2008 Deloitte Review and remained open. It said that a follow-up review conducted by the internal audit function identified continued exceptions to the policy. The Management Response was that the Credit Committee would continue to adhere to its terms of reference.

6.372 As outlined above, the Audit Committee requested the internal auditor to prepare a memorandum in respect of the recommendations raised in both the Deloitte reports. This report stated:

“Internal Audit believes that the Credit Committee is adhering to its Terms of Reference. However, a number of loans being advanced based on the Chief Executive’s approval only and therefore, the Credit Committee is not involved in the approval process”.

2009 Internal Audit Report

6.373 This report made findings in relation to additional advances made without appropriate approval. In one case the Credit Committee approved a £4 million additional loan but the UK general manager had issued a new loan facility of £10 million. It also identified a loan that had been advanced with no documentation other than a request from the UK general manager.

2009 Deloitte Review

6.374 This report made a similar finding to previous reports with respect to approval of loans. This report identified a number of instances where appropriate approval was not obtained from the Credit Committee.

Finding in relation to INBS - SPC 2.1, SPC 2.2, SPC 2.3, SPC 2.5 and SPC 2.6

6.375 **Having regard to their Loan File Analysis (as summarised at paragraph 6.433 et seq. above), the Inquiry finds that SPC 2.1, SPC 2.2, SPC 2.3, SPC 2.5 and SPC 2.6 are proven as against INBS.**

6.376 **The Inquiry finds that this amounted to breaches by INBS of the following legislative provisions and condition on INBS’s authorisation underpinning SPC 2(a), 2(b) and 2(c):**

(a) Regulation 16(1) of the 1992 Regulations

The Inquiry finds that the non-compliance by INBS constituted a failure to establish and maintain internal procedures, processes, systems and controls to ensure that the level of risk in the institution is monitored and managed in that its business was managed in accordance with sound administrative and accounting principles. Accordingly, the Inquiry finds that a contravention of Regulation 16(1) of the 1992 Regulations occurred.

(b) Section 76(1) of the 1989 Act

The Inquiry finds that the failure to establish proper procedures, processes and systems for conducting its business, and controls to ensure the implementation of and adherence to those procedures, processes and systems, resulted in poor risk management, ineffective governance and inefficient practices. The legal requirement is not just to have documented procedures and systems in place but rather the regulated entity must ensure implementation and adherence to the systems of control so that the institutions managed in a sound and prudent manner. INBS did not ensure implementation or adherence to systems of control with respect to the issues raised in the SPC 2 Allegations. Accordingly, the Inquiry finds that a contravention of section 76(1) of the 1989 Act occurred.

(c) Part 1 of the 2005 Regulatory Document.

The Inquiry finds that the non-compliance by INBS occurred from July 2006 and amounted to a failure to ensure that the wide range of obligations imposed by the 2005 Regulatory Document were met by INBS. Accordingly, the Inquiry finds that a contravention of Part 1 of the 2005 Regulatory Document occurred.

Finding in relation to Mr Purcell's participation - SPC 2.1, SPC 2.2, SPC 2.3, SPC 2.5 and SPC 2.6

6.377 The findings of both the Loan File Analysis and the Contemporaneous Reports raise a number of issues, as follows:

- (a) Large sums of money were paid out by INBS without Credit Committee or Board approval. The percentage of loans in the Loan File Analysis where this occurred is very high.**
- (b) It is not clear what value there was in either the Credit Committee or the Board approving a loan after the money had been paid out or the CMO had been signed. SPCs 2.2, 2.5 and 2.6 deal with these breaches and the Loan File Analysis alone shows a serious and systemic problem in this regard. As summarised at paragraph 6.337 et seq. above, in respect of SPCs 2.2, 2.5 and 2.6 the Loan File Analysis found that: 12 loans were advanced with no loan approval; 13 loans were advanced prior to Credit**

Committee approval and, very significantly, 17 loans were found to have been paid out prior to Board approval.

- (c) Almost all of these loans emanated from the Belfast Branch of INBS.
- (d) A total of 12 Contemporaneous Reports between 2004 and early 2009 flagged the issue of loans being advanced without appropriate approval.

6.378 In spite of repeated recommendations from internal and external auditors, findings of unauthorised payments continued to be made in Contemporaneous Reports throughout the Review Period. Dr Walsh, the chairman of INBS, described the findings as *“clearly very disturbing”*. He maintained that instructions from the Board and the internal Audit Committee were to ensure that such payments could not take place.

6.379 As outlined in the preceding paragraphs, the Audit Committee and the Board considered these Contemporaneous Reports and in many cases management undertook to implement recommendations. Mr Purcell attended these Audit Committee and Board meetings. He was aware that the issue of money being paid out by INBS without appropriate authorisation was recurring. His evidence to the Inquiry was: *“I was aware and I was informed as – when I attended the Audit Committee meetings that action was being taken and things were being implemented”*.

6.380 Nevertheless, persistent findings of money being paid out without approval should have raised alarm. Notwithstanding assurances given by the internal auditor in quarterly reports³⁹¹ that the recommendation that no advances would be made without authorisation, was now implemented (see paragraph 6.63 above), the continued occurrence of these findings required direct action from the Board.

6.381 Mr Purcell, who was secretary to the Audit Committee, and the other non-executive Board members, all of whom were members of the Audit Committee, would have been aware or ought to have been aware that action was not being taken to ensure that unauthorised payments ceased. On the contrary, the audits and reports from 2006 onwards show an increasing issue with these payments. The Board had a responsibility to act decisively and had the authority to impose

³⁹¹ Head Office Audits 1st Quarter 2004, 2nd Quarter 2004, 3rd Quarter 2004 and 4th Quarter 2004 (Doc ID: 0.7.120.449766).

remedial action on management. There is no evidence that the Board responded to the extremely serious findings regarding money being paid out without authorisation, in any meaningful way. In fact, the minutes of Board meetings do not record any discussion on this matter. As a member of the Board, Mr Purcell shares in responsibility for this omission.

- 6.382 As already stated, the breaches identified in both the Loan File Analysis and in the Contemporaneous Reports related almost entirely to commercial lending emanating from the Belfast Branch. Even where commercial loans were put before the Credit Committee, it is clear from the evidence heard by the Inquiry that the members of the Credit Committee did not question or scrutinise these loans to a meaningful or acceptable extent. The evidence, as presented above, is compelling and there does appear to have been an understanding with respect to Belfast lending, that the Credit Committee was not expected to scrutinise or question the decision that had already been made by Mr Fingleton and Mr McCollum to advance the facility.
- 6.383 As outlined at paragraph 6.293 above, Mr Purcell stated that the responsibility for ensuring that appropriate actions were taken to address issues in respect of approval of loans, variations to loans and CMOs rested with the commercial lending managers and the Managing Director.
- 6.384 Even allowing for the fact that Mr Purcell was not himself directly involved in commercial lending, and taking into account his submissions in relation to this SPC, he was, as a member of the Board responsible for ensuring that INBS was run in compliance with policy. It is hard to overstate the credit risk implications of lending large amounts of money with no Board or Credit Committee oversight. Mr Reilly of KPMG spelled out the risks in his testimony, outlined above. The evidence shows that money was being paid out effectively on the instructions of a single individual.
- 6.385 In addition to the clear warnings in relation to this issue coming from internal and external reviews, the Board was also engaged in correspondence with the Financial Regulator between 2004 and 2007. As has been quoted at various points throughout this Findings Report, but bears repetition here, the Financial Regulator spelt out its concerns in a letter dated 9 December 2004. This letter identified the Financial Regulator's overall concern as being the significant shift in the risk profile of INBS's overall loan portfolio in a relatively short period of

time and the failure of control mitigants to keep pace. Chapter 12 of this Findings Report outlines in full the Financial Regulator's correspondence with INBS. In considering the question of Mr Purcell's participation in SPC 2.1, SPC 2.2 and SPC 2.3, the Inquiry has had regard to this correspondence and to the evidence from the Contemporaneous Reports.

- 6.386 The Inquiry has noted the evidence of the former Financial Regulator, Dr O'Reilly (as outlined above at paragraph 6.280 et seq.) who described the difficulty the Financial Regulator had experienced in getting INBS to respond to KPMG's and the Financial Regulator's recommendations and requests.
- 6.387 Mr Purcell's response to this allegation was to accept that lending money without Credit Committee and/or Board approval and without urgent credit decision approval procedures being applied was against policy. However, he said that responsibility for this area rested with Mr Fingleton and that he relied on Mr Fingleton's assurances that action was being taken and recommendations were being implemented.
- 6.388 Mr Purcell also accepted that he was aware of the contents of both the Financial Regulatory Correspondence and Contemporaneous Reports by virtue of his role as secretary to the Audit Committee and as a Board member. In this regard, Dr Walsh's evidence in relation to the position of Mr Purcell as an attendee at Audit Committee meetings is significant. As set out at paragraph 6.272 above, Dr Walsh said that having Mr Purcell at Audit Committee meetings was valuable in the context of his role as finance director and also valuable in the context of ensuring maximum support for the internal auditor. Mr Purcell's own account of his Audit Committee attendance was that he was no more than a secretary with no responsibility for outcomes from the meetings.
- 6.389 The Inquiry believes that Mr Purcell's attendance at Audit Committee meetings informed him of issues raised in Contemporaneous Reports and Financial Regulatory Correspondence and gave him full insight into Management Responses. He had a responsibility to ensure that the Board took appropriate action and, as a Board member, he shared in the Board's responsibility for failing to so act.
- 6.390 The Inquiry accepts that the primary responsibility for dealing with these issues rested with the senior executives and the executive director with responsibility for lending, and it does take into account Mr Purcell's role in INBS.

6.391 Nevertheless, the persistent identification of a serious credit risk issue over the entire Review Period and beyond, brings the issue within his ambit of responsibility as a Board member.

6.392 For the reasons set out above, the Inquiry finds that Mr Purcell participated in the commission of SPCs 2(a), 2(b) and 2(c) by INBS in respect of SPC 2.1, SPC 2.2, SPC 2.3, SPC 2.5 and SPC 2.6.

FAILURE TO ENSURE THAT VARIATIONS TO COMMERCIAL LOANS WERE APPROVED IN ACCORDANCE WITH INTERNAL POLICIES AND PROCEDURES

Relevant Allegations: SPC 2.7, SPC 2.8, SPC 2.9 and SPC 2.10

6.393 The above four SPC 2 Allegations relate to variations to commercial loans including variations to moratoria, term extensions and variations to the amount of the loan. The policy provisions that were suspected of having been breached are set out in the table included at Appendix 12.

Loan File Analysis

6.394 An overview of the Loan File Analysis conducted by the Inquiry and the findings made by it in respect of the SPC 2 Allegations is included at Appendix 7. In ease of the reader, the Inquiry has summarised below the four SPC 2 Allegations and the findings made by it in respect of these SPC 2 Allegations.

SPC 2.7

6.395 SPC 2.7 concerned four loans in the Loan Sample where it was suspected that the funds advanced on security already held by INBS were in excess of the loan amount and additional funds were not appropriately approved.

6.396 The Inquiry examined one³⁹² loan in respect this allegation. This loan originated from the Dublin office of INBS. The Inquiry found that the allegation was proven against INBS in respect of this loan. This finding was based on an examination of the Credit Committee and Board meeting minutes and the consolidated loan files. The total funds advanced in relation to the loan which was found to be in breach of SPC 2.7 was €12,495,530.

³⁹² The Inquiry excluded the following three loans from its analysis in circumstances where these loans concerned INBS Only Loan Allegations and therefore were not opened during the Loan Hearings: Loan Account: [REDACTED] (Customer and Borrower: [REDACTED]); Loan Account: [REDACTED] (Customer and Borrower: [REDACTED]); and Loan Account: [REDACTED] (Customer and Borrower: [REDACTED]).

6.397 A loan specific participation allegation concerning SPC 2.7 was advanced against Mr Purcell in respect of this loan. The Inquiry found that there was no participation by Mr Purcell in the Loan Specific Allegation, on the basis that his signing the DAA for this loan did not amount to approval of the loan. Mr Purcell's general participation in the SPC 2.7 allegation is addressed by the Inquiry below at paragraph 6.430.

SPC 2.8

6.398 SPC 2.8 concerned three loans where it was suspected that the loan amount advanced per the CMO was in excess of the loan amount outlined in the CLA and subsequently approved by the Board and that the additional advances were not appropriately approved.

6.399 The Inquiry examined the three loans in respect of this allegation. All three loans originated from the Belfast Branch of INBS. The Inquiry found that in the case of two of the three loans, the allegation was proven. These findings were based on an examination of Credit Committee meeting minutes, CMO documentation, Board meeting minutes and, in one instance, a memorandum from Mr McCollum to the commercial lending department.

6.400 The two loans which were found to be in breach of SPC 2.8 were a mix of sterling and euro facilities totalling approximately €66.5 million. The amount by which the advance exceeded the value in the CLA were £2.5 million, and €5 million respectively.

SPC 2.9

6.401 SPC 2.9 alleged, of the 98 loans in the Loan Sample, it was suspected that 36 loans that were or ought to have been approved by the Board or Credit Committee had their term extended without appropriate approval.

6.402 The Inquiry examined 30³⁹³ loans in respect of this allegation. The 30 loans originated from the Belfast Branch of INBS. The Inquiry found that the allegation was proven in respect the 30 loans examined by it. These findings were based on an examination of the consolidated loan files, Credit Committee meeting minutes and Board meeting minutes.

³⁹³ The Inquiry excluded the following six loans from its analysis in circumstances where these loans concerned INBS Only Loan Allegations and therefore were not opened during the Loan Hearings: Loan Account: [REDACTED] (Customer and Borrower: [REDACTED]); and Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).

6.403 The 30 loans which were found to be in breach of SPC 2.9 were a mix of sterling and euro facilities totalling approximately €846,485,000. They were spread across four customers. One customer³⁹⁴ was advanced one facility totalling £245 million. Another customer³⁹⁵ was advanced nine facilities totalling £381.5 million.

SPC 2.10

6.404 SPC 2.10 concerned two loans where it is suspected the terms of the CMOs were varied in that sales proceeds from property held as security by INBS were released to the borrower, without appropriate approval.

6.405 The Inquiry examined the two loans in respect of this allegation. The two loans originated from the Belfast Branch of INBS. The Inquiry found that the allegation was proven in respect of both of the loans. These findings were based primarily on an examination of Credit Committee meeting minutes for the Review Period and the lack of evidence showing approval from the Managing Director or that amended letters of offer were prepared.

6.406 The two loans, which were found to be in breach of SPC 2.10, were sterling facilities totalling £25 million and were to the same customer.³⁹⁶

Contemporaneous Reports

6.407 The conduct that was the subject of these four SPC 2 Allegations was raised in Contemporaneous Reports before, during and after the Review Period. Full details of these Contemporaneous Reports are outlined above. In ease of the reader, the Inquiry has summarised below the findings and recommendations made in the Contemporaneous Reports relevant to these four SPC 2 Allegations.

2003 KPMG Management Letter

6.408 This Management Letter made findings that commercial lenders extended moratorium facilities without authorisation from the Credit Committee or the Board and without new signed facility letters being issued. The Management Response was that INBS's Moratoria Policy would be amended to include the recommendation that Credit Committee or Board approval would be required for all amendments to facilities (see paragraph 6.22 above); and that all amendments would result in a new signed facility

394
395
396

letter. The recommendation regarding extensions and moratoria was identified as having been implemented by the internal auditor in the document entitled “*KPMG Management Letter 2003 Update on Credit and Other Recommendations*”, which recorded that a report is submitted to the Board monthly setting out all relevant amendments. This document also identified that not all amendments result in signed new facility letters. This document was reviewed at the Board meeting on 24 February 2005.

2004 KPMG Commercial Credit Review

- 6.409 This report noted that management had agreed to the introduction of a more comprehensive policy for dealing with moratoria extensions. As outlined above, however, there is no indication that any new policy or procedure was incorporated into any control document within the organisation at that time.

2004 KPMG Management Letter

- 6.410 This Management Letter once again made a finding in relation to commercial lenders varying the terms of loans without appropriate approval and without issuing updated CMOs. This Management Letter recommends that the Credit Committee or the Board note the amendments rather than approve them. The updated Management Response was that monthly reports on term extensions were submitted to the Board and an amendment letter was issued.

2005 KPMG Management Letter

- 6.411 This Management Letter made a finding with regard to amended facility letters not being signed and authorised by all parties. KPMG acknowledged that adequate procedures were implemented in respect of the internal approval of facility amendments however the recommendation regarding obtaining a new or amended signed loan offer had not been implemented. The Management Response was that in future such amended facility letters would be signed and returned by the borrower.

2007 Internal Audit Report

- 6.412 This report referred to a sample of 20 loan accounts of which only nine had moratoria reports completed and attached to the file. The Audit Committee noted that “*Moratoria changes were being made without the necessary approval documents being completed*”.

May 2008 Deloitte Review

- 6.413 This report noted several instances of an interest rate manually changed, an instance of a variation to a loan amount that had been authorised by the Managing Director only and had not been approved by the Credit Committee, and several instances where there was a discrepancy between the amount of the loan approved and the actual loan amount. The Management Response was that going forward all amendments to original terms of a loan would have Credit Committee approval prior to pay out.
- 6.414 Following this report, INBS wrote to the Financial Regulator confirming that the Audit Committee was considering the findings of the Deloitte report and had asked the internal auditor for an update at the end of July 2008 and again at the end of January 2009. The July 2008 update confirmed that amendments to loans would receive the approval of the Credit Committee and designated this as implemented from 1 May 2008.

September 2008 Deloitte Review

- 6.415 The issues identified by Deloitte in the May 2008 Deloitte Review in respect of variations were once again identified in this report, with additional instances of discrepancies being found.
- 6.416 The September 2008 Deloitte Review also found that moratoria were not being approved by the Credit Committee as required by policy. The Management Response was that in future all moratoria extensions would be approved by Credit Committee.
- 6.417 The September 2008 Deloitte Review, once again raised the issue of amendments to approved loans not following best practice. Writing to the Financial Regulator, INBS noted that both Deloitte and internal audit had confirmed that this recommendation had not been addressed. It stated that INBS was committed to presenting all loan term amendments to the Credit Committee for approval. It also said that moratoria extensions would be approved by the Credit Committee in future.
- 6.418 The Financial Regulator wrote to INBS on 23 December 2008 and stated that the September 2008 Deloitte Review had exacerbated their concerns with regard to credit risk management, having found that certain issues previously raised by Deloitte in the May 2008 Deloitte Review remained. In addition, further issues were identified by Deloitte in the September 2008 Deloitte Review.

6.419 This report noted instances of moratoria and term extensions being communicated to customers in advance of Credit Committee approval. It also noted a number of term extensions that were granted without any approval from the Credit Committee. The Management Response was that it would ensure that appropriate Credit Committee approvals would be received.

Finding in relation to INBS - SPC 2.7, SPC 2.8, SPC 2.9 and SPC 2.10

6.420 **Having regard to their Loan File Analysis (as summarised at paragraph 6.394 et seq. above), the Inquiry finds that SPC 2.7, SPC 2.8, SPC 2.9 and SPC 2.10 are proven as against INBS.**

6.421 **The Inquiry finds that this amounted to breaches of the following legislative provisions and condition on INBS's authorisation underpinning SPC 2(a), 2(b) and 2(c):**

(a) Regulation 16(1) of the 1992 Regulations

The Inquiry finds that the non-compliance by INBS points to a failure to establish and maintain internal procedures, processes, systems and controls to ensure that the level of risk in the institution is monitored and managed and that its business was managed in accordance with sound administrative and accounting principles. Accordingly, the Inquiry finds that a contravention of Regulation 16(1) of the 1992 Regulations occurred.

(b) Section 76(1) of the 1989 Act

The Inquiry finds that the failure to establish proper procedures, processes and systems for conducting its business, and controls to ensure the implementation of and adherence to those procedures, processes and systems, resulted in poor risk management, ineffective governance and inefficient practices. The legal requirement is not just to have documented procedures and systems in place but rather the regulated entity must ensure implementation and adherence to the systems of control so that the institution is managed in a sound and prudent manner. INBS did not ensure implementation or adherence to systems of control with respect to the issues raised in the SPC 2

Allegations. Accordingly, the Inquiry finds that a contravention of section 76(1) of the 1989 Act occurred.

(c) Part 1 of the 2005 Regulatory Document.

The Inquiry finds that the non-compliance by INBS occurred from July 2006 and amounted to a failure to ensure that the wide range of obligations imposed by the 2005 Regulatory Document were met by INBS. Accordingly, the Inquiry finds that a contravention of Part 1 of the 2005 Regulatory Document occurred.

Finding in relation to Mr Purcell's participation - SPC 2.7, SPC 2.8, SPC 2.9 and SPC 2.10

6.422 The Contemporaneous Reports that deal with SPC 2.9 are the 2003, 2004 and 2005 KPMG Management Letters, the 2007 Internal Audit Report, the May 2008 Deloitte Review, the 2008 Internal Audit Report, the September 2008 Deloitte Review and the 2009 Deloitte Review. The reports that raised the issue of moratoria loans are the 2003, 2004 and 2005 KPMG Management Letters, the 2007 Internal Audit Report and the 2009 Deloitte Review.

6.423 KPMG recommended in its 2003 Management Letter that the Credit Committee or Board approve all amendments to facilities in excess of individual credit authorities. This was changed in the 2004 and 2005 KPMG Management Letters to a recommendation that the Credit Committee or Board note all amendments. In response, INBS laid a report before the Board listing all moratoria amendments and the reasons for same, with effect from November 2004 and throughout the Review Period. KPMG also recommended in all three Management Letters that all amendments to original facility agreements should result in a new facility agreement that should be signed by all parties. INBS in its response resisted the proposal that the new facility be signed by all parties, until the 2005 KPMG Management Letter when they undertook to comply with this recommendation by September 2006.

6.424 Mr Purcell confirmed to the Financial Regulator in July 2005 that two members of the Credit Committee could approve moratoria amendments. In October 2006, by Board directive, INBS introduced the requirement that all such amendments be approved by the Credit Committee.

- 6.425 During this period the Financial Regulator was in regular correspondence with INBS following up on progress in implementing the KPMG recommendations and making it clear that its preference was for INBS to accept the recommendations in full.
- 6.426 The 2003 KPMG Management Letter spelt out the credit risk implications of variations and extensions being authorised by commercial lenders with no Credit Committee or Board approval. It stated: *“Failure of lenders to seek approval... could result in inappropriate or unauthorised amendments that may increase the risk of future loss to the Society”*.
- 6.427 Mr Purcell would have been aware or ought to have been aware of the extent to which these issues in relation to the approval of these amendments were raised, both as a Board member and as an attendee at the Audit Committee meetings at which these Contemporaneous Reports were discussed. Further, as the contact person for Financial Regulatory Correspondence within INBS, he would have had an enhanced awareness of the concerns of the Financial Regulator, and therefore would have been very aware of the Regulator’s concerns.
- 6.428 Whilst undoubtedly the primary responsibility for ensuring that commercial lending was conducted in an appropriate manner rested with the executive director who had responsibility for that area within INBS, nevertheless persistent findings should have raised concerns with all Board members.
- 6.429 The Inquiry finds that in his repeated assurances to the Financial Regulator that remedial action had been taken, when in fact it appears that this was not the case, Mr Purcell as a Board member participated in SPC 2.8 and SPC 2.9.
- 6.430 With respect to SPC 2.7 and SPC 2.10, the Inquiry notes that these particular issues were not raised in Contemporaneous Reports nor in Financial Regulator Correspondence. Accordingly, the Inquiry cannot make a finding that Mr Purcell was aware of the occurrence of the issues in SPC 2.7 and SPC 2.10 and therefore the Inquiry finds that Mr Purcell did not participate in these SPC Allegations. This includes a Loan Specific Allegation made against Mr Purcell in respect of SPC 2.7 that he had signed a DAA authorising payment in respect of one of these advances.

6.431 The Inquiry finds that Mr Purcell participated in the commission by INBS of SPC 2(a), 2(b) and 2(c) in respect of SPC 2.8 and SPC 2.9, for the reasons set out above. However, the Inquiry finds that Mr Purcell did not participate in the commission by INBS of SPC 2(a), 2(b) and 2(c) in respect of SPC 2.7 and SPC 2.10, for the reasons set out above.

FAILURE TO ENSURE THAT CMOs WERE IN COMPLIANCE WITH ITS INTERNAL POLICIES AND PROCEDURES

Relevant Allegations: SPC 2.12; SPC 2.13; SPC 2.14 and SPC 2.16

6.432 The above four SPC 2 Allegations relate to the issuing of the CMO to the borrower. The policy provisions that were suspected of having been breached are set out in the table included at Appendix 12.

Loan File Analysis

6.433 An overview of the Loan File Analysis conducted by the Inquiry and the findings made by it in respect of the SPC 2 Allegations is included at Appendix 7. In ease of the reader, the Inquiry has summarised below the four SPC 2 Allegations and the findings made by it in respect of these SPC 2 Allegations.

SPC 2.12

6.434 SPC 2.12 concerned eight loans in the Loan Sample where it is suspected the CMO did not reflect the terms on which the loan was approved, in that the terms outlined in the CLA and approved by the Board differed to the terms outlined in the CMO.

6.435 The Inquiry examined seven loans³⁹⁷ in respect of this allegation. The seven loans originated from the Belfast Branch of INBS. The Inquiry found that of the seven loans in respect of which this allegation was made, the allegation was proven in respect of one of the loans. This finding was based primarily on an examination of the CLAs, relevant loan documents, drawdowns and Credit Committee and Board meeting minutes.

6.436 For six loans, the Inquiry found that SPC 2.12 was not proven as against INBS.

³⁹⁷ The Inquiry excluded Loan Account: [REDACTED] (Customer: [REDACTED] Borrower: [REDACTED] Limited) from its analysis in circumstances where this loan concerned an INBS Only Loan Allegation and therefore was not opened during the Loan Hearings.

6.443 The Inquiry examined the two loans in respect of which this allegation was made. The two loans originated from the Belfast Branch of INBS. The Inquiry found that for one of the loans the allegation was proven. This finding was based primarily on an examination of the amended CLA and the lack of Credit Committee meeting minutes. For the other loan, the Inquiry found that the SPC 2.14 Allegation was not sufficiently supported by the documentation.

6.444 The loan which was found to be in breach of SPC 2.14 was a sterling facility totalling £42.5 million.

SPC 2.16

6.445 SPC 2.16 concerned five loans in the Loan Sample where it is suspected that the CMO was not appropriately signed by INBS.

6.446 The Inquiry examined five loans in respect of this allegation. The five loans originated from the Belfast Branch of INBS. The Inquiry found that the allegation was proven in respect of all five loans. These findings were based primarily on an examination of the CMO documents. The five loans which were found to be in breach of SPC 2.16 were sterling facilities totalling approximately £289.5 million. They were spread across three customers.⁴⁰² One customer was advanced one facility totalling £245 million.⁴⁰³

Contemporaneous Reports

6.447 As outlined in detail above, issues relating to CMOs were raised in Contemporaneous Reports and in Financial Regulatory Correspondence throughout the Review Period. In ease of the reader, the Inquiry has summarised below the findings and recommendations made in the Contemporaneous Reports relevant to the four SPC 2 Allegations.

2004 Internal Audit Report

6.448 This report made a finding that in respect of one file from a sample of 20, there was no letter of offer signed by commercial lending or by the customer. The report stated: "*This appears to be an isolated incident*". Internal audit recommended that under no circumstances can a loan be advanced before the CMO is signed. A document

402

403

prepared by the internal audit department listed this recommendation as “implemented”.

2004 Belfast Internal Audit Report

- 6.449 This report found that two transfers had been made before the CMO was signed. This was identified as a serious control weakness and it was recommended that an advance must not be made until the CMO is signed.

2005 Internal Audit Report

- 6.450 This report made a finding that one CMO from the sample of 11 was signed but undated. This report made a recommendation that the customer must sign the CMO before they received their advance. This was reiterated at the Audit Committee meeting on 11 April 2006 and was followed up on in an email from Mr McMahon to Mr McMenamin stating that a CMO must be in the loan file before an advance was made.

2007 Belfast Internal Audit Report

- 6.451 This report made a finding that in respect of one advance of £7 million, the CMO had not been signed by an appropriate representative of INBS.

May 2008 Deloitte Review

- 6.452 This report noted several instances where there was a discrepancy between the amount of the loan approved by the Board or Credit Committee, and the actual loan amount.
- 6.453 Several instances were also found where the date of the CMO was earlier than Credit Committee or Board approvals. The Management Response was that the application process would be undertaken before a CMO was issued. The Audit Committee considered the May 2008 Deloitte Review, which noted seven “*priority one*” findings. Finding number four was: “*The loans approved procedures are not performed in the correct sequence*”.
- 6.454 The internal audit department’s review on the implementation of the recommendations of the May 2008 Deloitte Review noted that “*The application process, including the completion of the CLA, should be undertaken before a signed loan offer is issued*”.

September 2008 Deloitte Review

- 6.455 This report noted “*several cases*” where the application date on the CLA was later than the letter of offer signed by the customer. The Management Response was to ensure that the application process would be undertaken before a signed loan offer was issued. This report made a new finding with regard to the signing of CMOs. It noted that CMOs issued by the Belfast Branch were only signed by one employee.
- 6.456 In his report on the implementation of the recommendations from the May 2008 and September 2008 Deloitte Reviews, the internal auditor noted, with respect to the finding that loan approval procedures were not being performed in the correct sequence, that loan offers were still being issued prior to Credit Committee approval and that the current status of this recommendation was that it was scheduled for implementation on 31 October 2008.
- 6.457 With regard to the signing of loan offers the internal auditor confirmed that two persons now signed loan offers in the Belfast Branch.
- 6.458 In a letter dated 12 December 2008 from INBS to the Financial Regulator, INBS set out the view of the Board with regard to the findings in the Deloitte Reviews of May 2008 and September 2008. In relation to the finding that “*loans approved procedures are not performed in the correct sequence*”, INBS stated that Deloitte could not test whether this recommendation had been addressed due to the lack of new and additional loans underwritten between June and August 2008. It said that internal audit had discussed the recommendation with commercial lending managers to ensure the application process was followed prior to the issue of the signed loan offer.

2009 Internal Audit Report

- 6.459 This report made findings with respect to loans being advanced without appropriate approval, namely without Credit Committee approval, and other issues whereby one or two people were purporting to approve certain loans. It made a finding of a loan being advanced without signed documentation. The INBS Management Response was that the drawdown and control section would ensure that there was proper approval for all pay outs.

2009 Deloitte Review

- 6.460 This report made a finding that in several cases the application date on the CLA was later than the letter of offer signed by the customer. It also noted several instances

where the date of the letter of offer was earlier than the Credit Committee or Board approvals. Once again, Deloitte recommended that the application process including the completion of the CLA, should be undertaken before a signed loan offer is issued. Management responded by saying it would continue to ensure that this recommendation was implemented.

Finding in relation to INBS - SPC 2.12; SPC 2.13; SPC 2.14 and SPC 2.16

6.461 **Having regard to their Loan File Analysis (as summarised at paragraph 6.433 et seq. above, the Inquiry finds that SPC 2.12; SPC 2.13; SPC 2.14 and SPC 2.16 are proven as against INBS.**

6.462 **The Inquiry finds that this amounted to breaches of the following legislative provisions and condition on INBS's authorisation underpinning SPC 2(a), 2(b) and 2(c):**

(a) Regulation 16(1) of the 1992 Regulations

The Inquiry finds that the non-compliance by INBS points to a failure to establish and maintain internal procedures, processes, systems and controls to ensure that the level of risk in the institution is monitored and managed and that its business was managed in accordance with sound administrative and accounting principles. Accordingly, the Inquiry finds that a contravention of Regulation 16(1) of the 1992 Regulations occurred.

(b) Section 76(1) of the 1989 Act

The Inquiry finds that the failure to establish proper procedures, processes and systems for conducting its business, and controls to ensure the implementation of and adherence to those procedures, processes and systems, resulted in poor risk management, ineffective governance and inefficient practices. The legal requirement is not just to have documented procedures and systems in place but rather the regulated entity must ensure implementation and adherence to the systems of control so that the institution is managed in a sound and prudent manner. INBS did not ensure implementation or adherence to systems of control with respect to the issues raised in the SPC 2 Allegations. Accordingly, the Inquiry finds that a contravention of section 76(1) of the 1998 Act occurred.

(c) Part 1 of the 2005 Regulatory Document.

The Inquiry finds that the non-compliance by INBS occurred from July 2006 and amounted to a failure to ensure that the wide range of obligations imposed by the 2005 Regulatory Document were met by INBS. Accordingly, the Inquiry finds that a contravention of Part 1 of the 2005 Regulatory occurred.

Finding in relation to Mr Purcell's participation - SPC 2.12; SPC 2.13; SPC 2.14 and SPC 2.16

- 6.463 With respect to the four SPC 2 Allegations relating to the CMO process, the Inquiry finds that Mr Purcell could not be deemed to have participated in SPC 2.12, SPC 2.14 or SPC 2.16. The Loan File Analysis indicates that the allegations in SPC 2.12, SPC 2.14 and SPC 2.16 do not appear to have been recurring or systemic problems in INBS. The Contemporaneous Reports do not identify them with sufficient clarity to have alerted Mr Purcell to such an extent that he should have looked beyond the assurances given to him by the Managing Director that matters raised by internal audit or by Deloitte would be dealt with.
- 6.464 Mr Purcell, in his role as finance director, would not be expected to have knowledge of individual CMOs and he was entitled to rely on the assurance of the Managing Director that, insofar as this was raised as an issue, it would be dealt with appropriately.
- 6.465 SPC 2.13 is more difficult to determine. The Loan File Analysis indicates that for a very significant number of the loan files, CMOs were issued prior to appropriate approvals. Based on the Loan File Analysis, this was a systemic and recurring issue in INBS. Providing a CMO to a borrower without prior approval from either the Credit Committee or the Board was a fundamental breakdown in credit risk management and represented a serious risk to INBS.
- 6.466 When the issue was first raised in the 2004 Internal Audit Report, the 2004 Belfast Internal Audit Report and the 2005 Internal Audit Report, it was raised by the internal Audit Committee and assurances were then given that CMOs would not be issued before appropriate approval. The issue did not arise again until the May and September 2008 Deloitte Reviews. These reports did not directly state that CMOs were being issued without approval but used a form of words,

“loans approved procedures are not performed in the correct sequence”, which do not reflect the seriousness of the breach.

- 6.467 The Inquiry does not believe that in the context of Mr Purcell’s role in INBS that he can, on balance, be found to have participated in SPC 2.13.
- 6.468 Accordingly, for the reasons set out above, the Inquiry finds that Mr Purcell did not participate in the commission by INBS of SPCs 2(a), 2(b), 2(c), in respect of SPC 2.12; SPC 2.13; SPC 2.14 and SPC 2.16.

CHAPTER 7

SPC 3

INTRODUCTION

7.1 SPC 3 concerns a suspected failure by INBS to ensure: that security (including personal guarantees) for commercial loans was obtained; that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced; that LTV limits were adhered to; and where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies.

7.2 The three individual SPCs are as follows:

SPC 3(a)

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that LTV limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 3(b)

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that LTV limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to establish and maintain systems of

control of its business and records, and systems of inspection and report thereon, as required by section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 3(c)

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that LTV limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of the SPC.

SPC 3 ALLEGATIONS

7.3 The following five allegations of non-compliance by INBS with its internal policies were advanced by the Investigation Report in respect of SPC 3¹:

- (a) SPC 3.1 alleged that there were loans that were unsecured during the Review Period.
- (b) SPC 3.2 alleged that in the context of borrowers that were private companies, personal guarantees from the individuals who owned or controlled the companies and/or joint and several guarantees where there was more than one main director, were not obtained.
- (c) SPC 3.3 alleged that a valuation report on the asset(s) used as security for a loan was not received by INBS before all or part of the loan was advanced.

¹ The SPC 3 Allegations are summarised in Chapter 8, paragraph 8.5, of the Investigation Report (Doc ID: RDU_REL-00000032) and are outlined in full in Consolidated Tables C3.1 to C3.5 and C3.25 to C3.27 (Doc ID: RDU_REL1600-00000108; RDU_REL1600-00000109; RDU_REL1600-00000110; RDU_REL1600-00000111; RDU_REL1600-00000112; RDU_REL1600-00000132; RDU_REL1600-00000133; RDU_REL1600-00000134).

- (d) SPC 3.4 alleged that commercial loans were advanced where it was suspected that the LTV was greater than the maximum applicable LTV percentage set out in INBS's internal policies.
- (e) SPC 3.5 alleged that where loans exceeded the maximum applicable LTV set out in the relevant lending policy, INBS failed to ensure that those exceptions were formally approved as exceptions in accordance with internal policy, for the 30 loans that there was an exception to policy.

7.4 The applicable procedures and policy provisions relevant to each SPC 3 Allegation are set out in the table at Appendix 13 and are dealt with as appropriate under each SPC Allegation.

RELEVANT INFORMATION AND SOURCES OF EVIDENCE

7.5 In addressing the SPC 3 Allegations, the following information and sources of evidence were considered by the Inquiry:

- (a) Relevant INBS policy documents.
- (b) The Loan File Analysis (carried out by the Inquiry in Chapter 4 of this Findings Report).
- (c) Contemporaneous Reports (including relevant corporate governance documentation and Financial Regulator Correspondence).
- (d) Other relevant documentary evidence (in particular correspondence with IBRC).
- (e) Interview evidence² (from individuals interviewed by Enforcement in the course of its Investigation), which was opened to witnesses.
- (f) Witness evidence.
- (g) Mr Purcell's replies to Investigation Letter.
- (h) Mr Purcell's submissions.³

² Interviews were conducted by Authorised Officers of the Central Bank during the period February 2013 to January 2014 to assist with the Investigation. Transcripts of these interviews were provided to the Inquiry.

³ As outlined in Chapter 2, paragraph 2.5, Mr Purcell represented himself during the Inquiry and accordingly made written and oral submissions to the Inquiry, in addition to and distinct from the evidence he provided under oath and in his witness statements.

- (i) Mr Purcell's evidence to the Inquiry.

SPC 3.1

- 7.6 SPC 3.1 alleged that there were loans that were unsecured during the Review Period.

Relevant INBS policy document

- 7.7 The applicable policy cited in the Investigation Report in respect of SPC 3.1 was the 28 February 2007 Commercial Mortgage Lending Policy, which stated:

"The Society's policy is that all facilities are secured and that we take the maximum available security".⁴

Loan File Analysis

- 7.8 Consolidated Table C3.1 identified three loans in the Loan Sample in respect of which it was alleged there was no security.
- 7.9 The Inquiry examined these three loans. The three loans were to the same customer⁵ but for three separate projects. They were drawn down in May, August and September 2007 and the total facility involved was for €43,525,000. The Inquiry found that in each case, the loan was unsecured as it had been secured on property that had not yet been purchased. In two cases, the loans were presented to the Board as facilities to purchase specific properties, which never materialised. A third loan for €5 million was what can be described as a 'hunting line' to purchase a property that had not yet been identified to a well-known customer of INBS.

Contemporaneous Reports and Financial Regulator Correspondence

- 7.10 The allegation that commercial loans were not secured was not raised in the Contemporaneous Reports or in the Financial Regulator Correspondence during the Review Period.

Interview evidence

- 7.11 The issue of unsecured lending was not raised during the interviews conducted by Enforcement in the course of its Investigation.

⁴ 28 February 2007 Commercial Mortgage Lending Policy, page 7 (Doc ID: 0.7.120.27792).

⁵ [REDACTED]

Witness evidence and Mr Purcell's evidence to the Inquiry

- 7.12 The issue of unsecured lending was not raised with any witnesses or with Mr Purcell in the course of the SPC 1 to 4 Context Hearings.

INQUIRY FINDING – SPC 3.1

Finding in relation to INBS

- 7.13 The Inquiry finds that the three allegations of unsecured lending identified in the loan files were a breach of policy and were proven as against INBS. Looking at the particular circumstances of two of the loans, the Inquiry is satisfied that the clear intention was that the loan would be secured on the property to be purchased, however the purchase could not be proceeded with. In the third case, the loan of €5 million was advanced without any specific property in mind, but again the intention was to secure the loan once the property was purchased.
- 7.14 With regard to the legislative provisions and condition on INBS's authorisation underpinning SPC 3(a), 3(b) and 3(c), the Inquiry finds as follows:

(a) Regulation 16(1) of the 1992 Regulations

The Inquiry finds that the instances identified in the Loan Sample, in the absence of any other instances of this occurring, did not in themselves point to a failure by INBS to manage its business in accordance with sound administrative and accounting principles or a failure to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed. Accordingly, the Inquiry does not find that a contravention of Regulation 16(1) of the 1992 Regulations occurred.

(b) Section 76(1) of the 1989 Act

The Inquiry finds that the instances identified in the Loan Sample did not amount to a failure by INBS to establish and maintain systems of control of its business and records, and systems of inspection and report thereon. Accordingly, the Inquiry does not find that a contravention of section 76(1) of the 1989 Act occurred.

(c) Part 1 of the 2005 Regulatory Document

The Inquiry finds that the instances identified in the Loan Sample did not amount to a failure by INBS to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. Accordingly, the Inquiry does not find that a contravention of Part 1 of the 2005 Regulatory Document occurred.

Finding in relation to Mr Purcell's participation

7.15 In light of the above findings in relation to INBS, the allegation of participation by Mr Purcell falls away.

SPC 3.2

7.16 SPC 3.2 alleged that in the context of borrowers that were private companies, personal guarantees from the individuals who owned or controlled the companies and/or joint and several guarantees where there was more than one main director, were not obtained.

Relevant INBS policy documents

7.17 The applicable policies cited in the Investigation Report in respect of SPC 3.2 were:

- (a) the April 2003 Credit Risk Policy⁶;
- (b) the UK Version of the April 2003 Credit Risk Policy⁷;
- (c) the 9 November 2004 Commercial Lending Criteria⁸;
- (d) the 2006 Notes on the Implementation of Impairment Provisioning Policy⁹;
- (e) the 28 February 2007 Commercial Mortgage Lending Policy¹⁰;
- (f) the 27 June 2007 Credit Risk Management Policy¹¹;
- (g) the 2007 Notes on the Implementation of Impairment Provisioning Policy¹²;

⁶ April 2003 Credit Risk Policy, page 8 of 28 et seq. (Doc ID: 0.7.120.478217).

⁷ UK Version of the April 2003 Credit Risk Policy (Doc ID: 0.7.120.622022).

⁸ 9 November 2004 Commercial Lending Criteria (Doc ID: 0.7.120.450329).

⁹ 2006 Notes on the Implementation of Impairment Provisioning Policy (Doc ID: 0.7.120.449946).

¹⁰ 28 February 2007 Commercial Mortgage Lending Policy (Doc ID: 0.7.120.27792).

¹¹ 27 June 2007 Credit Risk Management Policy (Doc ID: 0.7.120.431329).

¹² 2007 notes on the Implementation of Impairment Provisioning Policy (Doc ID: 0.7.120.449696).

- (h) the December 2007 Commercial Mortgage Lending Policy¹³; and
- (i) the 21 April 2008 Commercial Mortgage Lending Policy.¹⁴

7.18 The April 2003 Credit Risk Policy and the UK Version of the 2003 Credit Risk Policy firstly set out the purpose of the credit policy, as follows:

“The purpose of this credit policy is to provide a set of guidelines to ensure that all credits put forward meet minimum pre-agreed standards. In considering any proposition Irish Nationwide must have regard to the Borrower, the purpose, the amount, the repayment period and capacity, the security and the profitability of the lending.

...

Although these are only guidelines, it remains critical to ensure that all risks are recognised and appropriate steps taken, as in considering a credit facility the Society is put at risk. The responsibility to ensure compliance with the credit policy lies with the underwriter and ultimately a Senior Commercial Lender, Home Loans Manager and the UK Branch Manager.¹⁵

The policy is not exhaustive and merely reflects our current position and prudence in a credit policy, which is understood by the Branch Manager and lending officers. There will be occasions when a proposal will not fit the criteria set out herein, however, under the circumstance the proposal will be prepared for submission to Senior Management by a Senior Commercial Lender or the Homes Loans Manager.

With regard to under writing the Society places a strong emphasis on its existing customers repayment capacity and every effort is made to maximise the security it receives. Where the customer has existing loan facilities, cross charging of securities is possible”.

7.19 The policies went on to state under the heading “Borrower”:

“In the case of a corporate entity, we consider the standing of the principles/directors. The Society can not have recourse, in law, to the individual in a corporate lending unless he is a Guarantor. When lending to a corporate

¹³ December 2007 Commercial Mortgage Lending Policy (Doc ID: 0.7.120.450156).

¹⁴ 21 April 2008 Commercial Mortgage lending Policy (Doc ID: 0.7.120.448318).

¹⁵ Reference to the ‘UK Branch Manager’ is included in the UK Version of the April 2003 Credit Risk Policy only.

entity, the Society would therefore normally require that principles/directors guarantee the loan”.

7.20 These policies stated under the heading “Security”:

“The Society’s policy is that all facilities are secured and that the Society takes the maximum available security.

...

Personal guarantees: *In all cases where the borrower is a private company, the security should include a personal guarantee from the individual who owns or controls the company. If there was more than one main director, joint and several guarantees should be taken”.*

7.21 This provision is repeated in the 28 February 2007 Commercial Mortgage Lending Policy, the 27 June 2007 Credit Risk Management Policy, the December 2007 Commercial Mortgage Lending Policy and the 21 April 2008 Commercial Mortgage Lending Policy.

7.22 The 2006 Notes on the Implementation of Impairment Provisioning Policy stated:

“Collateral and Guarantees

It is the policy of the Society to ensure that all lending is secured on property located either in Ireland, the UK or the EU. Additionally, it is the policy of the Lenders to seek as much collateral and security for each loan as is possible in every instance. This added security is achieved through the use of the following:

...

Guarantees

In the case of Limited Companies, separate and singular guarantees should be sought from the directors of such companies for the full amount of the loan”.

7.23 This provision was repeated in the 2007 Notes on the Implementation of Impairment Provisioning Policy.

7.24 As outlined previously, the Inquiry has determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending

between November 2004 and February 2007, and so the Inquiry has not had regard to the provisions of same.

7.25 In INBS policy there was a strong emphasis on the quality of the individual client, for example, page 6 of the 27 June 2007 Credit Risk Management Policy¹⁶ stated:

“The Society’s strategy seeks to exploit its built up experience in its chosen markets and focuses on identifying opportunities where there is repeat business with successful clients. In this regard, the Society is involved with quality clients e.g. long established property developers, with expertise in purchasing and recognising value. It is this spread of expertise among its borrowers, which has given the Society and appreciation of the market in which it operates. The Society has developed a very strong niche market, particularly in the UK, by dealing with high net worth customers who have a proven record of success”.

7.26 This strategy of dealing with high net worth individuals was emphasised by former Board members and by former employees of INBS. The Project Harmony Report¹⁷, the due diligence report prepared in 2007 by KPMG in anticipation of a trade sale of INBS, identified this element of the INBS’s strategy. It stated at page 138:

“Credit history

- *Society’s stated preference is to deal with high net worth individuals who have a proven track record in past and present projects and where there is actual value and obvious potential in what is proposed at the outset*
- *Society has built its commercial lending portfolio on customer loyalty and relationships developed over time. A substantial part of the Society’s lending is repeat business with high net worth individuals. It is the Society’s aim to further develop these relationships in a profitable manner”.*

Loan File Analysis

7.27 Consolidated Table C3.2 identified 62 loans in the Loan Sample in respect of which it was alleged that personal guarantees had not been obtained. Although Consolidated

¹⁶ 27 June 2007 Credit Risk Management Policy, page 6 (Doc ID: 0.7.120.431329).

¹⁷ Project Harmony Report, KPMG Vendor due diligence report, dated 20 June 2007 (Doc ID: 0.7.120.55785).

Table C3.2 cited the 9 November 2004 Commercial Lending Criteria as an applicable policy in respect of 31 of these loans, in all cases other applicable policies were also cited and the Inquiry was able to assess these loans against the other policies cited and make a finding accordingly.

- 7.28 The Inquiry found that INBS had been in breach of policy by failing to obtain a personal guarantee from the director(s) of a borrower who was a private company in 60 of the 62 loan files identified. The Inquiry made its finding with respect to a failure to acquire personal guarantees by examining the CLA, the CMO, the Board meeting minutes, the Credit Committee meeting minutes and the loan file for each loan. Where no reference to a personal guarantee was found in any of these documents, the Inquiry concluded that on the balance of probabilities a personal guarantee had not been sought or acquired from the borrower. In one case¹⁸, a corporate guarantee had been obtained and the Inquiry did not make an adverse finding in those circumstances. In another case¹⁹, the SPC 3.2 Allegation was pursued against INBS only and so it was not opened during the SPC 1 to 4 Loan Hearings and therefore was not considered by the Inquiry.
- 7.29 The 60 loans were mainly to two large commercial customers of INBS. One customer, [REDACTED], received 22 of these loans. A second customer [REDACTED], received 32 loans. The other loans were to three separate customers.²⁰ One loan was in the sum of £245 million.²¹ 59 of the loans emanated from the Belfast Branch of INBS and one²² was from the Dublin office.
- 7.30 Fifty nine²³ of the 60 loans were loans with supplementary fee arrangements (Profit Share Loans). These were loans in which INBS was entitled to participate in the profits of the development or venture.
- 7.31 The 2004 KPMG Commercial Credit Review²⁴, identified characteristics of these loans that, in their view, gave rise to enhanced risk for INBS. These included:
- (a) Full capital and interest or capital moratorium.

¹⁸ See minutes of Board meeting, dated 29 November 2006, page 7 relating to [REDACTED] Loan Account: [REDACTED] (Doc ID: 0.7.120.23075).

¹⁹ Loan Account [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).

²⁰ [REDACTED] and Mr [REDACTED].

²¹ Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).

²² Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).

²³ Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]) did not reference a fee arrangement.

²⁴ 2004 KPMG Commercial Credit Review, dated 28 October 2004 (Doc ID: 0.7.120.735064).

- (b) 100% funding.
- (c) High LTV ratios.

- 7.32 A capital and interest moratorium meant that no capital or interest was paid during the life of the loan. This raised two risks. The first, allied to an already high LTV which could be up to 100%, meant the ratio further declined from day one potentially into negative cover. The second was a lack of ability to monitor problems with the loan other than by direct contact with the borrower and the project.
- 7.33 A high LTV may be acceptable in circumstances where a strong guarantee is provided. It may also be acceptable to dispense with a guarantee in the event that a low LTV provides the required cover. High levels of risk arise in circumstances of loans being granted with a combination of high LTV and no personal guarantee. In circumstances where property is offered as the only security, the entirety of the loan is exposed to a reduction in the market value of the property.
- 7.34 The 59 Profit Share Loans were therefore all exposed to these enhanced risks, whereby INBS was dependent on the asset for repayment and was therefore very exposed to a market downturn.
- 7.35 By 2007, the Project Harmony Report²⁵ stated that Profit Share Loans, which incorporated all the risk factors outlined above, accounted for over 65% of total commercial lending and Mr Purcell, in a letter to the Financial Regulator dated 26 September 2008²⁶, confirmed that over €6 billion or 65% of INBS's commercial book consisted of such loans.
- 7.36 Thirty two loan specific participation allegations were advanced against Mr Purcell in respect of this SPC Allegation. Consolidated Table C3.25²⁷ set out the basis for these allegations. It stated:

“Of the 62 loans where it is suspected that, in the context of Borrowers that were private companies, personal guarantees from the individuals who owned or controlled the companies and/or joint and several guarantees where there was more than one main director were not obtained (see Table C3.2), 35 loans were approved by the Board. For 32 of these 35 loans the CLA indicated the

²⁵ Project Harmony Report, KPMG Vendor due diligence report, dated 20 June 2007 (Doc ID: 0.7.120.55785).

²⁶ Letter from Stan Purcell, INBS, to Con Horan, Financial Regulator, dated 26 September 2008 (Doc ID: 0.7.120.443275).

²⁷ Consolidated Table C3.25 (Doc ID: RDU_REL1600-00000132).

loan was to a private company and personal guarantees or joint and several guarantees were not listed as part of the security for the loan on the CLA. Mr Purcell was in attendance at the Board meetings where these 32 loans were approved”.

7.37 Mr Purcell’s alleged participation in this SPC Allegation was based on the fact that he had attended Board meetings at which CLAs for the 32 loans had been presented and approved where there was evidence that a personal guarantee had not been obtained. In addition, Mr Purcell had signed the CLA on behalf of the Board in respect of 23 of these loans. The Inquiry found that for 31²⁸ of these 32 loans, INBS had failed to acquire personal guarantees from director(s) of private companies and that Mr Purcell had participated in the authorisation of these 31 loans without a personal guarantee from corporate borrowers.

Contemporaneous Reports

7.38 Four Contemporaneous Reports referred to the issue of personal guarantees. However, in three of these reports the concern related to the failure to maintain a central database of guarantees.²⁹ Only one report, the 2008 Belfast Internal Audit Report³⁰, made a finding that personal guarantees were not obtained.

2008 Belfast Internal Audit Report

7.39 This report stated:

“Loan Documentation

A number of deficiencies were noted in the documentation held on file in respect of a sample of 10 accounts:

- *...Only one of these loans had a requirement per the Commercial Mortgage Offer for the directors of the companies to provide a personal guarantee...*
- *For two (20%) of the loans, there were no guarantee agreements attached to the loan files. For three (30%) loans, the guarantee*

²⁸ The Inquiry did not make an adverse finding against INBS in respect of Borrower: [REDACTED]

[REDACTED] Loan Account: [REDACTED]

²⁹ 2004 KPMG Commercial Credit Review (Doc IDs: 0.7.120.735064, 0.7.120.735059, 0.7.120.735075 and 0.7.120.735070); 2007 Internal Audit Report (Doc ID: 0.7.120.31185) and 2007 Belfast Internal Audit Report (Doc ID: 0.7.120.431666).

³⁰ 2008 Belfast Internal Audit Report (Doc ID: 0.7.120.431794).

*agreements attached to the file did not fully meet the requirements of the signed Commercial Mortgage Offer”.*³¹

7.40 The internal audit department’s recommendation in respect of this finding was:

*“The Belfast Branch manager must ensure that all required documentation has been received from the customers and attached to the appropriate loan file in line with the requirements of the Commercial Mortgage Lending policy...”*³²

7.41 The report also noted two exceptions in relation to CMO terms and conditions, one of which related to the absence of personal guarantees on the customer’s file:

“The following exceptions were noted when examining whether the terms and conditions of a sample of 20 Commercial Mortgage Offers had been satisfied:

...

- *...For 2 loans (10%), personal guarantees have not been attached to the customer’s file. However, these are held as part of the security documentation by Howard Kennedy in all cases where they are a requirement”.*³³

7.42 The recommendation made in relation to this finding was that CMOs should contain all necessary terms and conditions (including by implication personal guarantees) and that evidence of same should be attached to the loan file.

7.43 This report was discussed at the Audit Committee meeting on 12 September 2008³⁴, the minutes of which recorded:

“The Committee noted the main weaknesses in the control environment. The internal auditor said the recommendations were being worked on and a number were already in place”.

7.44 These meeting minutes were circulated to the Board in advance of its meeting held on 12 December 2008³⁵, but there was no reference to, or action arising from, the finding cited in the 2008 Belfast Internal Audit Report.

³¹ 2008 Belfast Internal Audit Report, page 10 (Doc ID: 0.7.120.431794).

³² 2008 Belfast Internal Audit Report, page 10 (Doc ID: 0.7.120.431794).

³³ 2008 Belfast Internal Audit Report, page 12 (Doc ID: 0.7.120.431794).

³⁴ Minutes of Audit Committee meeting, dated 12 September 2008 (Doc ID: 0.7.120.56436).

³⁵ Minutes of Board meeting, dated 12 December 2008 (Doc ID: 0.7.120.21207).

Relevant documentary evidence - correspondence with IBRC

- 7.45 By letter dated 2 July 2019³⁶, the Inquiry directed IBRC to seek a copy of any guarantees in existence from INBS's former solicitors, in respect of the 62 borrowers and related loan accounts where an allegation of not obtaining personal guarantees had been made. The Inquiry provided IBRC with a schedule of the relevant loans.
- 7.46 IBRC's response, dated 13 September 2019³⁷, provided responses from four of the six law firms contacted. These included Howard Kennedy in London. The two firms that did not respond to IBRC's request were based in Milan and Paris respectively. The four firms that did respond accounted for 42 of the 62 loans identified. All four law firms confirmed that they checked their records and they did not retain any personal guarantees relating to the transaction(s) identified in the letters addressed to them.
- 7.47 IRBC confirmed that they would provide any further responses from the two outstanding firms once received, but no further correspondence has been provided.

Witness evidence

Brian Fitzgibbon

- 7.48 From October 2004 to April 2005, Mr Fitzgibbon was seconded from his role as branch development manager to commercial review manager. Mr Fitzgibbon gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 11 June 2021. He was asked if he recalled the April 2003 Credit Risk Policy which stated that maximum security should be obtained including, if possible, a personal guarantee. He said that he did not recall the policy and that he did not believe that it was something he looked for when he conducted commercial loan reviews. In relation to the policy requirement that maximum security should be obtained including, if possible, a personal guarantee, he stated:

"If we had a loan to value of 20% or less than 50%, a credit decision would have been made that a personal guarantee would not be required because you were well covered."

³⁶ Letter from RDU to Kieran Wallace and Eamonn Richardson (Special Liquidators of IBRC), dated 2 July 2019 (Doc ID: RDU_REL365-000000001).

³⁷ Letter from IBRC to RDU, dated 13 September 2019 (Doc ID: RDU_REL398-000000027).

If there was a loan to value in excess of let's say 60%, 70% or even in some cases 80%, it would be imperative that we go and get a personal guarantees... it just makes good credit sense".³⁸

7.49 Mr Purcell put it to Mr Fitzgibbon that there was no policy obligation to obtain a personal guarantee and that policy did not preclude a loan being advanced without a personal guarantee. Mr Fitzgibbon stated:

"If there is written policy there and a loan was given out without a personal guarantee, when one was required, it is going against the policy. What I'm saying is in practice, and based on credit decisions, decisions were made to advance loans contrary to the written policy that was there, but that was being made on a credit risk basis".³⁹

7.50 Mr Fitzgibbon did not agree with Mr Purcell's proposition that, under the policy an assessment could be made not to take a guarantee and that decision was not infringing the policy.

Darragh Daly

7.51 Mr Daly was a member of the Credit Committee from 2003 until July 2006 when he was appointed to the role of credit risk manager. Mr Daly gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 16 June 2021. He was asked if the requirement that a personal guarantee should be taken from the individual who owns or controls the company in all cases where the borrower was a private company, was something that he was aware of. He stated that he was not aware of that.⁴⁰

Shane McGowan

7.52 Mr McGowan worked as an administrator in INBS's commercial lending department from 2005 until 2008. He gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 16 June 2021, and confirmed what other witnesses had stated, i.e. that personal guarantees were not always taken in a company loan. He stated:

³⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 111 line 14 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

³⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 114 line 14 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

⁴⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 16 June 2021, page 26 (Doc ID: RDU_FT_SPC1-4_D21-000000001).

“Well, yes, it should have been, but personal guarantees weren’t always taken in a company loan; they weren’t always – I mean it wasn’t always the case where they would be sought, if you like, as part of security”.⁴¹

7.53 Mr McGowan said that he did not know why guarantees were not taken on a consistent basis. He stated:

“I would have followed the direction from the likes of Tom McMEnamin and John Roche in terms of just processing the various applications for them, so I can’t answer why it wasn’t followed given that you are pointing out there that it should have been followed...

...

the likes of Tom McMEnamin and John Roche would have had the relationships with the borrowers. So in terms of what’s being presented would have been normally down to the relationship that they had with them and whatever background was there with them”.⁴²

7.54 Mr McGowan said that when he engaged in drawing up CLAs, he could not recollect any suggestion that a personal guarantee should be included in the security on the face of the CLA.

Martin Noonan

7.55 Mr Noonan was responsible for commercial mortgage administration from mid-2005. He was a member of the Credit Committee from mid-2006.⁴³

7.56 Mr Noonan gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 17 June 2021. He was asked whether the Credit Committee examined CLAs to establish whether the security complied with policy. He said he was not aware of this. He stated, in relation to personal guarantees:

“And to be honest with you, the commercial lending to a company, the seven parts there, [the Basic Criteria] that was a menu, as such. And I know that on the personal guarantees of directors, for example, I know that Stan Purcell

⁴¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 16 June 2021, page 94 line 21 et seq. (Doc ID: RDU_FT_SPC1-4_D21-000000001).

⁴² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 16 June 2021, pages 97 and 98 (Doc ID: RDU_FT_SPC1-4_D21-000000001).

⁴³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 17 June 2021, page 13 line 6 et seq. (Doc ID: RDU_FT_SPC1-4_D22-000000001).

made reference to this in his transcript; personal guarantees, from my understanding, weren't an actual requirement. What they were was that – – and later on this became very relevant, is that, you were to get the appropriate security for the risk of the loan, and, where possible, you would get all of those things".⁴⁴

7.57 Page 7 of the 28 February 2007 Commercial Mortgage Lending Policy⁴⁵ was opened to Mr Noonan. It stated:

"The Society's policy is that all facilities are secured and that we take maximum available security".

7.58 The policy went on to state, at page 9:

"In all cases where the borrower is a private company, the security should include a personal guarantee from the individual who owns or controls the company. If there is more than one main director, joint and several guarantees should be taken".

7.59 Mr Noonan was asked if it appeared to him from that document, that there was a requirement for there to be personal guarantees. He said:

"That's how I'd read that. That's different to my understanding now I'd have to say".⁴⁶

7.60 Mr Purcell put it to Mr Noonan that both the April 2003 Credit Risk Policy and the 28 February 2007 Commercial Mortgage Lending Policy were guidelines and were not rigid requirements. Mr Noonan agreed with that proposition.⁴⁷

Alan Deering

7.61 Mr Deering was in the commercial lending department of INBS as an underwriter or administrator from February 2004 until his appointment as a commercial lender in 2007. He was also a member of the Credit Committee from September 2007.

⁴⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 17 June 2021, page 15 line 17 et seq. (Doc ID: RDU_FT_SPC1-4_D22-000000001).

⁴⁵ 28 February 2007 Commercial Mortgage Lending Policy (Doc ID: 0.7.120.27792).

⁴⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 17 June 2021, page 16 line 24 et seq. (Doc ID: RDU_FT_SPC1-4_D22-000000001).

⁴⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 17 June 2021, pages 53 to 56 (Doc ID: RDU_FT_SPC1-4_D22-000000001).

7.62 Mr Deering gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 23 June 2021. He was asked what he understood by the words “*maximum available security*” in terms of commercial lending. He said that he was not sure what those words meant but that the first security obtained would always be a first legal charge over the principal property that was being lent against. He was asked if that extended to taking personal guarantees as well, and he stated:

*“Yes, that was an additional security, but the primary security was the property. And any additional security that was available would be second charges on other properties or personal guarantees”.*⁴⁸

7.63 Mr Deering was asked whether it was ultimately required of a borrower to give a personal guarantee. Mr Deering said: “*yeah, for corporate borrowers, for companies, PG’s were required, yes, yeah*”.⁴⁹

7.64 It was put to Mr Deering that the loans that were examined by the Inquiry at the Loan Hearings did not appear to have personal guarantees in a number of instances. He was asked if he knew why that was. He stated:

*“No, I don’t... in -- the UK lending model was different, so I can’t speak for them, but the Irish model was to achieve -- or to seek a PG. That might not have been the case for the UK lending team”.*⁵⁰

7.65 When asked why the UK model was different, he stated:

*“They lent -- they did more joint ventures or profit share arrangements whereby PGs weren’t required, I believe”.*⁵¹

7.66 When questioned by Mr Purcell, Mr Deering agreed with the proposition that the relevant policies required getting as much security as possible but it was not a breach of policy if a personal guarantee was not obtainable and not secured.⁵²

⁴⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 23 June 2021, page 21 line 17 et seq. (Doc ID: RDU_FT_SPC1-4_D24-000000001).

⁴⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 23 June 2021, page 22 line 10 (Doc ID: RDU_FT_SPC1-4_D24-000000001).

⁵⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 23 June 2021, page 22 line 17 et seq. (Doc ID: RDU_FT_SPC1-4_D24-000000001).

⁵¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 23 June 2021, page 22 line 22 (Doc ID: RDU_FT_SPC1-4_D24-000000001).

⁵² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 23 June 2021, page 55 line 4 (Doc ID: RDU_FT_SPC1-4_D24-000000001).

Vincent Reilly

7.67 Mr Reilly was the partner in KPMG responsible for the audit of INBS during the Review Period. Mr Reilly gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 24 June 2021. He authored one of the Contemporaneous Reports relevant to SPC 3.2, the 2004 KPMG Commercial Credit Review. He explained that the 2004 KPMG Commercial Credit Review consisted of analysing the numbers in the loan book, from which he got a sense of the kind of risk in the book without actually doing any validation of controls.

7.68 One of the findings in the report related to personal guarantees. The report stated:

“The Society does obtain personal guarantees where companies are the borrower and the Society wants to link the principals to the exposure.

...

*However, according to management no personal guarantees have been called upon in the last three years”.*⁵³

7.69 The recommendation from KPMG was that management should keep an up to date central database of the level of personal guarantees as well as the evidence of guarantees on individual files.

7.70 Mr Reilly was asked whether it surprised him that no personal guarantees had been called upon in the previous three years, and he said that he would not have found it surprising because the credit environment was benign at that time.⁵⁴

David Brophy

7.71 Mr Brophy was a non-executive director of INBS from late February 2006 to April 2009. He was a member of the Audit Committee throughout that time.

7.72 Mr Brophy provided a witness statement to the Inquiry, dated 27 November 2020, in advance of giving oral evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 29 June 2021. He had been asked by the Inquiry whether he was aware of internal policies governing the preparation of CLAs and also whether he was aware of any

⁵³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 24 June 2021, page 94 and 95 (Doc ID: RDU_FT_SPC1-4_D25-000000001).

⁵⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 24 June 2021, page 95 line 15 et seq. (Doc ID: RDU_FT_SPC1-4_D25-000000001).

distinction between loans that originated in Belfast and those that originated in Dublin. He stated:

"I would have assumed that all loans complied with policy unless otherwise brought to my attention by management in relation to a particular loan".⁵⁵

7.73 During his evidence to the Inquiry, on 29 June 2021, Mr Brophy confirmed that when he referred to "*management*" in his witness statement, he meant the two executive directors who attended all Board meetings.⁵⁶

7.74 Mr Brophy was then asked how the Board reviewed CLAs and whether the review would have been close enough to pick up on whether or not a personal guarantee had been provided. He said that each CLA was considered separately but he could not confirm for any individual case how long was spent considering it. He said that where a loan was to a customer who was already well known to INBS there might be less discussion than with a new customer. Mr Brophy agreed with the proposition that what he appeared to be suggesting was that the lack of a personal guarantee may have been picked up but it would not have been seen as very surprising, particularly if the customer had a strong track record with INBS.⁵⁷

Michael Walsh

7.75 Dr Walsh was chairman of the Board of INBS throughout the Review Period.

7.76 Dr Walsh gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 1 July 2021. He was asked about security for loans and whether it was his understanding that all loans were secured with the maximum available security. He stated:

"...pretty much by definition, you know, the Society or any lender wants to maximise the security it can actually have... whatever security you could get you would get".⁵⁸

7.77 He was asked whether personal guarantees would always be required. He said:

⁵⁵ Witness Statement of David Brophy, dated 27 November 2020, page 2 (Doc ID: RDU_REL532-000000006).

⁵⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 29 June 2021, page 13 (Doc ID: RDU_FT_SPC1-4_D27-000000001).

⁵⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 29 June 2021, page 16 to 19 (Doc ID: RDU_FT_SPC1-4_D27-000000001).

⁵⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 20 line 27 (Doc ID: RDU_FT_SPC1-4_D29-000000001).

*“Well, you’d certainly get them where they were available... I mean the Board were informed on many occasions that personal guarantees weren’t available or weren’t the norm within the UK market”.*⁵⁹

7.78 He went on to say that INBS would have definitely asked for personal guarantees but in the event that it was not market practice in a particular area, then obviously INBS had to make its decisions in the full knowledge that those were not available. He was asked if personal guarantees were available in the Irish market, and he stated:

*“Yeah, I would say they were in general available in the Irish market, now there may or may not have been particular circumstances where they weren’t, but, you know, in the vast majority of cases I would have said that guarantees were available in the Irish market”.*⁶⁰

7.79 Dr Walsh was then asked whether personal guarantees were discussed at Board meetings, and he stated:

*“Yeah, I mean, they would have been discussed primarily in the context of each of the individual CLAs, because, I think, the Board was very focused on maximising security. And, you know, there was discussion multiple times really as to, you know, who the borrower actually was. And, I think, there was assurance say from the Executive, you know, that in the event if the loan was to let’s say Michael Walsh, that Michael Walsh was on the hook for that loan, because, you know, the Board didn’t approve situations where if Michael Walsh was getting the loan, you know, the security was actually restricted to a particular asset”.*⁶¹

7.80 He stated that where the loan was to a corporate entity the Board would have discussed the availability of personal guarantees. He said he could not comment on the observation put to him that the majority of loans emanating from Belfast did not appear to have a personal guarantee: *“I mean, I think, all I can say is that from a Board point of view, the pressure was always on to maximise security”.*⁶²

⁵⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 21 line 19 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

⁶⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 22 line 4 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

⁶¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 23 line 14 et seq. (Doc ID: RDU_FT_SPC1-4_D29-000000001).

⁶² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 1 July 2021, page 23 and 24 (Doc ID: RDU_FT_SPC1-4_D29-000000001).

Killian McMahon

- 7.81 Mr McMahon joined the internal audit department of INBS in November 2003 and became internal auditor of INBS in November 2004.
- 7.82 Mr McMahon gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 2 July 2021. He was referred to the 2004 KPMG Commercial Credit Review, and was asked whether it was his experience that personal guarantees were obtained where companies were borrowing funds. He said that he did not know whether personal guarantees were actively sought in the UK. Mr McMahon was referred to the entry in the 2004 KPMG Commercial Credit Review, which stated that personal guarantees were taken from companies that were borrowing from INBS. The report recommended that a database of personal guarantees be established and that all personal guarantees should be kept on the borrower file. Mr McMahon said that he had no recollection of being consulted in connection with a guarantee database nor of having any discussion with the Financial Regulator on the subject.⁶³

Mr Purcell's reply to Investigation Letter

- 7.83 In his response to the Suspected Prescribed Contraventions in the Investigation Letter from the Central Bank dated 12 December 2013, Mr Purcell stated:

"I deny any alleged participation in the commission of the suspected prescribed contraventions by INBS.

No specific documentation has been furnished to me identifying any suspected prescribed contraventions.

In response to the evidence referred to, I make the following observations. I am not aware of circumstances where security was not obtained. CLA's [sic] included security and as far as I was aware, the security was obtained. The nature of the security differed depending on the loan. Personal Guarantees were not always obtained, nor were they required to be obtained in respect of every loan. Insofar as there are instances where security was not valued in advance of a loan being advanced, this was provided for in the Building

⁶³Transcript SPCs 1-4 Remote Inquiry Hearing, dated 2 July 2021, page 69 et seq. and page 95 et seq. (Doc ID: RDU_FT_SPC1-4_D30-00000001).

*Societies Act 1989 (as amended). I do not recollect any circumstances where there was a breach of LTV guidance”.*⁶⁴

Mr Purcell’s submissions (during SPC 1 to 4 module)

7.84 In his submissions to the Inquiry at the conclusion of the Loan Hearings on 22 April 2021, Mr Purcell addressed personal guarantees, as follows:

“The Board had the authority to approve loans that did not include as part of the security personal guarantees from individuals who owned or controlled private companies and/or joint or several guarantees where there was more than one main director.

The Board’s approval of each CLA was in line with the lending policy at the time, as it approved each loan on a case by case basis.

The minutes of Board meetings recorded in relation to each loan approved by the Board that: The Board approved the application for mortgage facilities. This meant that the Board approved a CLA presented to it in its entirety which included security as set out on the CLA, which may or may not have included a personal guarantee.

The Board’s approval of the CLA, as presented to it, is evidenced by me signing and dating the CLA and giving the signed document to Tom McMenamin after each Board meeting. The policy of lenders was to obtain as much security as possible. This is what policies are referring to when they use the words such as “Normally” and “Should” in relation to getting personal guarantees. For certain loan applications, it was not possible to obtain personal guarantees.

The Credit Risk Management Policy (reference 431329) notes on page 30 that:

‘Additionally the Society seeks to take the maximum collateral and security for each loan as is possible in each instance’.

*A number of items of possible added security are listed, all which include a personal guarantee”.*⁶⁵

⁶⁴ Response of Stan Purcell dated 4 February 2014 to Suspected Prescribed Contraventions in letter of Central Bank dated 12 December 2013, page 5 and 6 (Doc ID: 0.7.120.781062).

⁶⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 22 April 2021, page 96 line 13 et seq. (Doc ID: RDU_FT_SPC1-4_D18-000000001).

7.85 In his opening statement at the commencement of the SPC 1 to 4 Context Hearings on 11 June 2021, Mr Purcell denied participation in “*the non-loan i.e. context specific allegations*” made against him in respect of SPCs 1 to 4.⁶⁶ With respect to compliance with policy in relation to the assessment, recommendation and approval of commercial loans, he identified the relevant policies as⁶⁷:

- (a) the April 2003 Credit Risk Policy⁶⁸;
- (b) the 28 February 2007 Commercial Mortgage Lending Policy⁶⁹; and
- (c) the 27 June 2007 Credit Risk Management Policy⁷⁰.

7.86 Mr Purcell referenced page 3 of the April 2003 Credit Risk Policy⁷¹ which stated:

*“There will be occasions when a proposal will not fit the criteria set out herein. However, under the circumstance the proposal will be prepared for submission to senior management by a senior commercial lender”.*⁷²

7.87 Mr Purcell also referred to the case by case guide and guidance approach which, he stated, were important features of the 27 June 2007 Credit Risk Management Policy, page 12 of which stated:

*“Commercial Loan Applications are assessed on a case by case basis”.*⁷³

7.88 Mr Purcell submitted:

“Most of the commercial lending assessed under the 28th February 2007 policy by lenders, including Michael Fingleton and the credit risk, was assessed on a case by case basis as it related to development finance.

Commercial loans with supplemental arrangement fees, also known as fee share agreements, were on a case by case basis. Each case was assessed on

⁶⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 29 (Doc ID: RDU_FT_SPC1-4_D19-00000004).

⁶⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 33 (Doc ID: RDU_FT_SPC1-4_D19-00000004).

⁶⁸ April 2003 Credit Risk Policy (Doc ID: 0.7.120.478217).

⁶⁹ 28 February 2007 Commercial Mortgage Lending Policy (Doc ID: 0.7.120.27792).

⁷⁰ 27 June 2007 Credit Risk Management Policy (Doc ID: 0.7.120.431329).

⁷¹ April 2003 Credit Risk Policy (Doc ID: 0.7.120.478217).

⁷² Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 33 line 9 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

⁷³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 34 line 5 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

its own merits, and as appropriate recommended to the Board for a final decision...

For the rest of commercial lending under the 28th February policy, guide was provided to the lenders and the Credit Committee under this policy.

Having regard to the guide of the 28th February 2007 policy, but not being bound by the guide LTV ratios or guidance as regards obtaining personal guarantees as security, the Credit Committee recommended CLAs, Commercial Loan Applications, to the Board for approval.

The loans recommended to the Board had been considered by lenders, including Michael Fingleton, and the Credit Committee, in light of policy guide as regards LTVs and guidance as regards personal guarantees.

For each application case by case, the guide or guidance might or might not have been followed".⁷⁴

7.89 Mr Purcell referred to personal guarantees in the context of Board approval of loans. He submitted:

"Once the loan was recommended by the Credit Committee, the Board considered the loan. The Board's approval covered all the features set out in the CLA, such as the LTV ratio stated on the CLA, and the security detailed on the CLA, which may or may not have included a personal guarantee when lending to a company.

...

The issue as to whether or not the security would include a personal guarantee when lending to a company was dealt with under the 2003 Credit Risk Policy in the same way as under the 28th February 2007 policy, described above.

The key features of the CLA, such as LTVs and security, that were recommended to and approved by the Board, were not exceptions to credit policy".⁷⁵

⁷⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 34 line 14 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

⁷⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 35 line 22 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

Mr Purcell's evidence to the Inquiry

7.90 As outlined out at paragraph 7.37 above, of the 32 loans in respect of which it was suspected that Mr Purcell had participated in the allegation that no personal guarantees had been acquired, the Inquiry found that INBS had failed to acquire personal guarantees in 31 loans. 30 of these loans had emanated from the Belfast Branch and one loan⁷⁶ emanated from the Dublin office, and they were all Profit Share Loans. The characteristics of profit share lending is set out at paragraph 7.31 above.

7.91 Of note, during the course of the SPC 7 Inquiry hearings, Mr Gary McCollum stated that personal guarantees were not a feature of commercial lending in the UK. He stated:

*“Guarantees were not a feature of the UK property market. Again, I would refer you back to my earlier point that most of the property developers in the UK had gone through a recession in the early nineties where a vast amount of them had provided personal guarantees and as a result of that had gone bankrupt. Major companies had also lost substantial [sic] -- So guarantees were not a feature of the UK property market from 2000 on, or it's probably from 1995 on when the recession ended, they had been burnt in the same way as the Irish developers this time round had been burnt accordingly”.*⁷⁷

7.92 Mr McCollum confirmed that irrespective of the kind of loan he was giving, he would not get personal guarantees. Mr Purcell gave evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 21 July 2021. He referred to his opening submission in relation to personal guarantees and stated that it was not non-compliance with policy if a personal guarantee was not taken.⁷⁸

7.93 The April 2003 Credit Risk Policy was opened to Mr Purcell and he agreed that the purpose of this policy was to set out minimum pre-agreed standards that had to be met in connection with lending.⁷⁹ The following statements from the April 2003 Credit Risk Policy were noted:

⁷⁶ Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]), emanated from the Dublin office.

⁷⁷ Transcript SPC 7 Inquiry Hearing, dated 18 September 2019, page 39 (Doc ID: RDU_SPC7FT_D9-000000001).

⁷⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 56 (Doc ID: RDU_FT_SPC1-4_D31-000000001).

⁷⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 93 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

“The purposes of this credit policy is to provide a set of guidelines to ensure that all credits put forward met minimum pre-agreed standards.

...

*There will be occasions when a proposal will not fit the criteria set out herein, however, under the circumstance the proposal will be prepared for submission to Senior Management by a Senior Commercial lender or the Homes Loans Manager”.*⁸⁰

7.94 Mr Purcell agreed with the proposition put to him, that the April 2003 Credit Risk Policy set out: firstly, minimum standards to be met in commercial lending; secondly, provision for cases where minimum pre-agreed standards were not met but it may nevertheless be desirable to lend; and thirdly, in the event that the pre-agreed standards were not met, an exceptions policy came into operation.⁸¹

7.95 This exceptions policy was set out in the 16 October 2003 Commercial Credit Committee Terms of Reference and the 19 July 2006 Commercial Credit Committee Terms of Reference. These documents both stated that exceptions to the credit policy and approval procedures had to be signed off by two members of the Credit Committee and reported for approval to the Board.⁸²

7.96 Under the December 2007 Credit Committee Terms of Reference, exceptions were required to be approved by the Credit Committee.⁸³

7.97 The April 2003 Credit Risk Policy stated:

*“In the case of a corporate entity, we consider the standing of the principles/directors. The Society cannot have recourse, in law, to the individual in a corporate lending unless he is a Guarantor. When lending to a corporate entity, the Society would therefore normally require that principles/directors guarantee the loan”.*⁸⁴

7.98 Further on in the document the policy stated:

⁸⁰ April 2003 Credit Risk Policy, page 10 of 28 (Doc ID: 0.7.120.478217).

⁸¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 95 (Doc ID: RDU_FT_SPC1-4_D31-000000001).

⁸² 16 October 2003 Commercial Credit Committee Terms of Reference, page 3 (Doc ID: 0.7.120.5896) and 19 July 2006 Commercial Credit Committee Terms of Reference, page 3 (Doc ID: 0.7.120.13247).

⁸³ December 2007 Credit Committee Terms of Reference, page 4 (Doc ID: 0.7.120.26675).

⁸⁴ April 2003 Credit Risk Policy, page 11 of 28 (Doc ID: 0.7.120.478217).

"In all cases where the borrower is a private company, the security should include a personal guarantee from the individual who owns or controls the company".⁸⁵

7.99 Mr Purcell stated that the wording of the policy did not mean that a personal guarantee constituted a minimum pre-agreed standard. It was put to Mr Purcell that if the requirement for a personal guarantee was to be excused, then it must meet an exception policy, and he stated: *"I don't agree. I think by it being put into the CLA, that is recommended to the board, the security is made clear and the board approves it with the security, which may or may not include a personal guarantee"*. The following exchange then took place:

"Q. What's the point of the exceptions policy, Mr Purcell?"

A. The point of the expectations [sic] policy would be if there was a very large, or a significant move away from the guidelines and the policy.

Q. Does it say that?"

A. No, but you just asked me, maybe that's my view of it. I mean it's a – it's there to cover exceptions, and I don't see the non-taking of a guarantee as an exception. I think it's covered under the policy.

Q. We'll come to the exceptions policy in a moment, Mr Purcell. But it certainly doesn't state that it is there only to meet major problems, or major exceptions, does it?"

A. No, it doesn't, it was just my view, Mr McCullough, of what it does".⁸⁶

7.100 Mr Purcell was asked why certain criteria, such as amendments to offer and conditions to be satisfied before drawdown, were criteria that had to be applied but personal guarantees was a criteria that could be ignored. Mr Purcell stated:

"...the personal guarantees were a part of the loan assessment.

In other words, you were looking at a loan and you were deciding whether you would do the loan. And, you know, part of when you were deciding to do a loan

⁸⁵ April 2003 Credit Risk Policy, page 13 of 28 (Doc ID: 0.7.120.478217).

⁸⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 97 line 20 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

is whether the loan is a good loan, whether you would do it whether it's a company with or without a guarantee.

You should get it normally, but there would be occasions, and there were obviously many occasions that that didn't apply.

The drawdowns, ...you should have all of the conditions done, because that's part of the deal".⁸⁷

7.101 Mr Purcell was referred to the relevant provision in the terms of reference of the Credit Committee relating to exceptions:

"Exceptions to the credit policy and approval procedures must be signed off by two members of the Credit Committee and reported for approval to the Board".⁸⁸

7.102 It was put to Mr Purcell that in the case of all the policies that were set out in the April 2003 Credit Risk Policy, including the policy relating to the requirement to obtain guarantees, it was possible that there could be exceptions but those exceptions had to be ordered in accordance with the Credit Committee terms of reference. Mr Purcell agreed that that was the policy that applied in the case of exceptions.⁸⁹ However, he contended that the April 2003 Credit Risk Policy and the 9 November 2004 Commercial Lending Criteria (which he submitted was not a policy as it had not been approved by the Board) were guidelines. He stated:

"The policy is a guideline, and in the assessment of a loan, things may not be taken, may not be there, such as there may not be three years audited accounts, that came up in internal audit reports. The company may well be an SPV, so there may be other factors that apply in the assessment of the loan that don't -- you know, that don't make it -- you are not contradicting policy, you are not -- essentially you are assessing the loan on the basis of the policy guidelines.

...

⁸⁷ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 100 line 15 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

⁸⁸ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 103 line 5 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

⁸⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 103 line 23 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

I mean it is my contention that if there is -- that those assessing the loans had to assess what security was available and what -- were they willing to accept the loan based on whatever security they could get or whether they wished to take various types of security. That's there under the policy. The policies are guidelines, and I don't believe the policy was let's say, infringed in that respect".⁹⁰

Mr Purcell's closing submissions (at conclusion of SPC 1 to 4 module)

7.103 After the oral evidence had concluded in SPC 1 to 4 module, Mr Purcell provided written closing submissions to the Inquiry dated 22 October 2021.⁹¹ In relation to SPC 3 he stated:

"SPC 3 Context (Ref.2 pages 12 to 14).

Paragraphs 8.514 and 8.515

The Managing Director was the link between the Credit Committee and the Board. Mr Fingleton was a member of the Credit Committee during the review period and presented the CLA's recommended by the Credit Committee to the Board for approval.

Paragraph 8.517

I was not responsible for following up on the implementation of internal audit recommendations that related to the commercial lending.

All the lending area managers reported to the Managing Director. The lending area managers were responsible for implementing KPMG's management letter recommendations relating to commercial lending.

Paragraph 8.518

The Internal Auditor followed up on the implementation of internal audit recommendations.

The lending area managers and the Managing Director were responsible for ensuring that any representations made to the external auditors on lending area

⁹⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 112 line 3 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

⁹¹ Closing Submissions of John S Purcell, dated 22 October 2021 (Doc ID: RDU_REL623-000000016).

recommendations were accurate.

Belfast and Deloitte audit reports

I was not responsible for the implementation of the recommendations in the Belfast audit reports 2004 and 2006 or the Deloitte audit report, May 2008 contrary to what is stated on pages 1365, 1366, 1367, 1368, 1374 and 1381 of the Investigation Report. Gary McCollum and Michael Fingleton were responsible for implementing the recommendations of the Belfast audits as set out in document reference 0.7.120.56461”.

7.104 In relation to the Loan Specific Allegations concerning a failure to acquire personal guarantees from directors of borrowing private companies, Mr Purcell stated:

“SPC 3 Specific Loans – Allegation 2 - Guarantees

The Board had the authority to approve a loan to a company where the security did not include a personal guarantee.

The policy of lenders was to obtain as much security as possible. This is what policies are referring to when they use words such as “Normally” and “Should” in relation to getting personal guarantees. For certain loan applications it was not possible to obtain personal guarantees.

The Credit Risk Management Policy notes on page 30 that:

“Additionally, the Society seeks to take the maximum collateral and security for each loan as is possible in every instance.”

A number of items of possible added security are listed which include a personal guarantee.

It is pertinent that the Investigation Report, paragraph 8.80, page 1,144, referring to security (personal guarantees) states “The allegation that commercial loans were not secured was not raised as a finding in the Contemporaneous Reports during the Review Period.” (Ref.1 pages 10 to 11, Ref.3 page 9, Ref.4 pages 9 to 10.)”.

INQUIRY FINDING – SPC 3.2

Finding in relation to INBS

- 7.105 In 60 of the 62 loans in the Loan Sample that alleged a breach of SPC 3.2, the Inquiry found that INBS was in breach of policy in that, in the context of borrowers who were private companies, it failed to obtain personal guarantees from individuals who owned or controlled the companies. The prevalence of this breach in a Loan Sample of 91 loans is significant and points to a serious and systemic failure to manage risk.
- 7.106 In reaching its finding against INBS, the Inquiry considered the wording of the relevant policies and Mr Purcell’s submissions in respect of these policies, as outlined above.
- 7.107 Paragraphs 7.17 et seq. above set out the relevant policy provisions in relation to personal guarantees from corporate borrowers. The wording is unequivocal in identifying the importance of personal guarantees. However, there is a degree of flexibility in the wording of the policies with regard to personal guarantees, and the Inquiry considered whether that flexibility amounted to an authority on the part of the Board to effectively waive the requirement with respect to almost all lending emanating from the Belfast Branch without identifying such a waiver as an exception to policy.
- 7.108 Mr Purcell contended that by approving a loan that did not have a personal guarantee listed as a security, the Board was accepting that risk. He said that each loan was considered on a case by case basis and the Board approved the CLA in its entirety. He stated in his closing submissions to the Loan Hearings: *“The policy of lenders was to obtain as much security as possible. This is what policies are referring to when they use the words such as “Normally” and “Should” in relation to getting personal guarantees. For certain loan applications, it was not possible to obtain personal guarantees”*.⁹²
- 7.109 The exchanges between Mr Purcell and the LPT in the course of his oral evidence during the Context Hearing established some important points. It established that the purpose of the credit risk policies was to ensure that all credits put forward met *“minimum pre-agreed standards”*. It also established

⁹² Transcript SPC 1-4 Remote Inquiry Hearing, dated 22 April 2021, page 97 line 5 et seq. (Doc ID: RDU_FT_SPC1-4_D18-00000001).

that where the pre-agreed standards were not met an exceptions policy came into operation.⁹³

7.110 Mr Purcell stated that the wording of the policy did not mean that a personal guarantee constituted a minimum pre-agreed standard and that he did not believe it required the application of the exceptions policy. When asked what the point of the exceptions policy was, he stated: “*The point of the expectations [sic] policy would be if there was a very large, or a significant move away from the guidelines and the policy*”.⁹⁴

7.111 The Inquiry believes that this goes to the heart of this SPC. There was not just an individual departure from policy, there was wholesale departure from policy in respect of loans emanating from the Belfast Branch. As Mr McCollum stated in his evidence quoted above, personal guarantees were never sought or acquired in UK lending. In these circumstances, the Inquiry does not believe that the commercial loans identified in the Loan Sample were a reasonable departure from the credit risk standards set down by policy, and believes that the lack of a personal guarantee should have been identified as an exception in accordance with the Credit Committee terms of reference. This would have required the exception to have been specifically brought to the attention of the Board in respect of each individual loan. There is no evidence that this occurred.

7.112 In coming to this view, the Inquiry is particularly mindful of the fact that of the 62 loans identified in the Loan Sample, 61 were Profit Share Loans. Paragraph 7.31 above sets out the characteristics of Profit Share Loans as identified by 2004 KPMG Commercial Credit Review. A LTV that could be as high as 100% together with an interest and capital moratorium, meant that the loan secured on nothing more than the market value of the property the subject of the loan was at significant risk if there was a downturn in the market. There was the added factor that these loans were for very large sums of money, the largest loan of which was for £245 million.

7.113 The emphasis placed on the standing of the principals and directors of corporate borrowers is identified as an important element of INBS strategy. “*High net worth individuals*” is a diminished concept when these individuals have no

⁹³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 94 line 4 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

⁹⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 21 July 2021, page 97 line 25 et seq. (Doc ID: RDU_FT_SPC1-4_D31-000000001).

personal investment in the project and in circumstances where the INBS had no access to the high net worth of the individual because of the lack of a personal guarantee.

7.114 Having regard to the above findings made by the Inquiry in relation to SPC 3.2, the Inquiry makes the following findings in respect of the legislative provisions and condition on INBS's authorisation underpinning SPC 3(a), 3(b) and 3(c):

(a) Regulation 16(1) of the 1992 Regulations

The Inquiry finds that from 1 August 2004 to 30 September 2008, INBS failed to ensure that personal guarantees for commercial loans were obtained, and thereby failed to manage its business in accordance with sound administrative and accounting principles and failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed. Accordingly, the Inquiry finds that a contravention of Regulation 16(1) of the 1992 Regulations occurred.

(b) Section 76(1) of the 1989 Act

The Inquiry finds that from 1 August 2004 to 30 September 2008, INBS failed to ensure that personal guarantees for commercial loans were obtained and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon. Accordingly, the Inquiry finds that a contravention of section 76(1) of the 1989 Act occurred.

(c) Part 1 of the 2005 Regulatory Document

The Inquiry finds that from 10 July 2006 to 30 September 2008, INBS failed to ensure that personal guarantees for commercial loans were obtained and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. Accordingly, the Inquiry finds that a contravention of Part 1 of the 2005 Regulatory Document occurred.

Finding in relation to Mr Purcell's participation

- 7.115 The basis for suspecting that Mr Purcell participated in SPC 3.2 is set out in Consolidated Table C3.25, as quoted at paragraph 7.36 above, and arises from his attendance at the Board meetings at which 32 of the 62 loans in the Loan Sample were approved.
- 7.116 Mr Purcell's roles and responsibilities are set out at Chapter 2 of this Findings Report. As a Board member, Mr Purcell had a role in the approval of commercial loans. Prior to 17 December 2007, the Board was responsible for approving loans in excess of the specific authority levels delegated by the Board to the Credit Committee, as per the applicable Credit Committee terms of reference. The loan document provided to the Board was the CLA. The CLA contained the terms of the loan, including the security to be taken, valuations, and LTVs.
- 7.117 The Inquiry finds that Mr Purcell, by virtue of his attendance at these Board meetings and his role as a Board member in approving these loans, participated in the authorisation of 31 loans without a personal guarantee from corporate borrowers. The Inquiry finds that this amounted to participation by Mr Purcell in SPC 3.2 and, accordingly, that the allegation of participation by Mr Purcell in the commission by INBS of SPCs 3(a), 3(b) and 3(c) is proven.

SPC 3.3

- 7.118 SPC 3.3 alleged that a valuation report on the asset(s) used as security for a loan was not received by INBS before all or part of the loan was advanced.

Relevant INBS policy documents

- 7.119 The applicable policies cited in the Investigation Report in respect of SPC 3.3 were:
- (a) the April 2003 Credit Risk Policy⁹⁵;
 - (b) the UK Version of the April 2003 Credit Risk Policy⁹⁶;
 - (c) the 9 November 2004 Commercial Lending Criteria.⁹⁷

⁹⁵ April 2003 Credit Risk Policy, page 8 of 28 et seq. (Doc ID: 0.7.120.478217).

⁹⁶ UK Version of the April 2003 Credit Risk Policy (Doc ID: 0.7.120.622022).

⁹⁷ 9 November 2004 Commercial Lending Criteria (Doc ID: 0.7.120.450329). As outlined previously, the Inquiry determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007, and so the Inquiry did not had regard to the provisions of same.

Loan File Analysis

7.120 There are four loans in the Loan Sample in respect of which the allegation that a valuation had not been obtained prior to drawdown was made. In three of these loans the SPC 3.3 Allegations advanced were INBS Only Allegations⁹⁸ and therefore were not pursued by the Inquiry. In the remaining loan, INBS was found not to have been in breach of the policy requirement.

Contemporaneous Reports

7.121 A total of ten Contemporaneous Reports were identified as potentially relevant to the SPC 3.3 Allegation. Nine of these reports made findings with respect to valuations. However, there was no finding in any of these reports that valuations were not obtained. Insofar as valuations were mentioned in these reports, it was either in the context of being a required item in a completion checklist that needed to be completed before a loan could be advanced, or it was noted in some reports that valuations were not kept on file and the recommendation was that this should be done.

INQUIRY FINDING – SPC 3.3

Finding in relation to INBS

7.122 **The Inquiry finds that the SPC 3.3 Allegation, that a valuation report on the asset(s) used as security for a loan was not received by INBS before all or part of the loan was advanced, is not proven against INBS. Accordingly, the Inquiry finds that there was no breach of the relevant legislative provisions and the condition imposed on INBS's authorisation identified at paragraph 7.2 above and therefore no commission by INBS of SPCs 3(a), 3(b) or 3(c).**

Finding in relation to Mr Purcell's participation

7.123 **Having regard to the above finding in relation to INBS, the allegation of participation by Mr Purcell falls away.**

⁹⁸ The INBS Only Allegations were Loan Specific Allegations advanced against INBS only or against INBS and Persons Concerned who were no longer subject to the Inquiry. For a full explanation of the INBS Only Allegations see Chapter 3, paragraph 3.29 of this Findings Report.

SPC 3.4

7.124 SPC 3.4 alleged that commercial loans were advanced where it was suspected that the LTV was greater than the maximum applicable LTV percentage set out in INBS's internal policies.

Relevant INBS policy documents

7.125 The applicable policies cited in the Investigation Report in respect of SPC 3.4 were:

- (a) the 9 November 2004 Commercial Lending Criteria⁹⁹;
- (b) the 28 February 2007 Commercial Mortgage Lending Policy¹⁰⁰;
- (c) the December 2007 Commercial Mortgage Lending Policy¹⁰¹;
- (d) the 21 April 2008 Commercial Mortgage Lending Policy.¹⁰²

7.126 As outlined previously, the Inquiry determined that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending between November 2004 and February 2007 and so the Inquiry has not had regard to the provisions of same.

7.127 The other three policies cited above set out "*Commercial Lending Sector Guide Criteria*" which included a sector by sector guide of the LTV limits to be applied to the different categories of lending e.g. residential lending, pub lending, hotel lending etc.¹⁰³

7.128 In the case of "*Development Finance*", the policies did not set down an LTV limit but stated that the loan amount and LTV was to be determined on a "*Case by Case basis*".¹⁰⁴

Loan File Analysis

7.129 Consolidated Table C3.4 which accompanied the Investigation Report identified 30 loans in the Loan Sample in respect of which it was alleged that the LTV was greater

⁹⁹ 9 November 2004 Commercial Lending Criteria (Doc ID: 0.7.120.450329).

¹⁰⁰ 28 February 2007 Commercial Mortgage Lending Policy (Doc ID: 0.7.120.27792).

¹⁰¹ December 2007 Commercial Mortgage Lending Policy (Doc ID: 0.7.120.450156).

¹⁰² 21 April 2008 Commercial Mortgage Lending Policy (Doc ID: 0.7.120.448318).

¹⁰³ 28 February 2007 Commercial Mortgage Lending Policy, page 18 et seq. (Doc ID: 0.7.120.27792); December 2007 Commercial Mortgage Lending Policy, page 18 et seq. (Doc ID: 0.7.120.450156); 21 April 2008 Commercial Mortgage Lending Policy, page 18 et seq. (Doc ID: 0.7.120.448318).

¹⁰⁴ 28 February 2007 Commercial Mortgage Lending Policy, page 24 (Doc ID: 0.7.120.27792); December 2007 Commercial Mortgage Lending Policy, page 24 (Doc ID: 0.7.120.450156); 21 April 2008 Commercial Mortgage Lending Policy, page 24 (Doc ID: 0.7.120.448318).

than the maximum applicable LTV percentage set out in INBS's internal policies. In one¹⁰⁵ of the 30 loans, the SPC 3.4 Loan Specific Allegation was excluded from the Loan Hearings on the basis that it was an INBS Only Allegation. Accordingly, the Inquiry only considered the SPC 3.4 Allegations that were advanced in the remaining 29 loans.

7.130 The relevant policy cited for 23 of these 29 remaining loans was the 9 November 2004 Commercial Lending Criteria and, accordingly, no finding is made in respect of SPC 3.4 for these 23 loans.

7.131 Of the remaining six loans the relevant policy identified for three¹⁰⁶ of the loans was the 28 February 2007 Commercial Mortgage Lending Policy. The relevant policy identified for two¹⁰⁷ loans was the 21 April 2008 Commercial Mortgage Lending Policy. The relevant policy for the remaining loan¹⁰⁸ was the December 2007 Commercial Mortgage Lending Policy.¹⁰⁹

7.132 The Inquiry examined the loan files in respect of these six loans and noted the following:

- (a) The sector was listed as residential development in the case of one loan for £245 million. The LTV limit identified in policy was 85% and the LTV listed on the loan file was 92%.¹¹⁰
- (b) The sector was listed as hotel in the case of one loan for €31 million. The LTV limit identified in policy was 70% and the LTV listed on the loan file was 100%.¹¹¹
- (c) The sector was listed as public house for two loans in respect of the same transaction totalling £62.5 million. The LTV limit identified in policy was 70% and the LTV listed on the loan files was 100% and 94% respectively.¹¹²

¹⁰⁵ Loan Account: [REDACTED] (Customer: [REDACTED]).
¹⁰⁶ Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]); Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]); Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).
¹⁰⁷ Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]); Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).
¹⁰⁸ Loan account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).
¹⁰⁹ The LTV limits for various sectors defined in the relevant policies are set out in the Summary Table of Sector Specific LTV Limits, included at Appendix 18.
¹¹⁰ Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).
¹¹¹ Loan Account: [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).
¹¹² Loan Account: [REDACTED] and [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).

- (d) The sector was listed as hotel for two loans in respect of the same transaction totalling £8 million. The LTV limit identified in the policy was 70% and the LTV listed on the loan files was 96% and 98% respectively.¹¹³

7.133 A finding of not proven was made by the Inquiry in respect of the SPC 3.4 Allegation against INBS in the remaining six loans, and the basis for same is outlined below at paragraphs 7.143 to 7.146.

7.134 There were 25 loan specific participation allegations advanced against Mr Purcell in respect of this SPC Allegation. In that regard, Consolidated Table C3.26 which accompanied the Investigation Report recorded that out of the 30 loans suspected to have had a LTV that was greater than the maximum applicable LTV percentage set out in INBS's internal policies, it is alleged that 25 were approved by the Board and the Board meeting minutes indicated that Mr Purcell was in attendance at the meetings where these 25 loans were approved. 22 of these loans cited the 9 November 2004 Commercial Lending Criteria as the applicable policy and therefore no finding was made against INBS in respect of those loans. The loan specific participation allegations against Mr Purcell in the remaining three loans fall away and the basis for this is addressed at paragraph 7.148 below.

Contemporaneous Reports

7.135 Although there were references to LTV limits in Contemporaneous Reports, there were no references to LTVs exceeding permitted limits, which is the subject matter of this SPC Allegation.

Mr Purcell's submissions

7.136 Mr Purcell addressed Contemporaneous Reports in the sixth area of his opening statement at the commencement of the Context Hearings on 11 June 2021, as follows:

"Pages 1144 and 1145, paragraph 8.8 of the Investigation Report refers to nine contemporaneous reports in relation to the alleged non-compliance with internal policies in respect of LTVs.

However, none of the findings in the nine reports about LTVs relate to the SPC 3 Allegation, that LTVs on commercial loans were greater than the maximum

¹¹³ Loan Account: [REDACTED] and [REDACTED] (Customer: [REDACTED]; Borrower: [REDACTED]).

applicable LTV percentage, and the LTVs were not approved as exceptions to the policy.

*In the seven instances where a finding in the nine reports resulted in a recommendation, none of the recommendations related to non-compliance with internal policy as regards LTV limits on commercial loans”.*¹¹⁴

7.137 He then summed up that section by stating:

*“In brief, none of the findings or recommendations in the nine reports – the nine contemporaneous reports relate to the SPC 3 Allegations about LTVs”.*¹¹⁵

7.138 In his closing submissions, dated 22 October 2021, Mr Purcell submitted that the remaining three loans were development finance coming under the case by case basis for LTVs under the 28 February 2007 Commercial Mortgage Lending Policy¹¹⁶, as set out at page 24 of the policy.¹¹⁷

7.139 Mr Purcell further submitted that if the three loans were not development finance, the assessment, recommendation and approval of the three loans was in compliance with the 28 February 2007 Commercial Mortgage Lending Policy, as follows:

- (a) Having regard to the guide LTV ratios in the 28 February 2007 Commercial Mortgage Lending Policy, but not being bound by the guide LTV ratios, the Credit Committee recommended the three CLAs to the Board for approval.
- (b) The three loans recommended to the Board had been considered by lenders, including Mr Michael Fingleton, and the Credit Committee in light of policy guide as regards LTV ratios. For each application, case by case, the guide might or might not have been followed.
- (c) Once the loans were recommended by the Credit Committee the Board considered the loans. The Board’s approval covered all the features set out in the CLA including the LTV ratio.¹¹⁸

¹¹⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, pages 50 line 23 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

¹¹⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 55 line 8 et seq. (Doc ID: RDU_FT_SPC1-4_D19-00000004).

¹¹⁶ 28 February 2007 Commercial Mortgage Lending Policy (Doc ID: 0.7.120.27792).

¹¹⁷ Closing Submission of John S Purcell, dated 22 October 2021, page 19 (Doc ID: RDU_REL623-000000016).

¹¹⁸ Closing Submission of John S Purcell, dated 22 October 2021, page 19 et seq. (Doc ID: RDU_REL623-000000016).

7.140 In relation to Board approval, Mr Purcell submitted that once the loan was recommended by the Credit Committee the Board considered the loan. He stated the Board's approval covered all the features set out in the CLA such as the LTV ratio as stated on the CLA and the security detailed on the CLA, which may or may not have included a personal guarantee when lending to a company. He said that the key features of the CLAs, such as LTV ratios and security, that were recommended to and approved by the Board were not exceptions to credit policy.¹¹⁹

7.141 He went on to submit that this meant that the Board approved the CLA presented to it in its entirety which included the LTV ratio stated on the CLA, the security as set out on the CLA and other items in the CLA.¹²⁰

INQUIRY FINDING – SPC 3.4

Finding in relation to INBS

7.142 **The Inquiry agrees with Mr Purcell's submission that there was no internal policy that imposed an LTV limit on commercial lending until the 28 February 2007 Commercial Mortgage Lending Policy. Accordingly, 24 of the 30 loans in respect of which this allegation was made against INBS fall away.**

7.143 **With respect to the remaining six loans each of them was identified as coming under a sector category in respect of which an LTV limit had been set. Mr Purcell, who was identified as having participated in respect of three of these loans, submitted that these were in fact development finance and therefore not subject to an LTV limit. In five of the six loans the loan files indicated that although hotels or public houses were being acquired, the object of the acquisition was not to run them as businesses but rather to develop them and sell them on. It is therefore arguable that the LTV limit did not apply and the LTV could be assessed on a case by case basis. In those circumstances and in the absence of any relevant Contemporaneous Reports identifying the issue, the Inquiry does not make a finding against INBS.**

7.144 **The Inquiry does not accept Mr Purcell's submission that the Board's approval covered all the features set out in the CLA such as the LTV ratio as stated on the CLA and the security detailed on the CLA, which may or may not have included**

¹¹⁹ Closing Submission of John S Purcell, dated 22 October 2021, page 25 (Doc ID: RDU_REL623-000000016).

¹²⁰ Closing Submission of John S Purcell, dated 22 October 2021, page 26 (Doc ID: RDU_REL623-000000016).

a personal guarantee when lending to a company. This has already been dealt with in respect of SPC 3.2 above.

7.145 The Inquiry agrees with Mr Purcell's opening statement set out at paragraphs 7.136 and 7.137 above. Having examined the Contemporaneous Reports in which LTV ratios were mentioned, the Inquiry is satisfied that there was no finding or recommendation in relation to LTV ratios exceeding permitted limits.

7.146 There is one outstanding loan that is more difficult to determine. It was a loan for £245 million and it was to a borrower who was described as a new client.¹²¹ The project involved the extensive refurbishment of a property in London. The Inquiry has come to the view that in the absence of clear definitions of what constituted residential development as opposed to development finance, it could not, on the balance of probabilities, make an adverse finding in respect of this loan.

7.147 In circumstances where the Inquiry makes no adverse findings against INBS in respect of SPC 3.4, the Inquiry finds that there was no breach of the relevant legislative provisions and the condition imposed on INBS's authorisation identified at paragraph 7.2 above and therefore finds that there was no commission by INBS of SPC 3(a), 3(b) or 3(c).

Finding in relation to Mr Purcell's participation

7.148 Having regard to the above findings in relation to INBS, all allegations of participation by Mr Purcell fall away.

SPC 3.5

7.149 SPC 3.5 alleged that where loans exceeded the maximum applicable LTV set out in the relevant lending policy, INBS failed to ensure that those exceptions were formally approved as exceptions in accordance with internal policy, for the 30 loans that there was an exception to policy. In one¹²² of the 30 loans the SPC 3.5 Loan Specific Allegation was excluded from the Loan Hearings on the basis that it was an INBS Only Allegation. Accordingly, the Inquiry only considered the SPC 3.5 Allegations that were advanced in the remaining 29 loans.

¹²¹ Loan Account: [REDACTED] (Customer: [REDACTED] Borrower: [REDACTED]).

¹²² Loan Account: [REDACTED] (Customer: [REDACTED]).

7.150 There are 25 loan specific participation allegations advanced against Mr Purcell in respect of this SPC Allegation. In that regard, Consolidated Table C3.27 which accompanied the Investigation Report recorded that out of the 30 loans suspected to have had an unapproved exception to policy, it is alleged that 25 were approved by the Board when Mr Purcell was in attendance.

INQUIRY FINDING – SPC 3.5

7.151 In light of the finding made by the Inquiry in respect of SPC 3.4 above, the SPC 3.5 Allegation falls away entirely (in respect of INBS and Mr Purcell).

CHAPTER 8

SPC 4

INTRODUCTION

- 8.1 SPC 4 concerns a suspected failure by INBS to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies.
- 8.2 The three individual SPCs are as follows:

SPC 4(a)

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 4(b)

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies, and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 4(c)

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies, and thereby failed to comply with a condition on its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 4 ALLEGATIONS

8.3 The following four allegations of non-compliance by INBS with its internal policies were advanced by the Investigation Report in respect of SPC 4¹:

- (a) SPC 4.1 alleged that commercial lenders did not monitor commercial loans.
- (b) SPC 4.2 alleged that INBS did not review its top 100 Large Exposures.
- (c) SPC 4.3 alleged that INBS's credit review function did not effectively communicate the output of the credit reviews it did perform, or the issues to be addressed by lenders, to commercial lenders (either directly or via the Credit Committee).
- (d) SPC 4.4 alleged that the output of INBS's credit review function was not considered as part of INBS's provisioning process, in that it appears that the credit review function's findings were not taken into account by the Provisions Committee as part of its decision-making.

8.4 It was alleged in the Investigation Report that monitoring of the commercial loan book should have been performed at a number of levels in INBS. Commercial lenders were responsible for the ongoing monitoring of loans in their individual portfolios. In addition, the credit review function was established in 2003 to perform a continuing review role separately from the lending function. This approach to monitoring was summarised in a letter from INBS to the Financial Regulator dated 1 February 2005.² The letter stated, on page 5 in a section entitled "*Systems to effectively monitor, manage and control lending risk*", that:

"Once a loan has been advanced it is monitored through regular contact between the commercial lenders and the borrowers as well as an ongoing process of credit review of large and material exposures".

8.5 SPC 4 deals with the monitoring of commercial lending by commercial lenders and by the credit review function. The Board also had a role in the monitoring of commercial lending and this is dealt with in the chapter relating to SPC 6.

¹ The SPC 4 Allegations are outlined in Chapter 9, paragraph 9.5, of the Investigation Report (Doc ID: RDU_REL-000000033) and the SPC 4.1 Allegation is further detailed in Consolidated Table C4.1 (Doc ID: RDU_REL1600-00000138).

² Letter from Michael Walsh, INBS, to Liam O'Reilly, Financial Regulator, dated 1 February 2005 (Doc ID: 0.7.120.131433).

- 8.6 The growth of Profit Share Loans in INBS during the Review Period, particularly in loans emanating from the Belfast Branch, made monitoring such lending more problematic. INBS significantly increased commercial lending throughout the Review Period, from €3.59 billion at 31 December 2004 (65% of the total loan book) to €8.18 billion at 31 December 2008 (78% of the total loan book). As can be seen in the evidence already examined in respect of SPCs 1 to 3, by September 2009 63% of commercial loans were on a capital and interest moratorium and a further 31% were the subject of a capital moratorium.
- 8.7 Accordingly, monitoring by way of receipt of loan repayments as scheduled over the term of the loan, which is one useful measure of the performance of that loan, was not applicable where these moratoria were applied. A lender in these circumstances would have to employ other means to monitor the performance of the loan, such as regular engagement with the borrower, updated valuations and site visits. In addition, high LTV loans exposed lenders to reductions in the value of the property securing the loans, particularly in situations where the lender was reliant on the sale or refinancing of the property to repay the loan and interest was rolled over into the loan over its term.
- 8.8 INBS's policy provisions for commercial loan monitoring by commercial lenders did not prescribe what constituted monitoring. Accordingly, in the Investigation Report it is only alleged that there was a breach of policy where there was no evidence of monitoring in any form by INBS. The applicable procedures and policy provisions relevant to the SPC 4 Allegations are set out in the table at Appendix 14 and are dealt with as appropriate below under each SPC Allegation.

SPC 4 Allegations to be considered by the Inquiry

- 8.9 During the course of exchanges with Mr Purcell regarding the parameters of the SPC 1 to 4 Context Hearings, the Inquiry clarified the position in respect of the allegations against Mr Purcell in SPC 4, as follows:

“As previously indicated, there is no loan specific element to the SPC 4 allegations as they relate to you. The evidence supporting your alleged participation in the SPC 4 allegations, as set out in paragraphs 9.246 – 9.254, is all non-loan specific evidence (contemporaneous reports, related regulatory

correspondence and provisions committee minutes and packs) and will therefore also be addressed during the course of the Context Hearing".³

- 8.10 In the Investigation Report (at paragraphs 9.246 to 9.254) it is alleged that there was participation by Mr Purcell only in respect of the SPC 4.2 and SPC 4.4 Allegations, outlined at paragraph 8.3 above. Accordingly, in this chapter the Inquiry only addresses these two SPC 4 Allegations.
- 8.11 Similar to the approach taken in previous chapters, before the Inquiry can make a finding in relation to Mr Purcell's alleged participation in the SPC 4.2 and SPC 4.4 Allegations, the Inquiry must first determine whether SPC 4.2 and SPC 4.4 are proven against INBS and, if so, whether this amounted to the commission by INBS of SPCs 4(a), 4(b) and 4(c). If the Inquiry makes a finding against INBS in that regard, it must then consider whether Mr Purcell participated in the breaches by INBS.

RELEVANT INFORMATION AND SOURCES OF EVIDENCE

- 8.12 In addressing the two relevant SPC 4 Allegations, the following information and sources of evidence were considered by the Inquiry:
- (a) Relevant INBS policy documents.
 - (b) Contemporaneous Reports (including relevant corporate governance documentation and Financial Regulator Correspondence).
 - (c) Witness evidence.
 - (d) Mr Purcell's submissions.⁴
 - (e) Mr Purcell's evidence to the Inquiry.
- 8.13 There is no loan specific evidence relating to the SPC 4.2 and SPC 4.4 Allegations. The only SPC 4 Allegation considered in the Loan File Analysis (carried out by the Inquiry in Chapter 4 of this Findings Report), was SPC 4.1 relating to monitoring. In those circumstances, the Inquiry does not consider the Loan File Analysis as a source of evidence when addressing the SPC 4.2 and SPC 4.4 Allegations below.

³ Email from RDU to Stan Purcell dated 31 July 2020 in response to email sent by Stan Purcell dated 18 July 2020 (Doc ID: RDU_REL489-000000001).

⁴ As outlined in Chapter 2, paragraph 2.5, Mr Purcell represented himself during the Inquiry and accordingly made written and oral submissions to the Inquiry, in addition to and distinct from the evidence he provided under oath and in his witness statements.

SPC 4.2

8.14 SPC 4.2 alleged that INBS did not review its top 100 Large Exposures.

Relevant INBS policy documents

8.15 SPC 4.2 concerned the review of the top 100 Large Exposures by the credit review function. The applicable policies cited in the Investigation Report in respect of this allegation were:

- (a) the 2005 Impairment Provisioning Policy⁵;
- (b) the 2006 Impairment Provisioning Policy⁶;
- (c) the 2006 Notes on the Implementation of Impairment Provisioning Policy⁷;
- (d) the 2007 Impairment Provisioning Policy⁸;
- (e) the 2007 Notes on the Implementation of Impairment Provisioning Policy⁹; and
- (f) the 27 June 2007 Credit Risk Management Policy.¹⁰

8.16 The INBS credit review function was established in 2003. Mr Frank Casey was tasked with establishing the credit review function, and performed this role throughout the Review Period.

8.17 Subsequent to its establishment in 2003, the role of the credit review function was formalised in the 2005 Impairment Provisioning Policy which states:

“The credit review is focused on the Top 100 Large Exposures. The reviewer examines the relevant lending files and completes a credit review form. This form provides a summary of the exposure and includes such information as the overall facility, amount, purpose, term, repayment arrangements, security,

⁵ 2005 Impairment Provisioning Policy (Doc ID: 0.7.120.25083).

⁶ 2006 Impairment Provisioning Policy (Doc ID: 0.7.120.449670).

⁷ 2006 Notes on the Implementation of Impairment Provisioning Policy (Doc ID: 0.7.120.449946).

⁸ 2007 Impairment Provisioning Policy (Doc ID: 0.7.120.449577).

⁹ 2007 Notes on the Implementation of Impairment Provisioning Policy (Doc ID: 0.7.120.449696).

¹⁰ 27 June 2007 Credit Risk Management Policy (Doc ID: 0.7.120.431329).

valuation and credit grade and quality of the loan. The review highlights issues to be addressed by lenders and corrective actions to be taken".¹¹

8.18 In the Investigation Report it is alleged that from December 2005, when the 2005 Impairment Provisioning Policy was passed by the Board, there was a policy requirement for the credit review function to review the top 100 Large Exposures. It alleged that the credit review function did not review INBS's top 100 Large Exposures in their entirety and that this was highlighted on a number of occasions, following the implementation of the policy requirement, during and after the Review Period.

8.19 The first of the policies relied upon that defines "large exposure" is the 27 June 2007 Credit Risk Management Policy which defined a Large Exposure as follows:

"An exposure to a client or group of connected clients where its value is equal to or exceeds 10% of the Society's Own Funds, is deemed to be a large exposure. For the purposes of this definition, exposures are deemed to be connected where two or more natural or legal persons constitute a single risk as one of them, directly or indirectly has control over the other or others. Control is defined as direct or indirect ownership, management control or financial dependencies.

Examples of connected customers include:

- *Persons within the same legal group*
- *Persons whose ultimate owner is the same individual/s.*
- *Companies having common directors or management.*
- *Persons linked by cross guarantees".¹²*

8.20 Prior to the 27 June 2007 Credit Risk Management Policy, the term "large exposure" could be explained by reference to certain regulatory documents, namely the Central Bank of Ireland's 1994 notice on the "*Implementation of the EU Directive on the Monitoring and Control of Large Exposures of Credit Institutions*"¹³ and the Financial

¹¹ 2005 Impairment Provisioning Policy, page 2 (Doc ID: 0.7.120.25083).

¹² 27 June 2007 Credit Risk Management Policy, page 33 (Doc ID: 0.7.120.431329).

¹³ Extract from Central Bank of Ireland, Spring Bulletin 1994, Implementation of the EU Directive on the Monitoring and Control of Large Exposures of Credit Institutions (Doc ID: 0.7.120.709210).

Regulator's "Quarterly Large Exposures Return Notes on Compilation" published in September 2004.¹⁴

8.21 INBS was obliged to report Large Exposures to the Financial Regulator in accordance with the 1994 and 2004 Central Bank reporting requirements and these reports were furnished throughout the Review Period. These reports were separate from, and in addition to, the requirement that the credit review function should review the top 100 Large Exposures.

8.22 The issue of the credit review function reviewing INBS's top 100 Large Exposures arose in Contemporaneous Reports and in Financial Regulator Correspondence during the Review Period.

Contemporaneous Reports

2006 Deloitte Audit Report¹⁵

8.23 This report made a finding that:

*"Outside of the Top 50 clients there is no formal review or the re-evaluation of the risk exposure from these loans".*¹⁶

8.24 Deloitte made a number of recommendations and management responded by stating that:

"The Commercial Lending Administrator assesses all Top 50 loans on an on-going basis.

All loan terms and moratoria are examined prior to expiry and appropriate action is taken.

*A new credit risk function has been set up and will implement all the recommendations".*¹⁷

8.25 As noted above, the 2005 Impairment Provisioning Policy, which had been approved by the Board on 21 December 2005, required the review of the top 100 Large

¹⁴ IFSRA, Quarterly Large Exposures Return Notes on Compilation, dated September 2004 (Doc ID: 0.7.120.709222).

¹⁵ 2006 Deloitte Audit Report (Doc ID: 0.7.120.432332).

¹⁶ 2006 Deloitte Audit Report, page 16 (Doc ID: 0.7.120.432332).

¹⁷ 2006 Deloitte Audit Report, page 16 (Doc ID: 0.7.120.432332).

Exposures. This was not referred to in the minutes of either the Audit Committee or the Board meetings when the 2006 Deloitte Audit Report was considered.

- 8.26 On 15 August 2005, Mr Purcell sent an email to the Financial Regulator responding to queries raised by the Financial Regulator in previous correspondence. In relation to the credit review process, this email stated:

*“Frank Casey has extended his credit beyond the Top 50 Exposure to 27 out of the next 50 Large Exposures”.*¹⁸

- 8.27 When the Financial Regulator was provided with this information, there was no policy requirement to review the top 100 Large Exposures but it was an issue that concerned the Financial Regulator before that date.

- 8.28 The Financial Regulator wrote to INBS on 31 August 2006 seeking updates on *inter alia*, Deloitte’s recommendations. In relation to “Commercial Loans Reporting and Management”, the Financial Regulator stated:

*“In addition I refer to your email of 15 August 2005 to the Financial Regulator, where you noted that Mr Casey had extended his credit review beyond the top 50 exposures to 27 out of the next 50. In this regard please advise what Deloitte’s [sic] mean by ‘Outside of the Top 50 clients there is no formal review or re-evaluation of the risk exposure from these loans”.*¹⁹

- 8.29 INBS’s response, dated 10 November 2006, stated that the credit risk department’s schedule for reviewing INBS’s exposures was:

“Top 30 exposures – Board report due November 2006.

Top 50 exposures – Board report due February 2007.

*Top 100 Exposures – Board report due May 2007”.*²⁰

- 8.30 The Quarterly Reports provided to the Board for quarter 3 and quarter 4 2006 included Credit Review Pro-Formas in respect of loans relating to INBS’s top 30 exposures. The

¹⁸ Email from Stan Purcell, INBS, to Lisa O’Rourke, Financial Regulator, dated 15 August 2005 (Doc ID: 0.7.120.137585).

¹⁹ Letter from Yvonne Madden, Financial Regulator, to Stan Purcell, INBS, dated 31 August 2006, page 9 (Doc ID: 0.7.120.449197).

²⁰ Letter from Stan Purcell, INBS, to Yvonne Madden, Financial Regulator, dated 10 November 2006, page 7 (Doc ID: 0.7.120.13615).

Quarterly Report for quarter 1 2007 included Credit Review Pro-Formas relating to INBS's top 50 exposures.

- 8.31 The Financial Regulator responded to INBS on 8 January 2007²¹, and repeated its previous query (outlined above) in relation to the apparent contradiction between the Deloitte finding and the email that had been sent by Mr Purcell on 15 August 2005. The Financial Regulator noted that a Board report on the top 30 exposures was to be provided by November 2006.
- 8.32 In response, INBS informed the Financial Regulator on 7 February 2007²² that it was unclear why Deloitte had made the comment, as INBS's reviews did extend beyond the top 50 exposures "*albeit the focus has always been on the large exposures*". INBS confirmed that the top 30 reviews had been completed and the top 50 and top 100 would be reported to the Board by February 2007 and May 2007 respectively.

2006 KPMG Management Letter²³

- 8.33 The 2006 KPMG Management Letter noted that there was no overall grade applied to an exposure that would reflect the aggregate grade applied on various facilities within an exposure. KPMG recommended that these grades be monitored on a quarterly basis in conjunction with the credit loan book review. The INBS Management Response stated that the exposure grading for the top 50 customers would be in place by the end of quarter 3 2007. It also stated that the Board would be provided with an analysis of accounts graded in the top 100 exposures and those awaiting grade under the review process. This statement suggests that at the time of the finalisation of the 2006 KPMG Management Letter in May 2007 exposure grading, and consequently credit review, for the top 50 customers had not been completed. The 2006 KPMG Management Letter was discussed by the Board at its meeting on 24 May 2007²⁴ the minutes of which noted that in relation to the credit grading of the loan book, new procedures and processes had been installed and were due for completion by October 2007.

²¹ Letter from Yvonne Madden, Financial Regulator, to Stan Purcell, INBS, dated 8 January 2007 (Doc ID: 0.7.120.132456).

²² Letter from Stan Purcell, INBS, to Yvonne Madden, Financial Regulator, dated 7 February 2007, page 5 (Doc ID: 0.7.120.136192).

²³ 2006 KPMG Management Letter (Doc ID: 0.7.120.55766).

²⁴ Minutes of Board meeting, dated 24 May 2007 (Doc ID: 0.7.120.35711).

May 2008 Deloitte Review²⁵

- 8.34 This report made a finding that: “*Credit review checks are routinely made only for loans exceeding EUR 10 million and those within the top 50 exposures*”.²⁶
- 8.35 Deloitte recommended that INBS consider whether the credit risk manager had sufficient resources to “*establish and embed Basel II compliant processes and associated risk management procedures*”.²⁷
- 8.36 The minutes of the Audit Committee meeting²⁸ at which this review was considered did not include any specific reference to the extent of coverage of loans reviewed by the credit review function.

September 2008 Deloitte Review²⁹

- 8.37 Both this September 2008 Deloitte Review and the follow-up 2009 Deloitte Review, issued in February 2009³⁰, reported that credit reviews had still not been performed in respect of all of INBS’s top 100 Large Exposures. The issue was re-designated by Deloitte from “*Priority 2*” – “*Significant*”, in May 2008, to “*Priority 1*” – “*Critical*” in the September 2008 Deloitte Review and 2009 Deloitte Review.
- 8.38 The September 2008 Deloitte Review stated:
- “Credit Review – An independent review process is in place to review the commercial lending agreements in place. Society policy states that the reviews should cover the Top 100 customers however the primary focus to date has been on the Top 50 customers where there is a greater and more material exposure to the Society”*.³¹

- 8.39 Under the heading “*Outstanding Findings from a 2008 Report and Updated Management Responses*”, Deloitte stated:

²⁵ May 2008 Deloitte Review (Doc ID: 0.7.120.138590).

²⁶ May 2008 Deloitte Review, page 27 (Doc ID: 0.7.120.138590).

²⁷ May 2008 Deloitte Review, page 27 (Doc ID: 0.7.120.138590).

²⁸ Minutes of Audit Committee meeting, dated 26 May 2008 (Doc ID: 0.7.120.57529).

²⁹ September 2008 Deloitte Review (Doc ID: 0.7.120.430877).

³⁰ 2009 Deloitte Review (Doc ID: 0.7.120.508410).

³¹ September 2008 Deloitte Review, page 4 (Doc ID: 0.7.120.430877).

*“Although policy states that the top 100 customers should be reviewed periodically the priority to date has been on completing reviews for the top 50 customers and for loans exceeding €10 million”.*³²

8.40 In its Management Response to this finding, INBS stated:

*“Credit Risk are charged with the review of accounts contained within the Large Exposures report. This comprises the Top 30 customers. Credit Risk have extended this to the Top 50 customers and beyond and will continue to extend its remit”.*³³

8.41 The final draft of the September 2008 Deloitte Review was discussed at the Audit Committee meeting on 4 November 2008. The minutes for this meeting³⁴ noted that the Audit Committee was disappointed at the progress in implementing recommendations from the May 2008 Deloitte Review and requested the internal auditor to prepare a report for circulation to the Board and the Financial Regulator.

8.42 Following its Board meeting on 12 December 2008, INBS sent a letter to the Financial Regulator on the same date which stated the Board’s position under the heading: “Not all commercial loans were subject to regular review by credit risk” as follows:

*“The Board agrees with Deloitte’s recommendation that more resources, both human and IT need to be allocated to the credit risk department to ensure the Society complies with all Basel II provisions and other reporting and review requirements”.*³⁵

8.43 The internal auditor sent a memorandum to the Board and chief executive dated 4 December 2008, which addressed the recommendations and implementation of the Deloitte reports. With regard to the review of commercial loans by credit risk, the internal auditor’s memorandum stated:

“Reason(s) for recommendation

Credit Risk need additional staff to assess the continued credit worthiness of the client/project. More exposures need to be properly reviewed.

³² September 2008 Deloitte Review, page 11 (Doc ID: 0.7.120.430877).

³³ September 2008 Deloitte Review, page 11 (Doc ID: 0.7.120.430877).

³⁴ Minutes of Audit Committee meeting dated 4 November 2008 (Doc ID: 0.7.120.56063).

³⁵ Letter from Stan Purcell, INBS, to Yvonne Madden, Financial Regulator, dated 12 December 2008, page 3 (Doc ID: 0.7.120.309719-000001).

Current Status

Sinead Dawney from the Accounts department has joined the Credit Risk team. However, Deloitte believe that more resources, both human and IT need to be allocated to the Credit Risk Department to ensure the Society complies with all Basel II provisions and other reporting and review requirements.

This recommendation is scheduled for implementation by 31/3/09".³⁶

- 8.44 The minutes for the Board meeting on 12 December 2008³⁷ recorded that the Board had considered the internal auditor's update in detail and had agreed the content of letters to be sent to the Financial Regulator.

2009 Deloitte Review³⁸

- 8.45 This report repeated the finding from the September 2008 Deloitte Review that:

"Although policy states that the top 100 customers should be reviewed periodically the priority to date has been on completing reviews for the top 50 customers and for loans exceeding €10 million".³⁹

- 8.46 The INBS Management Response was:

"Credit Risk and Commercial Lending are currently extending the reporting remit to the top 100 customers and then to the top 300 customers. This will be an ongoing process".⁴⁰

- 8.47 The evidence suggests, however, that as of February 2009 INBS had not reviewed the top 100 Large Exposures in accordance with policy. This was despite multiple Contemporaneous Reports highlighting this as an issue and a previous commitment having been given in correspondence to the Financial Regulator on 10 November 2006 that the review of the top 100 exposures would be complete and submitted to the Board by May 2007. As outlined above, the issue was previously raised in the 2006 Deloitte Audit Report; the 2006 KPMG Management Letter; the May 2008 Deloitte Review, and the September 2008 Deloitte Review.

³⁶ Memorandum from Killian McMahon to the Board and Chief Executive, dated 4 December 2008, page 3 (Doc ID: 0.7.120.749985).

³⁷ Minutes of Board meeting, dated 12 December 2008 (Doc ID: 0.7.120.21207).

³⁸ 2009 Deloitte Review (Doc ID: 0.7.120.508410).

³⁹ 2009 Deloitte Review, page 9 and 10 (Doc ID: 0.7.120.508410).

⁴⁰ 2009 Deloitte Review, page 9 (Doc ID: 0.7.120.508410).

Witness evidence

Frank Casey

8.48 Mr Casey was employed by INBS from 2003 and was tasked with establishing the credit review function.

8.49 Mr Casey provided a witness statement to the Inquiry, dated 10 December 2020, in which he responded to a number of issues identified by the Inquiry. He stated:

“... ”

(a) *I don't believe that I was aware of the concerns raised in the Contemporaneous Documents. I can't recall meeting or discussing the top 100 exposures with Deloitte, KPMG or the Financial Regulator.*

(b) *Undertaking to the Financial Regulator was not communicated to me as far as I can recall*.⁴¹

8.50 He had been asked to address in his witness statement to what extent the top 100 exposures were reviewed by the credit review function during the Review Period and he stated: *“Would estimate in excess of 80%”*.

8.51 Mr Casey also provided oral evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 15 June 2021. He was asked why only 70% or 80% of the top 100 exposures were reviewed and *“why was it that it never reached 100%?”*. He stated:

“Well, I was the only one doing the credit grading. There was a huge number of accounts. Reviews had to continue on. The priority was given to the large value ones. They couldn't all be – – I didn't have the capacity to do the whole lot of the reviews, you know”.⁴²

8.52 Mr Casey was asked about the letter written by Mr Purcell to Ms Madden, of the Financial Regulator, dated 10 November 2006 (see paragraph 8.29 above) which set out a schedule for the completion of credit reviews. He said that he had not been involved in putting that document together and he did not know who had made those commitments.⁴³

⁴¹ Witness Statement of Frank Casey, dated 10 December 2020, page 1 (Doc ID: RDU_REL540-000000001).

⁴² Transcript SPC 1-4 Remote Inquiry Hearing, dated 15 June 2021, page 93 line 25 et seq. (Doc ID: RDU_FT_SPC1-4_D20-000000001).

⁴³ Transcript SPC 1-4 Remote Inquiry Hearing, dated 15 June 2021, page 98 line 13 et seq. (Doc ID: RDU_FT_SPC1-4_D20-000000001).

8.53 The Inquiry has seen two documents produced by Mr Casey and provided to Mr Michael Fingleton. The first is a memorandum dated 14 June 2006⁴⁴ in which Mr Casey outlined the methodology for performing the credit review function. He stated:

"As requested, a monthly report on Credit Review is to be submitted to you.

Accounts reviewed are identified from the Top 100 Large Exposures monthly report.

...

Approximately 80% of the Top 100 exposures by value has been reviewed (again based on the March 06 report). Much of the remaining 20% is spread over a large number of relatively small value accounts.

...

As at mid May 06, 174 accounts had been fully reviewed and graded. A further 36 accounts were at various stages of completion.

A list of the completed 174 accounts was requested and advised to IFSRA, who randomly selected 10 accounts for examination. This was the first time the Credit Review function was subject to detailed examination by them.

Two meetings have recently taken place with IFSRA, the first to explain the Credit Review process, the second to go through in detail the ten selected accounts. Queries raised, were, I believe, answered to the satisfaction of IFSRA.

A wrap up meeting between IFSRA and Ita Rogers today resulted only in a number of minor recommendations about the credit review function. This, I believe, suggests IFSRA accepts both the process & the manner in which it is conducted".

8.54 The recommendations made by the Financial Regulator at the wrap up meeting on 14 June 2006, suggest that evidence of ongoing contact with customers should be recorded on the file.⁴⁵

⁴⁴ Memorandum from Frank Casey to Michael Fingleton, dated 14 June 2006 (Doc ID: AD-0.7.120.750180).

⁴⁵ Note of Closing Meeting with the Financial Regulator, dated 14 June 2006, page 4 (Doc ID: 0.7.120.7683).

- 8.55 A further email dated 1 October 2007 from Mr Casey to Mr Fingleton⁴⁶ highlighted the level of ungraded accounts that were still to be reviewed or graded. It stated:

“Mr Fingleton,

Â [sic]

As requested, attached is breakdown ofÂ [sic] non graded individual accountsÂ [sic] as per Top 100Â Exposure listing 30/6/07. I have highlighted those loans over 10m which will have priority for review/grading.

Â [sic]

Since end of June, further new facilities totalling 713m have been identified to date and are in theÂ [sic] process of beingÂ [sic] reviewed/graded.Â [sic] FrankÂ [sic] Casey – ungraded.xls”

- 8.56 The spreadsheet attached to the email listed 60 exposure groups and 175 loan facilities.

Darragh Daly

- 8.57 Mr Darragh Daly was appointed credit risk manager in July 2006. In his witness statement to the Inquiry, dated 25 November 2020, he said that he participated in the development of the 2007 Impairment Provisioning Policy. He said that one of the most pressing issues was getting sufficient input from the lending managers who were directly involved in managing the various loans and connections in order to build an accurate overall picture. In relation to the top 100 exposures he stated:

“17a I believe there were discussions emphasising the importance of being able to demonstrate the importance of having reviewed 100% of the top 100% [sic] exposures, however we did not have a full understanding of what was specifically required to achieve this goal.

17b I do not recall the percentage of reviews of the top 100 exposures that were completed. I was aware that we were seeking to improve and enhance the quality of the credit reviews and validate the data integrity underlying the loans that were considered.

⁴⁶ Email from Frank Casey to Meryl Coade (addressed to Mr Fingleton), dated 1 October 2007 (Doc ID: 0.7.120.378455).

17c I understand the Regulator had been informed for a number of previous years that such work would be undertaken going back to 2003”.⁴⁷

Brian Fitzgibbon

8.58 Mr Brian Fitzgibbon was appointed as commercial review manager in October 2004. He provided a witness statement to the Inquiry, dated 14 December 2020⁴⁸, and gave evidence during the SPC 1 to 4 Context Hearing on 11 June 2021.⁴⁹ In his witness statement to the Inquiry, he described the three elements of commercial review that operated in INBS, as follows:

“...the “commercial review” was the completion of 3 proforma namely a File proforma, a Credit Review proforma and a Legal proforma.

The completion of the File proforma entailed the inspection of all commercial loan facility files to establish what documentation was present.

The Credit Review proforma was completed on assessing the credit risk associated with each loan facility and/or counterparty.

The Legal proforma was populated by inspecting all legal files to ascertain was [sic – what] information and documents were present.

Both the File and Legal elements were carried out by a small team (5 or 6 I believe) while the Credit Review was carried out by a single assigned resource”.⁵⁰

8.59 The legal pro-forma, which was done by Mr Fitzgibbon for a six month period in 2004/2005, was a limited review to establish whether loan files were complete from a documentation perspective.

8.60 In his witness statement, Mr Fitzgibbon described the credit review function as being to assess the counterparty risk on INBS’s top exposures. Upon the completion of an individual review, a grade was assigned. In short, the legal review was an examination of INBS’s entire commercial portfolio while the credit review was the assessment of individual counterparties who had the greatest exposure to INBS.

⁴⁷ Witness Statement of Darragh Daly, dated 25 November 2020, page 2 and 3 (Doc ID: RDU_REL531-000000013).

⁴⁸ Witness Statement of Brian Fitzgibbon, dated 14 December 2020 (Doc ID: RDU_REL541-000000001).

⁴⁹ Transcript SPC 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 64 et seq. (RDU_FT_SPC1-4_D19-00000004).

⁵⁰ Witness Statement of Brian Fitzgibbon, dated 14 December 2020, page 1 (Doc ID: RDU_REL541-000000001).

8.61 Mr Fitzgibbon's role was to complete the file pro-forma, but after some months and following the review of over 1500 files he resigned from that role because he felt he was not afforded the opportunity to undertake corrective measures. Mr Fitzgibbon stated: "*I explained matters to Mr. Fingleton. I said the problem for the most part can be rectified. The answer I got was not positive. And I resigned my role in the position*".⁵¹

Mr Purcell's witness statement

8.62 Mr Purcell provided a witness statement to the Inquiry dated 5 March 2021.⁵² In relation to the two SPC 4 Allegations to be considered by the Inquiry, Mr Purcell denied participation in the allegations that (i) INBS did not review its top 100 Large Exposures (SPC 4.2), and (ii) the output of INBS's credit review function was not considered as part of the provisioning process (SPC 4.4).

8.63 With respect to the first of these allegations, SPC 4.2, Mr Purcell stated:

"1. It is alleged that INBS did not review its top 100 Large Exposures and so was not compliant with the 2005 Impairment Provisioning Policy, the 2006 and 2007 Impairment Provisioning Policies and Notes on the 2006 and 2007 Impairment Provisioning Policies ("Impairment Policies and Notes") and the 27 June 2007 Credit Risk Management Policy ("CRMP"). It is alleged that I participated in the suspected non-compliance by INBS with its internal policies.

The Impairment Policies and Notes and the CRMP did not make a policy requirement that the top 100 Large Exposures be reviewed.

The Policies and Notes were stating the practice of Credit Review and the plans of the Credit Risk Department.

I say this as I was involved in the preparation of the Impairment Policies and Notes.

I have set out below the reasons why what I am saying is the correct position.

a. Credit Risk Review

⁵¹ Transcript SPC 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 89 line 16 (Doc ID: RDU_FT_SPC1-4_D19-00000004).

⁵² Witness Statement of John S Purcell, dated 5 March 2021 (Doc ID: RDU_REL562-000000003).

A document titled "Commercial Lending Review Reporting Process" (Reference 0.7.120. 11258, pages 49 and 50) signed by Brian Fitzgibbon, dated 2 March 2005, was submitted to a board meeting on 10 March 2005.

This document states under Credit Risk Review: "The Society as part of its internal control function performs an independent assessment of all large exposures. Reviews consist of identification of relevant accounts by reference to monthly top 100 Large Exposures. Reviewer examines relevant lending files and completes Credit Review Pro forma.

This document is in effect saying that:

The credit review is focused on the top 100 Large Exposures.

The 2005 Impairment Provisioning Policy (0.7.120.25083) uses the words "The credit review is focused on the Top 100 Large Exposures". The 2005 policy is repeating what Credit Review were doing. The 2005 Impairment Provisioning Policy is not creating a policy about credit reviews or making it a policy requirement that the top 100 Large Exposures have to be reviewed.

The Impairment Provisioning Policies 2006 (0.7.120.449670) and 2007 (0.7.120.449577) repeated that "The credit review is focused on the top 100 Large Exposures" because that is what credit review were doing.

b. August 2005

The progress made reviewing Large Exposures in the second half of 2005 is illustrated by the following:

1. An Internal Financial Regulator memo dated 10 August 2005 (0.7.120. 1128589) says: "Mr Purcell advised that Mr (Frank) Casey (The person who carried out credit reviews) probably wouldn't be much further than the top 50 however he will revert with definitive answer. Mr Purcell did however state that the top 30 credits account for about half the commercial lending book. Stan to revert on actual progress to date.
2. Frank Casey in an email to me dated 12 August 2005 (0.7.120.264230) supplied information to update the Financial Regulator.
3. I replied to the Financial Regulator on 15 August 2005 (0.7.120.137585) saying:

"3. Credit Reviews

Frank Casey has extended his credit (reviews) beyond the Top 50 Exposures to 27 out of the next 50 Large Exposures.”

At the end of 2005 when the 2005 Impairment Provisioning Policy was approved credit review remained focused on the top 100 Large Exposures as it was on the 8 March 2005.

c. June 2006

The position as regards credit reviews in mid – 2006 was as follows:

Document AD-ENF_PROD_CAT-00000168 sets out Frank Casey’s discussion with the Financial Regulator on 20 June 2006.

The Financial Regulator recorded that:

“Mr Casey advised that at present further staff are not required”

“The inspectors were advised that the credit review process concentrates on the top 100 Exposures and that approximately 83% of the commercial book (by value) has been reviewed and allocated a credit risk grade.”

“Reviews are selected based on a monthly review of the top 100 Exposures, arrears listings and non-performing loans together with other market indicators. Mr Casey advised that he aims to review all of the top 50 Exposures at least quarterly.”

d. Credit Risk Department Plan - September 2006 (0.7.120.36378)

This plan was submitted to the Board meeting held on 27 September 2006 (0.7.120.3 4149).

The plan sets out the “Task” 1a) on Page 1 of “Ensuring that Credit Reviews are carried out on the Commercial loan Book. The “Expected time frame” is:

Top 30 Nov 06

Top 50 Feb 07

Top 100 May 07”.

The plan allocates the Prime Responsibility for this task to Frank Casey.

e. Letter to the Financial Regulator dated 10 November 2006 (0.7.120.13 615)

Page 7 of this letter says:

“The Credit Risk department current review schedule of the Society’s exposures is as follows:

Top 30 exposures – Board Report due Nov. 2006

Top 50 exposures – Board Report due Feb. 2007

Top 100 exposures – Board Report due May 2007

A final draft of the letter to the Financial Regulator dated 10 November 2006 was sent to Darragh Daly, Richard McMurtry, Killian McMahon, Tom McMenamin and Gary McCollum on 3 November 2006 (0.7.120.29 8551).

f. Provisions Committee Meeting on 26 October 2006

The minutes of the meeting of the Provisions Committee held on 26 October 2006 (0.7.120.12262) record that Frank Casey and Darragh Daly were present at the meeting.

The minutes record on page1. that:

“A detailed report (The Report) was circulated in advance of the meeting and contained the following items for review by the Committee.

2. Impairment Provisioning Policy (first approved 21 December 2005).

3. Notes on the Implementation of Impairment Provisioning Policy.”

g. The Notes on Impairment Provisioning Policy 2006... And 2007

The Notes on page 9 of the 2006 policy and page 10 of the 2007 policy state:

“The credit review function reviews on a periodic basis loan accounts which comprise the Society’s Top 100 Exposures”.

This sentence in the “Notes” was not creating a policy provision relating to the review of the top 100 Large Exposures by the credit review function.

The sentence was referring to the Credit Risk Department Plan of September 2006, d. above, and the Credit Risk department current review schedule of the Society’s exposures set out in the letter dated 10 November 2006 to the Financial Regulator, e. above.

The credit review of the top 100 Large exposures was not carried out by the end of 2007 and so the 2007 Notes on the Implementation of Impairment Provisioning Policy stated what was still a plan for the future.

h. Credit Risk Management Policy 27 June 2007 (CRMP)

The Credit Risk Management Policy (0.7.120.431329) states on page 27:

“Reviews consist of identification of relevant accounts by reference to monthly top 100 Large Exposures.”

This sentence is the same as what was in the document dated 8 March 2005 signed by Brian Fitzgibbon mentioned in paragraph a. above “Credit Risk Review.”

The CRMP is saying that Credit Review focus on the top 100 Large Exposures to identify accounts for review. It is not saying that the top 100 Large Exposures are reviewed by Credit Review.

i. Frank Casey

Frank Casey said in an interview on 28 May 2013 (See page 1464 and 1465 of the Investigation Report).

“That’s what was expected of me was the top 100 exposures... I would have got the bulk of the value done”

...

“Probably not in their totality, but say, I don’t know but 70% or 80% by value but it kept changing obviously as loans were repaid and new loans came in, it was a movable feast really.”

Frank Casey gave credit review updates to the Managing Director on 14 June 2006 (0.7.1 20. 750180), 21 August 2006 (0. 7.1 20.3 55722 – 000001), 26 September 2007 (0.7.120.3 77212 – 000001) and 1 October 2007 (0.7.120. 378455 – 000001)”⁵³

Mr Purcell’s submissions

8.64 In his opening statement during the SPC 1 to 4 Context Hearing on 11 June 2021, Mr Purcell reiterated and expanded on a number of the points made in his witness statement. He submitted:

“I deny participation in the non-loan specific allegations for SPCs 1 – 4 in relation to me which were set out in an e-mail to me dated 31 July 2020.

...

⁵³ Witness Statement of John S Purcell, dated 5 March 2021, pages 15 to 20 (Doc ID: RDU_REL562-000000003).

Impairment Policy and Notes to the policy:

The first area I will address is Impairment Policy and the notes to the policy.

The Impairment Policies (2005, 2006 and 2007) and the notes thereto (2006 and 2007), they referenced practices of the lending area. However, the policies and notes did not create lending policy or policy for credit grading, policy for reviewing the top 100 large exposures, or policy in relation to submitting the output of Credit Review to provisions committee meetings.

I know this as I was involved in preparing the Impairment Policy and notes in 2005, 2006 and 2007.

When we were forming the Impairment Policy and notes we were not making credit policy. That was done by the Commercial Lending Department with the Commercial Mortgage Lending Policy dated 28 February 2007, and by the Credit Risk Department with the Credit Risk Management Policy dated 27 June 2007.

It was the responsibility of the lending area to make credit policy.

While the Impairment Policy and note reference practices in the lending area they did not create policy for the lending area. That was done by the lending area managers. The lending area managers developed and formed the credit policy that they would apply.

The implications of the Impairment Policy and Notes not making policy for the lending area are:

- 1. The allegation against me set out in table C1.16 - in relation to a credit grade on one loan is incorrect...*
- 2. It was not a policy requirement that INBS review its top 100 large exposures. Failure to review the top 100 exposures was not non-compliance with the 2005, 2006 and 2007 Impairment Policy, and the 2006 and 2007 notes on the implementation of Impairment Provisioning policy.*
- 3. It was not a policy provision that the output of the Credit Review function be considered as part of the provisioning process. INBS was not non-compliant with the 2006 and 2007 notes on the implementation of Impairment Policy in this regard.*

...

In summary

1. *The Impairment Policy and the notes thereto did not make policy for lending, credit grading, review of top 100 exposures or for submission of the output of the credit review function to the Provisions Committee.*

*In light of this, there was no non-compliance with policy, as alleged, in relation to a credit grading on one loan, review of the top 100 exposures or consideration of the output of the credit review function as part of provisioning process”.*⁵⁴

Mr Purcell’s oral evidence to the Inquiry

8.65 Mr Purcell was cross-examined on these submissions by the LPT during the SPC 1 to 4 Context Hearing on 31 July 2021. He was asked to explain his position with regard to the submission that the Impairment Provisioning Policies did not create policy with regard to either the top 100 exposures or in relation to a requirement that the output of credit reviews should be brought to the Provisions Committee. He contended that the Impairment Provisioning Policies set out policies in relation to provisioning but did not create policy in relation to the top 100 exposures or the credit review function. He stated that these policies “*were not sort of doing anything more than dealing with policy as regards impairment*”.⁵⁵

8.66 The following further exchange on the issue then took place:

“Q. ...And as I understand what you are saying to the Inquiry Members, while that is a policy, it’s not a policy that’s set out credit policy, is that right?

*A. It didn’t, because I was involved with those, as I pointed out, it wasn’t making policy in that regard. It recorded some practices. And I did set that out in a memo, or it was set out by Richard for me, I think it was a memo dated 27th of October 2006 that went to the Board”.*⁵⁶

⁵⁴ Transcript SPC 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 29 et seq. (RDU_FT_SPC1-4_D19-00000004).

⁵⁵ Transcript SPC 1-4 Remote Inquiry Hearing, dated 31 July 2021, page 60 et seq. (RDU_FT_SPC1-4_D31-00000001).

⁵⁶ Transcript SPC 1-4 Remote Inquiry Hearing, dated 31 July 2021, page 61 line 13 et seq. (RDU_FT_SPC1-4_D31-00000001).

INQUIRY FINDING – SPC 4.2

Finding in relation to INBS

- 8.67 The Inquiry is satisfied from its review of the documentation and the evidence received from Mr Casey that the requirement that INBS should review its top 100 Large Exposures, was not complied with by INBS during the Review Period.
- 8.68 The issue to be decided by the Inquiry, is whether the requirement that INBS should review its top 100 Large Exposures, was a policy requirement. In the Investigation Report it is alleged that this became a policy requirement following the Board approval of the 2005 Impairment Provisioning Policy. Mr Purcell contends that the 2005 Impairment Provisioning Policy did not create policy with regard to the top 100 Large Exposures, but merely recorded the practice in the credit review function.
- 8.69 The Notice of Inquiry, which outlined the SPCs against INBS which Mr Purcell is suspected to have participated in, referred specifically to a failure to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies from 1 August 2004 to 30 September 2008. Therefore, contraventions can only arise where a breach of a specific policy has occurred.
- 8.70 The Inquiry has reviewed the 2005 Impairment Provisioning Policy⁵⁷ together with the terms of reference for the Provisions Committee, which is appended to the 2005 Impairment Provisioning Policy.
- 8.71 The Impairment Provisioning Policy outlines the roles and responsibilities of the Provisions Committee in paragraph 1. It states:

“The Board established a provisions committee in 2003. The terms of reference of the provisions committee are set out in appendix (I). In summary; the provisions committee is responsible for ensuring that the Society makes adequate specific and collective impairment provisions... The information considered by the provisions committee as set out in Appendix (II)”.

⁵⁷ 2005 Impairment Provisioning Policy (Doc ID: 0.7.120.25083).

- 8.72 Appendix (II) lists a total of 18 reports to be circulated to the members of the Provisions Committee in advance of meetings. This list does not include the top 100 Large Exposures reviewed by the credit review function.
- 8.73 The terms of reference for the Provisions Committee lists the agenda to be followed. Five specific considerations are listed and the final one states: *“Assessment of the adequacy of the general provision against the loan portfolio”*. Although this provision could be interpreted as meaning an assessment of the top 100 Large Exposures, it does not state that.
- 8.74 The Inquiry is of the view that the submission by Mr Purcell in relation to the requirement that INBS review its top 100 Large Exposures (set out above at paragraph 8.64), is correct. Whilst the requirement to review the top 100 Large Exposures was imposed on INBS by virtue of assurances and undertakings given to the Financial Regulator, these were based on best practice and were not reflective of a policy obligation.
- 8.75 Accordingly, the Inquiry finds that the allegation in SPC 4.2 that INBS did not review its top 100 Large Exposures in breach of policy is not proven as against INBS.
- 8.76 Therefore, the Inquiry finds that there was no breach of the relevant legislative provisions and the condition on INBS’s authorisation identified at paragraph 8.2 above and, accordingly, that there was no commission by INBS of SPC 4(a), 4(b) or 4(c) with regard to SPC 4.2.

Finding in relation to Mr Purcell’s participation

- 8.77 Having regard to the above finding in relation to INBS, the allegation of participation by Mr Purcell falls away.

SPC 4.4

- 8.78 SPC 4.4 alleged that the output of INBS’s credit review function was not considered as part of INBS’s provisioning process, in that it appeared that the credit review function’s findings were not taken into account by the Provisions Committee as part of its decision-making.

Relevant INBS policy documents

- 8.79 The applicable policies cited in the Investigation Report in respect of SPC 4.4 were:

- (a) the 2006 Notes on the Implementation of Impairment Provisioning Policy⁵⁸;
- (b) the 27 June 2007 Credit Risk Management Policy⁵⁹; and
- (c) the 2007 Notes on the Implementation of Impairment Provisioning Policy.⁶⁰

8.80 The 2006 and 2007 Notes on the Implementation of Impairment Provisioning Policy state:

*“Within the Credit Risk function, Credit Review is carried out to assess the quality of the lending undertaken by the Society, in order to assist in the identification of instances where an exposure ought to be assessed for impairment”.*⁶¹

8.81 The 27 June 2007 Credit Risk Management Policy effectively repeats the above provision.

Provisions Committee

8.82 In the context of INBS’s Provisions Committee, which was responsible for provisioning impaired loans, in the Investigation Report it is alleged that it was part of the function of the Provisions Committee to consider the output from the credit review function which had relevance to potential losses or impairments.⁶²

8.83 The Provisions Committee was established in October 2003. The June 2004 Provisions Committee Terms of Reference and the 26 October 2006 Provisions Committee Terms of Reference stated:

“The provisions committee assists in identifying loans and advances, which may require a provision, and to capture provisioning discussions.

...

The committee is to ensure that the Society has adequately made provisions against loans and advances, which are considered to be unrecoverable, and

⁵⁸ 2006 Notes on the Implementation of Impairment Provisioning Policy (Doc ID: 0.7.120.449946).

⁵⁹ 27 June 2007 Credit Risk Management Policy (Doc ID: 0.7.120.431329).

⁶⁰ 2007 Notes on the Implementation of Impairment Provisioning Policy (Doc ID: 0.7.120.449696).

⁶¹ 2006 Notes on the Implementation of Impairment Provisioning Policy, page 4 (Doc ID: 0.7.120.449946); 2007 Notes on the Implementation of Impairment Provisioning Policy, page 5 (Doc ID: 0.7.120.449696).

⁶² Investigation Report Chapter 9, paragraph 9.41 (Doc ID: RDU_REL-00000033).

*also against risks which, although not specifically identified are know [sic] from experience to be present in any portfolio of loans and advances”.*⁶³

- 8.84 The Provisions Committee Terms of Reference applicable up to September 2008, list the membership of the committee as including Mr Fingleton, Mr Purcell, Mr Casey and four to five other INBS employees.⁶⁴
- 8.85 The Inquiry has been provided with minutes for 11 meetings of the Provisions Committee that occurred during the Review Period. Mr Purcell attended all of these meetings and Mr Casey attended all but two of these meetings.
- 8.86 The Inquiry has reviewed the Provisions Committee minutes and packs for the meetings during the Review Period. There is no evidence of Credit Review Pro-Formas, or credit grades or reports in relation to same, being submitted to and/or reviewed by the Provisions Committee.

Contemporaneous Reports

March 2005 Commercial Lending Review

- 8.87 The March 2005 Commercial Lending Review, relating to the period at 31 December 2004, contained a document (at page 49 and 50) that had been prepared by Mr Fitzgibbon and was dated 8 March 2005. This document was entitled “*Commercial Lending Review – Reporting Process*”. It stated:

“The scope of the commercial lending review focuses on all approved commercial facilities throughout the life of the loan.

The [sic] is broken down into 3 main inter linked sectors

- 1. Credit Risk Review of top 100 Counterparties*
 - 2. Credit, Security and File Review of commercial portfolio.*
 - 3. Portfolio Analysis and Quarterly Reporting*
- 1. Credit Risk Review**

⁶³ June 2004 Provisions Committee Terms of Reference (Doc ID: 0.7.120.18830) and 26 October 2006 Provisions Committee Terms of Reference (Doc ID: 0.7.120.8883).

⁶⁴ June 2004 Provisions Committee Terms of Reference (Doc ID: 0.7.120.18830) and 26 October 2006 Provisions Committee Terms of Reference (Doc ID: 0.7.120.8883). The 26 October 2006 Provisions Committee Terms of Reference included an additional member – Darragh Daly, Credit Risk Manager.

The Society as part of its internal control function performs an independent assessment on all large exposures.

Reviews consist of identification of relevant accounts by reference to monthly Top 100 Large Exposures. Reviewer examines relevant lending files and completes Credit Review ProForma (see appendix 1).

This proforma provides a pen picture of the exposure and includes such information as facility, amount, purpose, term, repayment arrangements, security, valuation, credit grade. It also highlights issued [sic] identified that need to be addressed by lenders and corrective steps that need to be taken.

Issues/concerns identified are raised with lenders and, if necessary, with Managing Director.

All facilities are allocated a credit grading, which is the reviewers [sic] assessment of the underlying risk pertaining to the credit.

The grades being allocated are numeric 1-4, summarised as follows:

- *Grade 1 – good-quality risk.*
- *Grade 2 – acceptable risk.*
- *Grade 3 – watch risk.*
- *Grade 4 – unacceptable risk.*

Factors taken into account when allocating a grade include:

- *Repayment capacity*
- *Track record*
- *Loan to value ratio*
- *Quality/timeliness of financial information*
- *Compliance with terms and conditions*

Repayment terms-full repayments, interest only, capital/interest moratoria.

Proforma are also used to record any relevant information that becomes available throughout the term of the facility.

All information is stored on Access database.

In addition, separate credit review files are maintained, which will typically contain copies of proforma, credit loan application, valuation, facility letters, financial information and any other documentation useful to an understanding of the credit.

Reviews in respect of the top 30 carried out quarterly while others are carried out annually.

All facilities considered doubtful are put on watch and are reported to the Provisions Committee".⁶⁵

Witness evidence

Frank Casey

8.88 Mr Casey was asked to address, in his witness statement, whether the output of the credit review function was considered as part of the provisioning process. He stated:

"Provisions pack showing accounts to be considered for assessment was put together by, I believe, the finance department. All loans which had been graded were readily available on the Summit system for consideration by that department".⁶⁶

8.89 In his oral evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 15 June 2021, Mr Casey confirmed that the grade assigned to a commercial loan was available on the Summit system, but the underlying documentation of the credit review process was contained in the credit review file which Mr Casey kept in hard copy in a cabinet. He said that the Credit Review Pro-Formas would also have been available on a database which the credit risk department had access to.⁶⁷ Mr Casey agreed with the evidence previously given to the Inquiry by Ms Melody van der Berg, who had been appointed to the credit risk department in June 2006, where she stated as follows:

⁶⁵ March 2005 Commercial Lending Review, page 49 of 55 (Doc ID: 0.7.120.11258).

⁶⁶ Witness Statement of Frank Casey, dated 10 December 2020, para. 8(a) (RDU_REL540-000000001).

⁶⁷ Transcript SPC 1-4 Remote Inquiry Hearing, dated 15 June 2021, page 67 et seq. (RDU_FT_SPC1-4_D20-000000001).

“Well, my understanding was that Mr. Casey had something called a proforma review form, and it would be generated with the borrower’s information. He would then provide a summary and assign the grade, and that was all on the form.”

...

“And then there was also a credit review file, a paper copy of a file called ‘credit review file’

...

*Frank would have had a sort of skeleton file, if you like, of the borrower’s file, and in it would have been his credit reviews, updates he got from the lenders, possibly copies of valuation reports and the likes”.*⁶⁸

8.90 The March 2005 Commercial Lending Review⁶⁹ was opened to Mr Casey. He was brought to the “*Commercial Lending Review – Reporting Process*” commencing on page 49 of the document, as outlined at paragraph 8.87 above, and asked whether he was responsible for applying a “*grade 3 – watch grade*” and whether he reported to the Provisions Committee on every instance in which this occurred. He said that he had not seen the “*Commercial Lending Review – Reporting Process*” prior to attending this Inquiry and did not agree with its contents.⁷⁰ When asked was it the practice that where loans were put on a “*watch grade*” they would be specifically brought to the attention of the Provisions Committee, he said:

“No, not that I’m aware of.

...

*Unless from – – unless they were picked out by the Provisions Committee secretary from the Summit system picking out various grades, I don’t know that”.*⁷¹

⁶⁸ Transcript SPC 1-4 Remote Inquiry Hearing, dated 15 June 2021, page 79 line 8 et seq. (RDU_FT_SPC1-4_D20-000000001).

⁶⁹ March 2005 Commercial Lending Review (Doc ID: 0.7.120.11258).

⁷⁰ Transcript SPC 1-4 Remote Inquiry Hearing, dated 15 June 2021, page 82 line 17 et seq. (RDU_FT_SPC1-4_D20-000000001).

⁷¹ Transcript SPC 1-4 Remote Inquiry Hearing, dated 15 June 2021, page 85 line 16 et seq. (RDU_FT_SPC1-4_D20-000000001).

8.91 When asked if the “*Commercial Lending Review – Reporting Process*” was either a document which he had been involved in preparing or corresponded to any duty that he had, he stated: “*Absolutely not*”.⁷²

8.92 Mr Casey was asked about a document attached to an email dated 27 June 2006 from Ms van der Berg to Mr Daly⁷³, which listed her duties and the duties to be performed by Mr Casey. One of the duties identified for Mr Casey, was as follows:

“FC to attend provisioning committee meeting and to supply info related reviews.

Prov. Comm. comments to be updated on Credit Review Database”.⁷⁴

8.93 In his evidence, Mr Casey said that he interpreted that as meaning that he had to provide information to Ms van der Berg and to input that on the credit review database. He said he did this whenever he got information. However, “*To suggest that I was to supply information to the Provisions Committee as per that form is wrong*”.⁷⁵

8.94 Mr Purcell, in his cross-examination of Mr Casey, put it to him that the document forwarded by Ms van der Berg to Mr Daly clearly set out what his duty was. Mr Casey stated in response:

“That does not clearly set out what my duty was. I don’t know -- you’d need to ask Melody what exactly she meant by that memo, or that -- those paragraphs.

...

My -- I never was requested to supply information to the Provisions Committee. If I was asked to supply information to the Provisions Committee, I would have done so.

Likewise, if you recall with regard to credit grading; when I was told that I should be supplying the credit reviews to the Credit Committee, I immediately did it. Why would I not do it? That does not say that I am to supply information credit reviews to the Provisions Committee. It says -- my understanding -- my reading of that is that I was to go to the provisions meeting to obtain information

⁷² Transcript SPC 1-4 Remote Inquiry Hearing, dated 15 June 2021, page 86 line 19 et seq. (RDU_FT_SPC1-4_D20-000000001).

⁷³ Email from Melody van der Berg to Darragh Daly, dated 27 June 2006 (Doc ID: 0.7.120.169444) attaching document outlining the duties of “MvdB”, “OC” and “FC” (Doc ID: 0.7.120.169444-000001).

⁷⁴ Document outlining the duties of “MvdB”, “OC” and “FC”, page 3 (Doc ID: 0.7.120.169444-000001).

⁷⁵ Transcript SPC 1-4 Remote Inquiry Hearing, dated 15 June 2021, page 89 line 5 et seq. (RDU_FT_SPC1-4_D20-000000001).

and put the comments on the credit review database. It's quite clear from the box underneath:

"Provisions Committee comments to be updated on credit review database".⁷⁶

8.95 Mr Purcell stated:

"...I would be at a Provisions Committee meeting. You would have been there, and I would have understood, and I think any reasonable person would have understood, that the reason you were there was to attend Provisions Committee meetings and to supply information re the latest reviews.

Now, that would mean that you are to supply information re your latest reviews, not about very good loans, not about what we didn't want to know about, but any information that you had about loans that the Provisions Committee should be interested in. And that sentence clearly sets it out. That was your duty".⁷⁷

8.96 Mr Purcell further questioned Mr Casey on the contents of the "Commercial Lending Review – Reporting Process" document, as outlined at paragraph 8.87 above. In particular, Mr Purcell asked about the sentence, "All facilities considered doubtful are put on watch and are reported to the Provisions Committee".⁷⁸

8.97 Mr Casey responded that he had never seen the document. Mr Purcell put it to him that the document had been written by his manager and that it had been written to inform the Board what his duties were. Mr Casey stated:

"It's very clear what it means, but I never saw this document. I didn't know this was being said about me to the Board. If I was asked to supply the Provisions Committee with a list of loans and grades, there would have been no problem whatsoever. I was not -- this -- this does not -- I did not see this document. I was not party to that. I was not party to that document".⁷⁹

...

⁷⁶ Transcript SPC 1-4 Remote Inquiry Hearing, dated 15 June 2021, page 103 line 4 et seq. (RDU_FT_SPC1-4_D20-000000001).

⁷⁷ Transcript SPC 1-4 Remote Inquiry Hearing, dated 15 June 2021, page 104 line 27 et seq. (RDU_FT_SPC1-4_D20-000000001).

⁷⁸ Transcript SPC 1-4 Remote Inquiry Hearing, dated 15 June 2021, page 107 line 14 et seq. (RDU_FT_SPC1-4_D20-000000001).

⁷⁹ Transcript SPC 1-4 Remote Inquiry Hearing, dated 15 June 2021, page 109 line 7 (RDU_FT_SPC1-4_D20-000000001).

*“My credit review – the output of the grades was available to all management, as per reference to the grade. And that was on the system”.*⁸⁰

8.98 Mr Purcell referred to the minutes of a meeting of the Provisions Committee held on 26 October 2006.⁸¹ At that meeting, the Provisions Committee Terms of Reference were reviewed and updated to include the credit risk manager as a member of the Provisions Committee. The minutes also noted that the Provisions Committee was responsible for establishing INBS’s Impairment Provisioning Policy which would be reviewed on an annual basis. Mr Purcell put it to Mr Casey that these minutes showed that he was aware of the policies set out at paragraph 8.79 above. Mr Casey said that he would not disagree with that.⁸²

Darragh Daly

8.99 Mr Daly, who was credit risk manager during the Review Period, and also a member of the Provisions Committee during that time, addressed whether the output of the credit review function was considered as part of the provisioning process in his witness statement. He stated:

*“I believe the Credit Review outputs were considered as part of the provisioning process”.*⁸³

8.100 Mr Purcell questioned Mr Daly about this statement in his witness statement. Mr Daly said that, in his mind, doubtful loans would have been advised to the secretary of the Provisions Committee in advance and that it was the responsibility of all members of the Provisions Committee, including Mr Casey, to inform Mr Richard McMurtry⁸⁴ (secretary to the Provisions Committee) of any loans that required consideration.⁸⁵

8.101 Mr Daly was questioned by the Inquiry Members as to whether the credit review database would have been available to commercial lenders. Mr Daly said that he believed that only the credit risk department would have had access to the database, and stated: *“I don’t believe there would have been too many among the lenders who*

⁸⁰ Transcript SPC 1-4 Remote Inquiry Hearing, dated 15 June 2021, page 111 line 2 (RDU_FT_SPC1-4_D20-000000001).

⁸¹ Minutes of Provisions Committee meeting, dated 26 October 2006 (Doc ID: 0.7.120.12262).

⁸² Transcript SPC 1-4 Remote Inquiry Hearing, dated 15 June 2021, page 112 line 3 et seq. (RDU_FT_SPC1-4_D20-000000001).

⁸³ Witness Statement of Darragh Daly, dated 25 November 2020, page 3 (Doc ID: RDU_REL531-000000013).

⁸⁴ Mr McMurty was secretary to the Provisions Committee from November 2005 to 2009.

⁸⁵ Transcript SPC 1-4 Remote Inquiry Hearing, dated 16 June 2021, page 67 line 1 et seq. (Doc ID: RDU_FT_SPC1-4_D21-000000001).

would have been familiar with the methodology applied in terms of an access database".⁸⁶

Martin Noonan

- 8.102 Mr Noonan, who was head of residential lending in INBS, was also a member of the Provisions Committee throughout the Review Period.
- 8.103 In his oral evidence to the Inquiry during the SPC 1 to 4 Context Hearing on 17 June 2021, Mr Noonan explained that he had no involvement in commercial provisions but that his view was that Mr Casey was in the best position to do those provisions and help with the pro-forma sheets. He said he had no recollection of Mr Purcell requesting that the credit review output be presented to the Provisions Committee.⁸⁷
- 8.104 Mr Purcell put it to Mr Noonan that there was a requirement as set out by his manager at the time, Mr Fitzgibbon, in his memo to the Board dated 8 March 2005⁸⁸, that Mr Casey should put all loans considered doubtful on "watch" and report them to the Provisions Committee. However, Mr Purcell made the point that Mr Casey was not required by any policy to do this by handing in pro-formas. He said they were never required, but that Mr Casey was required to attend and bring the knowledge he had.⁸⁹
- 8.105 Mr Noonan said that he believed that it would have made sense for Mr Casey to have been responsible for producing Credit Review Pro-Formas to the Provisions Committee, but he did not contend that he was obliged by policy to do so.⁹⁰

Alleged participation by Mr Purcell

- 8.106 In the Investigation Report it was alleged that Mr Purcell had a role in coordinating Management Responses to KPMG Management Letters. It stated that as well as addressing and reporting to the Audit Committee on the status of the implementation of recommendations made by KPMG, Mr Purcell, as a member of executive management in attendance at the Audit Committee meetings, was responsible for following up on the implementation of recommendations made in internal audit reports.

⁸⁶ Transcript SPC 1-4 Remote Inquiry Hearing, dated 16 June 2021, page 75 line 8 et seq. (Doc ID: RDU_FT_SPC1-4_D21-000000001).

⁸⁷ Transcript SPC 1-4 Remote Inquiry Hearing, dated 17 June 2021, page 44 line 19 et seq. (Doc ID: RDU_FT_SPC1-4_D22-000000001).

⁸⁸ March 2005 Commercial Lending Review, page 50 of 55 (Doc ID: 0.7.120.11258).

⁸⁹ Transcript SPC 1-4 Remote Inquiry Hearing, dated 17 June 2021, page 51 line 9 et seq. (Doc ID: RDU_FT_SPC1-4_D22-000000001).

⁹⁰ Transcript SPC 1-4 Remote Inquiry Hearing, dated 17 June 2021, page 53 line 11 et seq. (Doc ID: RDU_FT_SPC1-4_D22-000000001).

Internal audit reports during the Review Period included findings in respect of the monitoring of commercial loans.⁹¹

8.107 In the Investigation Report it was also alleged that as a member of the Provisions Committee Mr Purcell had a duty to ensure that INBS made adequate provisions against loans, which would have included considering the output of the credit review function in the provisioning process. It stated that based on a review of the minutes of and packs for the Provisions Committee meetings for the duration of the Review Period, the Provision Committee did not receive any documents from the credit review function for consideration at the Provisions Committee meetings.⁹² In the Investigation Report the evidence of former members of the Provisions Committee that Mr Casey did contribute orally to these meetings, was acknowledged. The Investigation Report stated:

*“As such, while it is possible that Mr Casey provided updates at the meeting to those attending the meeting orally on specific loans that came up for discussion, this is not reflected in the Provision Committee’s minutes and was not supported by a written submission, or any documentation, to the Provisions Committee. Therefore, any such updates, if provided, would have been insufficient to address the policy requirement to assist in the identification of loans for impairment/potential loan losses”.*⁹³

8.108 Mr Purcell addressed these allegations in a witness statement, an opening statement and in direct evidence to the Inquiry.

Mr Purcell’s witness statement

8.109 Mr Purcell provided a witness statement to the Inquiry, dated 5 March 2021.⁹⁴ As outlined at paragraph 8.62 above, in relation to the two SPC 4 Allegations to be considered by the Inquiry, Mr Purcell denied participation in the allegations that (i) INBS did not review its top 100 Large Exposures (SPC 4.2), and (ii) the output of INBS’s credit review function was not considered as part of the provisioning process (SPC 4.4).

⁹¹ Investigation Report Chapter 9, paragraph 9.243 (Doc ID: RDU_REL-000000033).

⁹² Investigation Report Chapter 9, paragraph 9.252 (Doc ID: RDU_REL-000000033).

⁹³ Investigation Report Chapter 9, paragraph 9.254 (Doc ID: RDU_REL-000000033).

⁹⁴ Witness Statement of John S Purcell, dated 5 March 2021 (Doc ID: RDU_REL562-000000003).

8.110 In relation to the second allegation of participation made against him, SPC 4.4, Mr Purcell stated:

“2. It is alleged that the outcome of INBS’s Credit Review function was not considered as part of the provisioning process and so INBS was not compliant with the 2006 and 2007 Notes on the Implementation of Impairment Provisioning Policy.

It is alleged that I participated in the suspected non-compliance by INBS with its internal policies.

a. In an attachment to an email (0.7.120.169444 – 0000001) from Melody Van Der Berg to Darragh Daly dated 27 June 2006 about her duties at the time, reference is made to Frank Casey and the Provisions Committee.

Ms. Van Der Berg set out Frank Casey’s duties as regards the Provisions Committee as follows:

“Frank Casey to attend provisioning committee meeting(s) and to supply information re latest reviews”.

This clarified that Frank Casey was to bring the “Output of the credit review function” to the provisioning process by attending meetings and supplying information re the latest reviews. There was no policy requirement to include his credit review proformas as part of the papers circulated in advance.

Frank would be attending in person to assist in the identification of instances where an exposure ought to be assessed for impairment and in the early identification of potential loan losses.

Martin Noonan to whom Frank Casey reported to for a time after Frank Casey joined INBS and who was involved in Frank Casey’s recruitment said:

“Then commercial made their presentation (at the provisions committee meetings) through Tom McMEnamin and Frank Casey laterally and again they were discussed by the committee”. (Page 1501 of the Investigation Report)

b. The Notes to Impairment Policy 2006 and 2007...do not create a policy requirement for credit reviews proformas to be submitted to the Provisions Committee.

The Notes state what Credit Review was doing as set out in Melody Van Der Berg’s email of 27 June 2006 and explained above.

...

c. The credit review proformas were not listed as one of the reports to be reviewed by the provisions committee as set out in the Terms of Reference of the provisions committee dated 28 October 2006. (0.7.120.8883).

Also, the credit review proformas were not listed in Appendix 2 of the Impairment Policy dated 21 December 2005. (0.7.120.25083).

d. Darragh Daly in his Witness Statement for SPC's 1-4 said he believed the credit review outputs were considered as part of the provisioning process. (RDU_REL531-000000013)".⁹⁵

Mr Purcell's submissions

8.111 In his opening statement to the Inquiry at the commencement to the SPC 1 to 4 Context Hearings on 11 June 2021, Mr Purcell reiterated and expanded on a number of the points made in his witness statement. He submitted:

"I deny participation in the non-loan specific allegations for SPCs 1 – 4 in relation to me which were set out in an e-mail to me dated 31 July 2020".⁹⁶

8.112 Mr Purcell went on to address the issue of credit reviews and the allegation that the output of INBS's credit review function was not considered as part of the provisioning process. His full submission in this regard is as follows:

"The fifth area I will address is the allegation that the output of INBS's Credit Review function was not considered as part of the provisioning process, and so INBS was not compliant with the 2006 and 2007 notes on the implementation of Impairment Provisioning Policy.

It is alleged that I participated in the suspected non-compliance by INBS with its internal policies.

- 1. I deny that there was a policy requirement under the 2006 and 2007 notes that the output of the Credit Review function be considered as part of the provisioning process.*
- 2. I deny the allegation that the output of the credit review function was not considered as part of the provisioning process.*

⁹⁵ Witness Statement of John S Purcell, dated 5 March 2021, page 21 and 22 (Doc ID: RDU_REL562-000000003).

⁹⁶ Transcript SPC 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 29 line 25 et seq. (RDU_FT_SPC1-4_D19-00000004).

3. *I deny that I participated in the non-compliance by INBS.*

I said under the first area addressed earlier in this statement that there was no policy requirement that the output of the credit review function be considered as part of the provisioning process.

However, the output of the credit review function was considered as part of the provisioning process.

I refer to pages 21 and 22 of my witness statement, dated 5 March 2021, about the responsibilities of the credit reviewer, Mr. Casey, as regards the output of the credit review function as being part of the review process.

In addition to this I will now set out the following in relation to Mr Casey's responsibilities and the consideration of the output of the credit review as part of the provisioning process and two aspects of the provisioning process itself.

A: Mr Fitzgibbon's signed memo to the Board dated 8th March 2005 (11258, pages 49 and 50).

In March 2005, the duty of the credit reviewer, Mr. Casey, as regards the impairment process was set out in writing by his manager, Mr Fitzgibbon, to the Board. The two-page memo was titled "Commercial lending review reporting process". The memo states:

"1. The proforma, which was produced by Mr. Casey, also highlights issues identified that need to be addressed by lenders and correct the steps that need to be taken. Issues or concerns identified or raised with lenders and, if necessary, with managing director.

2. All facilities considered doubtful are put on watch and are reported to the Provisions committee."

I say that Mr. Casey contributed to this memo and was aware of its contents and his responsibilities, as set out in the memo.

B: E-mail from Ms. Van der Berg to Darragh Daly Dated 27 June 2006. (169444-000001). This e-mail states:

"Mr. Casey to attend provisioning committee meetings and to supply information re latest reviews".

Mr. Casey said at the inquiry hearing on 8th March 2018 ... that he may have seen the above e-mail at the time.

C: Credit review assisting in the impairment provisioning process.

The minutes of the Provisions Committee meeting held on 26th October 2006 (12262) state that the notes on the implementation of Impairment Provisioning Policy (the notes) had been circulated in advance to Mr. Casey, credit reviewer, as well as to the other members of the Provisions Committee.

Mr. Casey also attended the Provisions Committee meeting when the notes were approved. The notes state on page 4 under credit risk, paragraph 2.5 that:

“Within the credit risk function, Credit Review is carried out to assess the quality of the lending undertaken by the Society in order to assist in the identification of instances where an exposure ought to be assessed for impairment.”

The notes state, on page 9:

“In addition, the credit review function, which is staffed and managed independently of the lending function, serves to further augment and strengthen the Society’s approach to risk assessment and the early identification of potential loan losses.”

The two sentences above set out Mr. Casey’s role, which he knew about since he was given this document. The notes state on page 5, under financial reporting, paragraph 2.6:

“The financial reporting function also assists in the identification of accounts for individual assessment and communication with the lenders arrears’ controller to calculate the impairment loss.”

The notes set out the separate roles and practices of credit review and financial reporting function in the impairment process.

D: Credit Risk Management Policy, 28 June 2007.

Page 28 and 29 of this policy states that:

“It” meaning the credit review – “also highlights issues identified that must be addressed by lenders and corrective action that must be taken. Issues,

concerns identified are raised with the lenders and, if necessary, with the managing director.”

The above sentence in the Credit Risk Management Policy, which was written mainly by Darragh Daly, to whom Mr. Casey reported, sets out work required of Mr. Casey and is entirely consistent with Mr Fitzgibbon’s memo dated 8th March 2005.

E: The responsibilities of the credit reviewer, Mr. Casey:

During a preliminary meeting with Mr. Casey on 27th December 2012. (Reference 57396) Mr. Casey said on page 2 that he did have extensive interaction with the commercial lenders. On page 5 he said: Prior to 2008 he was not asked to send up provision figures to the Provisions Committee.

However, Mr. Fitzgibbon’s memo on the commercial lending review process dated 8th March 2005 said, all facilities considered doubtful are put on watch and are reported to the Provisions Committee.

Mr. Casey, as credit reviewer was required to do this. Ms. Van der Berg’s e-mail which Frank Casey said he may have seen at the time stated that Mr. Casey to attend provisioning committee meetings and to supply information re his latest reviews.

F: Mr Casey’s role and his recruitment.

Mr Casey was asked in an interview on 28th May 2013 (reference 683766, page 9), “who approached you in respect of the role within the Society?”

Mr. Casey said it was possibly Stan Purcell, or through Stan Purcell.

He said:

“I, Frank Casey, was initially reporting to a chap called Martin Noonan, but, I think, it was Stan Purcell’s view that a review function should be set up, but that’s just from recollection.”

The above statement is not correct. I had no involvement in Mr. Casey’s recruitment or approaching him about his role. It was not my view that a credit review function should be set up.

Mr. Casey's recruitment was handled by Martin Noonan, Michael Fingleton and Tom McMenamin. I had no involvement at all in Mr. Casey's recruitment. Mr. Casey reported in turn to Martin Noonan, Brian Fitzgibbon, Melody Van der Berg and Darragh Daly, all of whom reported to Michael Fingleton.

G: Mr Casey's attendance and his activity at provision committee meetings:

Mr. Casey attended nine out of 12 provision committee meetings held during the review period. Mr. Casey spoke at six of the nine meetings about individual loans and raised a particular case for assessment, that was on the meeting of the 21st December 2007 (page 4, reference 495651).

He also requested an amendment to the notes on impairment, and that was at the meeting on the 26th October 2006, page 3, reference, 12262.

A memo to Mr. Casey about a particular loan (reference 19583) was included in the pack for a meeting on the 19th January 2007, and was raised at the committee meeting held on 19th January 2007 (reference 19317, page 2).

A memo from Mr. Casey about a loan was included in the pack of information circulated in advance for the 26th October 2006 committee meeting (reference 20356).

Mr. Casey was requested at four meetings to obtain reports and to clarify the position on certain loans.

H: Adequate Provisions for loan losses:

INBS made adequate provisions for loan losses during the review period. The Provisions Committee meetings were the forum where loans were assessed for provisioning. The members of the Provisions Committee included everyone who had knowledge and/or reports that would assist in assessing loans for provisioning.

Within the lending area information about loans circulated between key staff, lending managers and the managing director.

Credit review informed lenders and lenders informed the credit review process. A problem loan that was initially known to one lending executive was quickly known to all the relevant lending managers and the managing director. The knowledge of Michael Fingleton and Tom McMenamin especially, the

contribution from Mr. Casey, together with the reports circulated in advance and the discussion at provision committee meetings ensured that impairment provisioning was carried out properly.

However, there was no policy requirement contrary to paragraph 9.254 of the Investigation Report that credit risk updates, proformas, be provided to Provisions Committee meetings.

...

In summary:

1. The Impairment Policy and the notes thereto did not make policy for lending, credit grading, review of the top 100 exposures or for submission of the output of the credit review function to the Provisions Committee.

In light of this, there was no non-compliance with policy, as alleged, in relation to a credit grading on one loan, review of the top 100 exposures or consideration of the output of the credit review function as part of provisioning process.

...

5. The responsibility of the credit reviewer to supply information from his credit review work to provision committee meetings was set out in a memo dated 8th March 2005, an e-mail dated 27th June 2006, and referenced in the notes on impairment dated 26th October 2006. There was no policy requirement in relation to the credit reviewer's work in this regard.

The output of credit review was considered as part of the provisioning process".⁹⁷

⁹⁷ Transcript SPC 1-4 Remote Inquiry Hearing, dated 11 June 2021, page 42 line 10 et seq. (RDU_FT_SPC1-4_D19-00000004).

INQUIRY FINDING – SPC 4.4

Finding in relation to INBS

- 8.113 The Inquiry finds, based on the evidence outlined above, that the Credit Review Pro-Formas were not reviewed by the Provisions Committee as part of the provisioning process.
- 8.114 The Inquiry is satisfied that Mr Casey, as credit review manager, attended the Provisions Committee meetings and contributed to same.
- 8.115 SPCs 4(a), 4(b) and 4(c) set out in the Notice of Inquiry state that it was suspected that INBS failed to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies.
- 8.116 Mr Purcell contends that the requirement to consider INBS's credit review output as part of the provisioning process was not a policy requirement and did not require that Mr Casey present the Credit Review Pro-Formas to the Provisions Committee.
- 8.117 The Inquiry agrees with Mr Purcell's submission that there was no specific policy requirement that in considering the output of INBS's credit review function, the Credit Review Pro-Formas had to be considered by the Provisions Committee. The evidence outlined above indicates that Mr Casey did attend and contribute to the Provisions Committee considerations and policy did not require that he do any more than that.
- 8.118 Accordingly, the Inquiry finds that the SPC 4.4 Allegation that the output of INBS's credit review function was not considered as part of INBS's provisioning process in breach of policy is not proven as against INBS.
- 8.119 Therefore, the Inquiry finds that there was no breach of the relevant legislative provisions and the condition on INBS's authorisation identified at paragraph 8.2 above and, accordingly, that there was no commission by INBS of SPC 4(a), 4(b) or 4(c) with regard to SPC 4.4.

Finding in relation to Mr Purcell's participation

- 8.120 Having regard to the above finding in relation to INBS, the allegation of participation by Mr Purcell falls away.

CHAPTER 9

SPC 5

INTRODUCTION

9.1 SPC 5 relates to INBS's alleged failure to ensure that the Credit Committee performed particular functions in accordance with INBS's internal policies.

9.2 The three individual SPCs are as follows:

SPC 5(a)

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 5(b)

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 5(c)

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS's internal policies, and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 5 ALLEGATIONS

- 9.3 The following four allegations of non-compliance by INBS with its internal policies were advanced in respect of SPC 5¹:
- (a) SPC 5.1 alleged that INBS's Credit Committee did not review and consider commercial loans in large arrears and/or deemed non-performing.
 - (b) SPC 5.2 alleged that INBS's Credit Committee did not review and consider loans submitted as part of the credit review process (as no such loans were submitted to it).
 - (c) SPC 5.3 alleged that INBS's Credit Committee did not review and consider relevant Management Information System (**MIS**) reports.²
 - (d) SPC 5.4 alleged that INBS's Credit Committee did not review and consider any issues raised by INBS's internal audit department, and/or other advisors or regulators (KPMG/Central Bank).

BACKGROUND

Role of the Credit Committee within INBS

- 9.4 Chapter 2 of this Findings Report sets out the governance structure of INBS. The Credit Committee was responsible for approving loans up to a specified limit. Thereafter, the Credit Committee was required to recommend loans for approval to the Board. The Board approved all major commercial loans. As outlined in the evidence below, the Board, whilst independent in its decision-making, relied upon the fact that loans coming before it had been reviewed and recommended by the Credit Committee. The role of the Credit Committee is discussed further in Chapter 11 of this Findings Report which deals with profit share lending.
- 9.5 Board meeting minutes dated 13 February 2001³ recorded the decision of the Board to establish a Credit Committee. It stated:

"The Board decided to establish a Credit Committee. The members of the Committee will be Michael P. Fingleton, Managing Director, Fiona Couse,

¹ The SPC 5 Allegations are outlined in Chapter 10, paragraph 10.5, of the Investigation Report (Doc ID: RDU_REL-000000034).

² Management Information Systems (MIS) reports were reports drawn up on matters such as sectoral exposure, customer exposure and geographical concentration.

³ In attendance at the Board meeting was: Peter D. O'Connor (Chairman), Michael P. Fingleton (Managing Director) Cornelius Power, Michael Walsh & Stan Purcell (Secretary).

Operations Manager, Michael Leonard, Senior Commercial Lender, John Roche, Commercial Lender, Thomas McMEnamin, Development Manager. The Committee will meet regularly to consider and approve loan applications in the range £250,000 to £500,000 and to review and recommend to the Board loan applications in excess of £500,000".⁴

9.6 Mr Tom McMEnamin, in his evidence to the Inquiry during the SPC 5 module hearing on 5 June 2018, described the establishment of the Credit Committee, as follows:

"... Mr. Purcell came to me and basically said we have to set up a credit committee. We need -- who do you recommend and so on? We need three people, and I think I mentioned two or three people and who were very reluctant to get involved but they came along, but however, I think I am correct in saying I didn't get any verbal or written documentation as to how the Credit Committee should proceed".⁵

9.7 In the course of his examination by the LPT during the SPC 5 module hearing on 21 May 2018, Dr Michael Walsh, who was chairman of the Board from May 2001 until after the Review Period, was asked about the relationship between the Credit Committee and the Board and how influenced the Board was by a Credit Committee recommendation. The following exchange took place:

"Q. And how influenced were the Board by the recommendation of the Credit Committee?

A. Well, I mean obviously, you know, the Board were independent in the sense that they were kind of free to decide whatever they wanted, but, you know, clearly, you know, we were only going to consider loans that have been recommended by them. Equally well with every single loan that came to the Board, we went through it with the managing director and, you know, the managing director would actually describe the loan, describe the intent, recommend the loan, and, you know, everybody on the Board got an opportunity to question and then, you know, the decision was taken.

Q. And how often, roughly, would you not have followed the recommendation in percentage terms have you any idea?

⁴ Minutes of Board meeting, dated 13 February 2001, page 5 (Doc ID: 0.7.120.431503).

⁵ Transcript SPC 5 Inquiry Hearing, dated 5 June 2018, page 23 line 5 (Doc ID: RDU_FT_D44-00000001).

A. Oh, I think very seldom. I mean typically what would have actually happened if there was a loan that we didn't agree with, it would go back for, you know, further assessment, or alternatively there might be some variation of terms. But, you know, it was more a decision not to sort of say we will never do this loan. It would have been a decision to actually adjust the terms or to reconsider it.

Q. So generally, you think the Board followed the recommendation of the Credit Committee?

A. I would say so, yes".⁶

RELEVANT INFORMATION SOURCES OF EVIDENCE

9.8 In addressing the SPC 5 Allegations, the following information and sources of evidence were considered by the Inquiry:

- (a) Relevant INBS policy documents.
- (b) Contemporaneous Reports (including corporate governance documentation and Financial Regulator Correspondence).
- (c) Corporate governance documentation.
- (d) Financial Regulator Correspondence.
- (e) Interview evidence⁷ (from individuals interviewed by Enforcement in the course of its Investigation) which was opened to witnesses.
- (f) Witness evidence.
- (g) Mr Purcell's replies to Examination and Investigation Letters.
- (h) Mr Purcell's submissions.⁸
- (i) Mr Purcell's evidence to the Inquiry.

⁶ Transcript SPC 5 Inquiry Hearing, dated 21 May 2018, page 14 line 17 (Doc ID: RDU_FT_D40-00000001).

⁷ Interviews were conducted by Authorised Officers of the Central Bank during the period February 2013 to January 2014 to assist with the Investigation. Transcripts of these interviews were provided to the Inquiry.

⁸ As outlined in Chapter 2, paragraph 2.5, Mr Purcell represented himself during the Inquiry and accordingly made written and oral submissions to the Inquiry, in addition to and distinct from the evidence he provided under oath and in his witness statements.

9.9 The Inquiry considered all this information and evidence and makes its findings in relation to the four SPC 5 Allegations and in relation to SPCs 5(a), 5(b) and 5(c) at the conclusion of this chapter.

Relevant INBS policy documents

9.10 The four SPC 5 Allegations are derived from the terms of reference of the Credit Committee.⁹ During the Review Period there were three iterations of the Credit Committee terms of reference, as follows:

- (a) the 16 October 2003 Commercial Credit Committee Terms of Reference¹⁰;
- (b) the 19 July 2006 Commercial Credit Committee Terms of Reference¹¹; and
- (c) the December 2007 Credit Committee Terms of Reference.¹²

16 October 2003 Commercial Credit Committee Terms of Reference

9.11 The first version of the terms of reference is dated 16 October 2003 and under the heading "*Purpose/Background*", it stated:

"The Society has established a Credit Committee to:

- a) Apply the Commercial Lending Credit Policy of the Society (as approved by the Board from time to time) to new commercial loan applications (Appendix A).*
- b) Consider, approve and recommend (as appropriate) commercial loan applications submitted to the Society".¹³*

9.12 The terms of reference document listed the members of the Credit Committee¹⁴ and provided that the minimum quorum of Credit Committee meetings was three members.

9.13 Under the heading "*Meetings*" the terms of reference stated:

"Committee will meet regularly, at least once a week to consider and approve commercial loan applications up to €500k and to review and recommend to the

⁹ Residential lending was not considered by any Credit Committee within INBS until December 2007 and so the Credit Committee was only involved in commercial lending until that date.

¹⁰ 16 October 2003 Commercial Credit Committee Terms of Reference (Doc ID: 0.7.120.5896).

¹¹ 19 July 2006 Commercial Credit Committee Terms of Reference (Doc ID: 0.7.120.13247).

¹² December 2007 Credit Committee Terms of Reference (Doc ID: 0.7.120.26675).

¹³ 16 October 2003 Commercial Credit Committee Terms of Reference (Doc ID: 0.7.120.5896).

¹⁴ The members of the Credit Committee were listed as: Michael Fingleton, Tom McMenamin, John Roche and Darragh Daly, and commercial underwriters were to attend meetings as appropriate.

Board of the Society all loan applications in excess of €500k. More frequent meetings will be held when required.

Committee Meetings should facilitate an open discussion on all credits presented and encourage the view points of committee members and underwriters. Decisions made should be communicated by the appropriate underwriter to the originator of the credit application and noted there on.

Minutes of meetings should capture discussions and should be circulated to members of the Committee and be available for inspection by Internal or External Auditors and by Regulators.

Secretary of the Credit Committee will be the P.A. of the Head of Commercial Lending”.

9.14 The final section of the terms of reference was headed “*Authority/Duties*” and it set out 12 items, as follows:

“...All Commercial loan applications must be approved and/or recommended (where appropriate) by the Credit Committee.

- *The Credit Committee has authority to approve loan applications up to €500k. Loan applications in excess of €500k are subject to Board approval.*
- *In the event that a credit decision is required urgently and it is not possible to convene a meeting with the Credit Committee, at least two members of the Committee must support and approve the credit up to €500k. Any amounts in excess of this must be approved by the Managing Director and two members of the Credit Committee.*

Any loans so approved should be signed off by the Credit Committee and the Board as soon as practicable.

- *Exceptions to the Credit Policy and approval procedures must be signed off by two members of the Credit Committee and reported for approval to the Board.*
- *The Credit Committee will ensure that credit applications comply with the current Credit Policy of the Society, as may be amended from time to time.*

- *The Credit Committee is responsible for ensuring that lenders/underwriters review all relevant documentation pertaining to a credit application e.g. accounts, valuations, security, guarantees, cash flow etc before and [sic] application is submitted to the Board. In addition, the history of the borrower should be reviewed together with the borrower's existing exposure limits.*
- *The Credit Committee is responsible for ensuring that total exposure to a borrower or connected group of borrowers is reflected in the application.*
- *The Credit Committee may decline credit applications for various reasons e.g. credit policy, inadequate cash flow and/or security cover etc. When a credit application is declined, the reasons are to be noted on the minutes of that meeting.*
- *The Credit Committee will review and consider;*
 - *Commercial loans which have a capital and/or interest moratorium which needs extending.*
 - *Commercial loans that are in large arrears and/or deemed non-performing.*
 - *Any loans submitted to it as part of the credit review process.*
 - *Relevant MIS reports e.g. sectoral exposure, customer exposure/concentration.*
 - *Any issues raised by internal audit and/or other advisors/regulators (KPMG/Central Bank).*
- *The Credit Committee will ensure that members of the Credit Committee and commercial lenders are updated and informed of market conditions through internal and external research.*
- *Any issues raised by the Board of Directors that refer to the Credit Committee should be communicated to the members of the Credit Committee by the Secretary to the Society.*

- *The Credit Committee will undertake other duties assigned to it from [sic] time to time by the Board.”*

9.15 The section highlighted in bold above is the relevant section of the terms of reference that it is alleged was breached by INBS and is the basis for the SPC 5 Allegations. The first item listed, that the Credit Committee would consider and review “*Commercial loans which have a capital and/or interest moratorium which needs extending*”, is not part of this SPC, but is considered by the Inquiry as part of SPC 2.

19 July 2006 Commercial Credit Committee Terms of Reference

9.16 The terms of reference of the Credit Committee was updated and approved by the Board on the 19 July 2006.¹⁵

9.17 Apart from a change in membership¹⁶ and the increase in the threshold below which the Credit Committee had authority to approve loan applications, from €500,000 to €1 million, the 19 July 2006 Commercial Credit Committee Terms of Reference¹⁷ was the same as the 16 October 2003 Commercial Credit Committee Terms of Reference document outlined at paragraphs 9.11 to 9.14 above and the bullet-pointed items, the subject matter of SPC 5, are repeated.

December 2007 Credit Committee Terms of Reference

9.18 The terms of reference of the Credit Committee was updated and approved at a Board meeting which took place on 17 December 2007.¹⁸

9.19 In this iteration of the document the “*Purpose / Background*” of the Credit Committee was extended and amended, as follows:

“The Society has established a Credit Committee to:

- a) *Apply the Commercial Mortgage Lending Policy of the Society (as approved by the Board from time to time) to new commercial loan applications*

¹⁵ Attendees at that Board meeting were: Michael P. Walsh (Chairman), Michael P. Fingleton (Managing Director), Terence J. Cooney (Vice-Chairman), Stan Purcell (Secretary). See minutes of Board meeting dated 19 July 2006 (Doc ID: 0.7.120.33969).

¹⁶ The members of the Credit Committee were listed as: Michael Fingleton; Tom McMenamin; John Roche; Brian Fitzgibbon and Martin Noonan, and commercial underwriters were to attend meetings as appropriate.

¹⁷ 19 July 2006 Commercial Credit Committee Terms of Reference (Doc ID: 0.7.120.13247).

¹⁸ Attendees at that Board meeting were: Michael P. Walsh (Chairman), Michael P. Fingleton (Managing Director), Terence J. Cooney (Vice-Chairman), David M J Brophy (Director), Stan Purcell (Secretary). See minutes of Board meeting, dated 17 December 2007 (Doc ID: 0.7.120.38856).

- b) *Apply the Residential Mortgage Lending Policy of the Society (as approved by the Board from time to time) to new residential loan applications.*
- c) *Consider and approve or decline all commercial loan applications submitted to the Society.*
- d) *Consider and approve or decline residential loan applications submitted to the Society where a customers exposure to the Society exceeds or may exceed €1 million*.¹⁹

9.20 This marks a significant change in the remit of the Credit Committee, in that:

- (a) it now had approval discretion on all commercial loans; and
- (b) for the first time residential lending was brought within its remit with approval discretion for all loans in excess of €1 million.

The membership of the Credit Committee was also extended to seven members.²⁰

9.21 The list of items under the heading “*Authority / Duties*” were amended to accommodate the additional role of the Credit Committee. In relation to the items at issue in SPC 5, the December 2007 Credit Committee Terms of Reference stated:

“The Credit Committee will review and consider;

- *Commercial loans which have a capital and/or interest moratorium which needs extending.*
- *Commercial loans that are in large arrears and/or deemed non-performing.*
- *Any loans submitted to it as part of the credit review process.*
- *All residential loan applications submitted to the Society where a customer’s exposure to the Society exceeds or may exceed €1 million.*

¹⁹ December 2007 Credit Committee Terms of Reference (Doc ID: 0.7.120.26675).

²⁰ Membership was listed as: Michael Fingleton; Tom McMenamin; Martin Noonan; Gary McCollum; Brian Fitzgibbon, John Murphy and Alan Deering, and commercial underwriters were to attend meetings as appropriate.

- *Relevant MIS reports e.g. sector exposure, customer exposure/concentration.*
- *Any issues raised by Internal Audit and/or other advisors/regulators (KPMG/Central Bank)*.²¹

9.22 The 2007 version also amended the urgent credit decision approval procedure. However, apart from the two key changes noted above, the 2007 version of the terms of reference was a direct copy of the two previous versions. Accordingly, the list of issues that the Credit Committee was required to review and consider was the same in all versions of the terms of reference that were in operation throughout the Review Period, save for the additional item that referred to residential lending in the 2007 version (which is outside the remit of this Findings Report).

9.23 In addition to the non-compliance identified in the SPC 5 Allegations listed at paragraph 9.3 above, in paragraph 10.6 of the Investigation Report it was alleged that:

*“The internal policy provisions [as set out in the terms of reference documents] ... were among the internal controls relevant to commercial lending in place at INBS during the Review Period. Moreover, the Credit Committee itself should have operated as a key internal control relevant to the commercial lending approval process and the management of credit risk. On the basis of the evidence set out in this chapter [Chapter 10 of the Investigation Report], it is alleged that INBS failed to manage its commercial lending business in accordance with its internal policies, and so failed to put in place, establish or maintain a system of control in relation to the functioning of the Credit Committee. Consequently, it is suspected that INBS contravened Regulation 16 (1) of the 1992 Regulations (SPC 5 (a)), Section 76 (1) of the 1989 Act (SPC5 (b) and failed to comply with the requirements of Part 1 of the 2005 Regulatory Document (SPC 5 (c))”.*²²

9.24 SPC 5 addresses the alleged failure of the Credit Committee to ensure that it reviewed important internal and external information (as required by its terms of reference) that would have informed its role in approving CLAs.

9.25 In paragraph 10.11 of the Investigation Report it was alleged that the review and consideration of the four items identified in the SPC 5 Allegations at paragraph 9.3

²¹ December 2007 Credit Committee Terms of Reference, page 4 (Doc ID: 0.7.120.26675).

²² Investigation Report Chapter 10, paragraph 10.6 (Doc ID: RDU_REL-000000034).

above, would have served to inform the Credit Committee when considering CLAs and either recommending them to the Board for approval or approving them. This was part of the “purpose” of the Credit Committee according to the opening paragraphs of its terms of reference, as cited above.

- 9.26 The Inquiry analysed the parameters of the allegations in SPC 5. It examined Chapters 1, 2, 3, 4 and 10 of the Investigation Report. These chapters have no evidential value following a decision of the Inquiry dated 20 January 2017.²³ However, the Investigation Report does provide context for the suspected prescribed contraventions contained in the Notice of Inquiry and in that respect it is a useful reference for the Inquiry.
- 9.27 Compliance with the terms of reference of the Credit Committee is an important element in SPCs 1 to 4 and has already been dealt with in Chapters 5, 6, 7 and 8 of this Findings Report. For the purposes of this chapter, the only relevant compliance element is with regard to the four SPC 5 Allegations outlined at paragraph 9.3 above.

Contemporaneous Reports

- 9.28 The following three Contemporaneous Reports made findings and recommendations that are relevant to SPC 5.

2004 KPMG Management Letter²⁴

- 9.29 This Management Letter was issued following the 2004 audit by KPMG, on 3 June 2005. In respect of commercial credit reviews, it stated:

“Issue and effect

Credit Reviews are regularly performed on the Society’s top 50 exposures by the Society’s Credit Review Officer.

The results of these credit reviews are subsequently informally discussed with senior management.

The informal nature of the process may result in recommendations not being actioned appropriately.

Recommendation

²³ Decision in relation to the Status of the Investigation Reports, dated 20 January 2017 (Doc ID: RDU_REL-00000086).

²⁴ 2004 KPMG Management Letter (Doc ID: 0.7.120.55765).

We acknowledge that the Society has made significant progress in its reporting of the commercial credit portfolio to the Board. However, management should now consider the merits of formally reporting the results of the credit reviews performed by the Credit Review Officer to the credit committee on a quarterly basis.

In addition, follow up reviews should be scheduled within one month of the formal reporting of these reviews to ensure any recommendations/actions have been implemented”.

The INBS Management Response to this recommendation was:

“Credit Reviews, to specifically include the Credit Risk grading on individual accounts, will be submitted to the Credit Committee on a quarterly basis.

*Issues arising will be discussed and appropriate action steps implemented. The Credit Review officer will monitor the results of action steps”.*²⁵

9.30 The 2004 KPMG Management Letter was discussed by the Board in draft form in May 2005²⁶ with the final version being discussed at the Board meeting on 21 June 2005.²⁷

9.31 The Audit Committee discussed the Management Letter at its meeting on 9 August 2005. The minutes of that meeting stated:

*“The final KPMG management letter for 2004, dated 3 June 2005, which was the same as the final draft dated 26 May 2005, was noted. The Internal Auditor confirmed that the recommendations in the management letter would be discussed with the specialist service providers [Deloitte] who are carrying out internal audits”.*²⁸

9.32 Following a request from the Financial Regulator, dated 2 December 2005²⁹, for clarifications on a number of points raised in the 2004 KPMG Management Letter, INBS sent an update to the Financial Regulator on 22 December 2005 which stated, *inter alia*:

²⁵ 2004 KPMG Management Letter, page 4 (Doc ID: 0.7.120.55765).

²⁶ Minutes of Board meeting, dated 31 May 2005, page 14 (Doc ID: 0.7.120.32656).

²⁷ Minutes of Board meeting, dated 21 June 2005, page 8 (Doc ID: 0.7.120.37131).

²⁸ Minutes of Audit Committee meeting, dated 9 August 2005, page 2 (Doc ID: 0.7.120.57027).

²⁹ Letter from Joyce Sharkey, Financial Regulator, to Ita Rogers, INBS, dated 2 December 2005 (Doc ID: 0.7.120.135173).

“Status Nov 05

First report was submitted to the Credit Committee in October 2005.

The Credit Review Officer will monitor the results of action steps and ensure that the recommendations have been implemented”.

“Additional queries Dec 05

Q. Has the Credit Review Officer begun the process of monitoring and implementing any recommendations made the Credit Committee following the Credit Review report?

Update:

*The credit review officer has commenced following up on queries raised by the Credit Committee”.*³⁰

2005 KPMG Management Letter³¹

- 9.33 The 2005 KPMG Management Letter was issued on 8 August 2006. Although it was considered by the Board at its meeting on 24 August 2006, it was not tabled at an Audit Committee meeting.
- 9.34 The 2005 KPMG Management Letter included a section entitled “*Status of prior year recommendations*”. In relation to the recommendation in the 2004 KPMG Management Letter that: “*Credit Reviews: management should now consider the merits of formally reporting the results of the Credit Reviews performed by the Credit Review Officer to the Credit Committee on a quarterly basis*”, the Management Response to this recommendation was stated to be:

“Credit Reviews specifically include the Credit Risk grading on individual accounts and have been submitted to the Credit Committee on a quarterly basis”.

The status of this recommendation was listed as “*Closed*” in the 2005 KPMG Management Letter, with the note: “*Recommendation has been implemented*”.³²

³⁰ Letter from Ita Rogers, INBS, to Joyce Sharkey, dated 22 December 2005, page 2 of 7 (Doc ID: 0.7.120.872863).

³¹ 2005 KPMG Management Letter (Doc ID: 0.7.120.55767).

³² 2005 KPMG Management Letter, page 20 (Doc ID: 0.7.120.55767).

9.35 As noted above, the 2005 KPMG Management Letter was reviewed and discussed by the Board at its meeting on 24 August 2006. The minutes for this meeting stated:

“The Board reviewed and discussed the following reports which had been circulated in advance: ...

*(3) KPMG Management letter 2005”.*³³

9.36 The 2004 KPMG Management Letter had recommended that results of the credit review process be considered by the Credit Committee and that there should be follow up to this consideration by the Credit Committee. The Management Response was to undertake that the recommendation would be implemented.

9.37 The evidence outlined below shows that the results of the credit reviews were not considered by the Credit Committee during the Review Period.

2008 Internal Audit Report³⁴

9.38 This report was the result of an audit conducted by internal audit on the operation of the Credit Committee from January 2008 to June 2008. The final report was issued in July 2008.

9.39 In relation to Credit Committee meetings, internal audit made the following findings:

“2.1 Credit Committee Meetings

Exception(s)

Discussions concerning loan applications were the only matters detailed in the meeting minutes. There were no documented discussions about moratoria extensions, non-performing loans, relevant MIS reports or other issues concerning the credit committee.

Recommendation

*The Credit Committee must receive information on and consider the other items within its remit”.*³⁵

³³ Minutes of Board meeting, dated 24 August 2006, page 21 (Doc ID: 0.7.120.21569).

³⁴ 2008 Internal Audit Report (Doc ID: 0.7.120.431377).

³⁵ 2008 Internal Audit Report, page 5 (Doc ID: 0.7.120.431377).

This finding was assigned an exception rating of “2” which was noted to be a “*Moderate control weakness with some possibility of significant financial loss, misstatement of financial results, compliance implications or reputational impacts if left unaddressed*”.³⁶

- 9.40 The 2008 Internal Audit Report was noted at the Audit Committee meeting on 12 September 2008.³⁷ The minutes of that meeting make specific reference to the Credit Committee approval process but not the requirement to review and consider other matters in the Credit Committee’s terms of reference. These Audit Committee meeting minutes were reviewed and discussed at the Board meeting on 12 December 2008.

Corporate governance documentation

Credit Committee meeting minutes and agenda

- 9.41 The three terms of reference for the Credit Committee that applied during the Review Period all stated that:

*“Minutes of meetings should capture discussions and should be circulated to members of the Committee and be available for inspection by Internal or External Auditors and by Regulators”.*³⁸

Accordingly, if items were discussed at Credit Committee meetings but not recorded in the minutes, this would itself be a breach of the terms of reference of the Credit Committee.

- 9.42 In addition, as outlined at paragraph 9.175 below, INBS, in submissions to the Financial Regulator, undertook that all reports submitted to the Credit Committee would be minuted. This arose following an inspection of INBS by the Financial Regulator in June 2006, after which the Financial Regulator wrote to INBS on 20 November 2006 requesting that the minutes of the Credit Committee meetings evidence that the committee is reviewing reports produced by the credit review function.³⁹ Mr Purcell sent this letter of 20 November 2006 from the Financial Regulator, together with INBS’s reply dated 31 January 2007, by email to *inter alia* the non-executive directors of the Board on 5 March 2007.⁴⁰ The INBS response dated 31

³⁶ 2008 Internal Audit Report, page 7 (Doc ID: 0.7.120.431377).

³⁷ Minutes of Audit Committee meeting, dated 12 September 2008, page 3 (Doc ID: 0.7.120.56436).

³⁸ 16 October 2003 Commercial Credit Committee Terms of Reference, page 3 (Doc ID: 0.7.120.5896); 19 July 2006 Commercial Credit Committee Terms of Reference, page 3 (Doc ID: 0.7.120.13247); December 2007 Credit Committee Terms of Reference, page 3 (Doc ID: 0.7.120.26675).

³⁹ Letter from Yvonne Madden, Financial Regulator, to Michael Fingleton, INBS, page 12 (Doc ID: 0.7.120.519059).

⁴⁰ Email from Stan Purcell to Michael Walsh, David Brophy & Ors., dated 5 March 2007 (Doc ID: 0.7.120.276197).

January 2007, committed that: *“All reports submitted to and reviewed by the credit committee will be minuted in the minutes of the committee”*.⁴¹

9.43 In order to identify whether the Credit Committee considered any of the four items that are the subject matter of SPC 5, the Inquiry considered all of the available Credit Committee meeting minutes for the period August 2004 to September 2008. There was a total of 93 Credit Committee meetings during the Review Period and the Inquiry was provided with minutes and packs for all 93 of these meetings.⁴² The first meeting reviewed took place on 6 August 2004 and the last was on 15 September 2008. The Inquiry has seen minutes from after the Review Period, but there are no minutes provided from the time before August 2004.

9.44 All 93 sets of minutes follow a similar template. The date of the meeting appears at the top of the page followed by the words:

“At a meeting of the Credit Committee held on x/x/x at which [Credit Committee members in attendance and loan managers] were present, the following was reviewed and discussed”.

9.45 There follows a list of loan applications in respect of which the minutes record the name of the borrower, the amount required, the total exposure of the borrower, the purpose of the loan and finally, the approval or recommendation of the Credit Committee. Each application was signed off by either one two members of the Credit Committee.

9.46 Apart from the CLAs and the recorded decisions of the Credit Committee, there was no record of any other discussions taking place at the Credit Committee meetings. Specifically, there was no record of any of the four items the subject matter of SPC 5 being discussed at any of the Credit Committee meetings. In addition, there was no evidence of any of the identified reports being included in the packs for any Credit Committee meeting during the Review Period.

9.47 The Credit Committee agenda presented a different picture. The first time the Credit Committee produced a Credit Committee pack containing an agenda for the forthcoming meeting appears to have been on 20 June 2005.⁴³ The agenda for that meeting listed the items to be covered as follows:

⁴¹ Letter from Michael Fingleton, INBS, to Yvonne Madden, Financial Regulator, dated 31 January 2007, page 5 (Doc ID: 0.7.120.443254).

⁴² See Table 3 Appendix I of the Investigation Report (Doc ID: RDU_REL-000000046).

⁴³ Credit Committee Agenda for meeting dated 20 June 2005 (Doc ID: 0.7.120.36416).

“...Commercial loan applications for approval.

- *Loans submitted as part of the credit review process*
- *Exceptions to the Credit Policy.*
- *Commercial loans that are in large arrears and/or deemed non-performing.*
- *Commercial loans which have a capital and/or interest moratorium which needs extending.*
- *Other relevant MIS reports.*
- *Any issues raised by internal audit and / or other advisors / regulators (KPMG / Financial Regulator/Board of Directors).*
- *Any other business”.*

Items at bullet points 2, 4, 5 and 6 above are all clearly drawn from the terms of reference of the Credit Committee.

9.48 A total of 75 Credit Committee packs were produced between 20 June 2005 and 15 September 2008. The Inquiry examined these packs and there was an agenda included for each meeting between 20 June 2005 and 17 August 2007. There appears to have been no agenda prepared before or after that time period.

9.49 In each of these agendas, at least one of the four items outlined in the terms of reference which are relevant to SPC 5, were listed. There was no pattern to how these items were included and the agendas do not appear to have been drawn up in a formulaic way that simply copied what was on previous agendas each week. On the face of them these items appear to have been deliberately included on the agenda for the meeting to which it related – some matters required monthly reporting, some quarterly and some were annual reports.

9.50 The production of Credit Committee agendas appears to be the result of email correspondence within INBS. In that regard, the compliance manager, Ms Ita Rogers, wrote to Mr McMenamin and Ms Melody van der Berg on 29 August 2005, attaching an internal memorandum. The memorandum stated:

“In previous KPMG Management Letters and Internal Audit reports there have been recommendations raised in relation to the Credit Committee and items that should be discussed at committee meetings. These items have been collated into the below listing and should form the agenda of committee meetings.

An agenda of items should be prepared before each meeting. Some items may only form part of the agenda on a quarterly or monthly basis but all items discussed should be noted in the minutes of the meeting.

Credit Committee Agenda for Meeting DD-MMM-YY

- *Commercial loan applications for approval.*
- *Loans submitted as part of the credit review process (Each quarter).*
- *Exceptions to the Credit Policy.*
- *Commercial loans that are in large arrears and/or deemed non-performing.*
- *Commercial loans which have a capital and/or interest moratorium which needs extending.*
- *Other relevant MIS reports.*
- *Any issues raised by internal audit and / or other advisors / regulators (KPMG/ Financial Regulator/Board of Directors).*
- *Any other business”.*⁴⁴

9.51 As already stated at paragraph 9.48 above, Credit Committee agendas were produced from June 2005 until August 2007. Notwithstanding this, the only role of the Credit Committee that was evident from the minutes and packs was its consideration of individual loan applications. Part of the Inquiry’s investigations involved establishing whether the four items had been discussed but not minuted at Credit Committee meetings.

⁴⁴ Internal Memorandum from Ita Rogers to Tom McMenamin and Melody van der Berg, dated 29 August 2005 (Doc ID: 0.7.120.216753-000001).

Evidence of Tom McMenamain

9.52 In his evidence to the Inquiry during the SPC 5 module hearing on 6 June 2018, Mr McMenamain was asked about the introduction of a Credit Committee agenda from May 2005. When asked why an agenda was now being provided for meetings of the committee, he responded:

"I am not a hundred percent sure, but I think I possibly was requested to draw up some type of an agenda. I may be wrong, but I possibly think that I might have drawn that up. I'm not sure".⁴⁵

9.53 Mr McMenamain said that he believed he was asked to do this either by the head of compliance, Ms Rogers, or the internal auditor, Mr Killian McMahon. The exchange between the LPT and Mr McMenamain during the hearing on 6 June 2018, needs to be cited in full to get an understanding of what the agenda meant in practice. The LPT opened the agenda that had been drawn up for the meeting of 8 May 2005, and the following exchange took place:

"Q. Alright. And if you look at this agenda, it has at the top commercial loan applications for approval.

...

And then at the bottom we have any other business...

And then we have in the middle, ...our four items which are extracted from the terms of reference: Commercial loans that are in large arrears and/or deemed non-performing; commercial [loans] [sic] which have a capital and/or interest moratorium which needs extension; other relevant MIS reports; any issues raised by internal audit or advisors/regulators, and examples of that are given.

Now, in fact that is almost precisely the wording of the terms of reference that we have seen a couple of times yesterday, Mr. McMenamain would you agree?

Yes.

...

⁴⁵ Transcript SPC 5 Inquiry Hearing, dated 6 June 2018, page 16 line 7 (Doc ID: RDU_FT_D45-000000001).

Q. ...We know, from your evidence yesterday and today, that none of these items were in fact considered by the Credit Committee. So what's the point in having them on the agenda?

A. Probably, it's probably irrelevant.

Q. Well, whatever about it being irrelevant, why was this on the agenda if they weren't discussed at the meeting of 8th May or any other meeting for the following three odd years?

A. Probably there wasn't any. I can't honestly say.

Q. Well, Mr McMnamin, there must have been a purpose. It may not have been your purpose, but somebody must have had a purpose in having these items put on the agenda. Did you ever ask, look why are these going on the agenda if they are never discussed?

A. I probably should have asked that. I didn't.

...

Q. Again to go back to a theme, again that we discussed yesterday, Mr. McMnamin, at this point in time around May of 2005, your position is that you weren't aware of the terms of reference apart from the requirement for a quorum of three people?

A. That would be correct.

Q. ...Now, if we go... to the next document, which is the minutes of that meeting, it's document 14273. This is a meeting which, as it happens, is also not quorate, but I won't make much of that. We know it's not compliant with the terms of reference. The sums either advanced or recommended for advancement were in excess of 18 million euro and in excess of 98 million pounds. And could I just ask you, as a matter of interest, did anybody at that meeting, do you recollect, ... having looked at the agenda that we've seen a couple of minutes ago, say when are we going to discuss the other relevant MIS reports?

A. I wouldn't have thought so.

Q. No. So we have an agenda that is put together which suggests that things will be addressed at a meeting which you don't intend to address, nobody intends to address them, they are not actually considered and nobody raises an issue about that?

A. Yes.

...

Q. The agenda appears to be a bit of a sham, Mr. McMenemy, doesn't it?

A. Yeah, based on that, yeah".⁴⁶

9.54 When questioned by the LPT, Ms Rogers, the compliance officer who had prepared the memorandum and draft agenda, was not able to explain to the Inquiry how they had arisen.

9.55 As referenced in Mr McMenemy's evidence above, he said that he was unaware of the terms of reference of the Credit Committee throughout his time on the Credit Committee. Mr McMenemy acted as chair of the Credit Committee during the Review Period until Mr Michael Fingleton began attending meetings in December 2007.⁴⁷ The only former member of the Credit Committee who said that they had been provided with a copy of the terms of reference was Mr Martin Noonan, who said he had been aware of the terms of reference from December 2007 onwards, but not before that.⁴⁸ Other members of the Credit Committee that gave evidence to the Inquiry stated that they had no knowledge of the document.

Financial Regulator Correspondence

9.56 The Financial Regulator conducted an inspection in relation to a review of the internal audit function, corporate governance procedures and the credit review function at INBS between 6 and 14 June 2006. Following this review, the Financial Regulator wrote to INBS on 20 November 2006 including the following findings in respect of the operation of the Credit Committee, under the heading "*M20 – Credit Risk Management role*":

⁴⁶ Transcript SPC 5 Inquiry Hearing, dated 6 June 2018, page 16 line 20 et seq. (Doc ID: RDU_FT_D45-000000001).

⁴⁷ Minutes of Credit Committee meeting, dated 6 December 2007 (Doc ID: 0.7.120.29881).

⁴⁸ Transcript SPC 5 Inquiry Hearing, dated 14 March 2018, page 76 line 17 et seq. (Doc ID: RDU_FT_D17-000000001).

“...Bullet point 4 of page 4 of the Terms of Reference sets out the credit risk management role of the committee e.g. reviewing relevant MIS reports, reviewing arrears and non-performing loans etc There is no evidence from a review of the minutes of the committee that it is performing this role

2. *There is no evidence from a review of the minutes of the committee that it is reviewing reports produced by the Credit Review function*
3. *There is no reporting line from the Credit Committee to the Board in relation to the credit risk management role of the committee”*.⁴⁹

9.57 The letter outlined a number of further concerns in relation to the Credit Committee. It stated:

“M21 – Attendance at meetings

The inspectors are concerned at the following:

1. *The Managing Director, who is a member of the committee, did not attend any of the 27 meetings reviewed by the inspectors, covering the period 8 May 2005 to 11 May 2006.*
2. *Mr Darragh Daly, Home Loans Manager, who is a member of the committee, attended only 2 of 27 meetings.*
3. *The quorum of 3 members was only achieved for 2 of the 27 meetings.*
4. *For the four meetings of the committee in July 2005, only one member of the committee, Mr John Roche, was present.*
5. *In July 2005, Mr Tom McMenamin was listed as approving facilities on behalf of the Credit Committee, however he was not present at any of the four meetings in July 2005.*

Recommendations

1. *Membership of the Credit Committee should be reviewed to ensure that members are available to attend meetings.*

⁴⁹ Letter from Yvonne Madden, Financial Regulator, to Michael Fingleton, INBS, dated 20 November 2006, page 11 (Doc ID: 0.7.120.519059).

2. *Meetings should not be held in the absence of a quorum.*
3. *Only members present at the meeting of the committee should approve facilities or recommend their approval to the Board.*
4. *What is the status of decisions taken in the absence of a quorum and are these decisions ratified in any way?*⁵⁰

9.58 INBS responded to this correspondence from the Financial Regulator by letter dated 31 January 2007. This letter addressed all 30 items raised by the Financial Regulator. With respect to “M20” and the credit risk management role of the Credit Committee, INBS stated:

*“All reports submitted to and reviewed by the credit committee will be minuted in the minutes of the committee”.*⁵¹

9.59 The Financial Regulator further queried this matter in its follow-up letter on 14 March 2007. It stated:

“M20 Credit Risk Management Role

- *Please advise from when the credit committee will minute that it has reviewed all reports submitted?*
- *I note that the recommendation made regarding the credit committee formally reporting to the Board in relation to the exercise of the credit risk management and review role has not been addressed and accordingly, I should be obliged if you could address this matter”.*⁵²

9.60 INBS responded on 17 May 2007, as follows:

“M20 Credit Risk Management Role

- *The Credit Committee reviews all reports submitted to it and will minute it from June 2007.*

⁵⁰ Letter from Yvonne Madden, Financial Regulator, to Michael Fingleton, INBS, dated 20 November 2006, page 12 (Doc ID: 0.7.120.519059).

⁵¹ Letter from Michael Fingleton, INBS to Yvonne Madden, Financial Regulator, dated 31 January 2007, page 5 (Doc ID: 0.7.120.443254).

⁵² Letter from Yvonne Madden, Financial Regulator, to Michael Fingleton, INBS, dated 14 March 2007, page 4 (Doc ID: 0.7.120.133691).

- *Both the commercial lending and credit risk departments are audited and the internal audit report issued to the audit committee. Any concerns in relation to the exercise of either function would be contained in such reports. In addition the credit committee report directly to the Board and the credit risk department report quarterly to the Board. Should any concerns arise in relation to a mortgage both the credit committee and the credit risk department have the ability to bring it to the attention of the Board given their present reporting lines”.*⁵³

9.61 The initial correspondence from the Financial Regulator, on 20 November 2006, and INBS’s response of 31 January 2007 were discussed at the Audit Committee meetings on 19 December 2006⁵⁴ and 13 March 2007⁵⁵ respectively. There is no reference in these Audit Committee meeting minutes to the issues raised by the Financial Regulator regarding the Credit Committee’s performance of its duties.

9.62 The Financial Regulator conducted a further inspection of INBS between 4 and 14 December 2007 in relation to “*Commercial Property Lending Exposures*”. A post-inspection letter was issued to INBS on 8 February 2008. The schedule to the letter set out specific findings from the inspection, including the following in relation to the reporting of results of credit reviews to the Credit Committee, contained in the section headed “*INBS Specific Findings – High Priority*”:

“H1 – Credit Review

Based on the sample of exposures included in the inspection, it appears that there is no comprehensive review of exposures to a group of connected borrowers conducted on an annual basis. Rather, reviews consist of an ongoing high-level review of individual projects. In addition, credit reviews do not appear to involve a review of documentation such as Audited Financial Statements, Cash Flow Statements etc.

The inspectors were advised that although the results of “credit reviews” should be provided to the Credit Committee, this has not been taking place. In this regard, the Terms of Reference of the Credit Committee state that the Credit

⁵³ Letter from Michael Fingleton, INBS to Yvonne Madden, Financial Regulator, dated 17 May 2007, page 3 (Doc ID: 0.7.120.443301).

⁵⁴ Minutes of Audit Committee meeting, dated 19 December 2006 (Doc ID: 0.7.120.57335).

⁵⁵ Minutes of Audit Committee meeting, dated 13 March 2007 (Doc ID: 0.7.120.56372).

*Committee will review and consider any loans submitted to it as part of the credit review process”.*⁵⁶

9.63 In the letter dated 8 February 2008, the Financial Regulator stated:

*“I would be obliged if the board of INBS could consider the contents of this letter at its next board meeting and respond to the Financial Regulator setting out its comments together with details of proposed follow-up actions and timeframes”.*⁵⁷

9.64 The Board reviewed this letter dated 8 February 2008 and a previous letter from the Financial Regulator dated 29 January 2008 (that did not refer to credit reviews) at its meeting on 18 February 2008. The minutes of that meeting recorded:

“The Board reviewed the letter dated 29 January 2008 addressed to the Secretary and the letter dated 8 of February 2008 addressed to the Chairman re the inspection of commercial property lending exposures by the Financial Regulator which was carried out in December 2007.

*The Board noted that draft responses were being prepared for both letters”.*⁵⁸

9.65 A draft response to the Financial Regulator’s letter dated 8 February 2008 was reviewed by the Board at its meeting on 28 March 2008⁵⁹ and a final response was agreed at the Board meeting on 21 April 2008.⁶⁰ In this response letter, dated 21 April 2008, a schedule was attached addressing the specific items raised by the Financial Regulator. In relation to the recommendation that *“Details of all credit reviews performed should be forwarded to Credit Committee”*, INBS stated:

“Credit risk review reports will be submitted to the Credit Committee when reviews are carried out. Reviews are carried out at different intervals depending on the circumstances of the loan. Informal contact with lenders about the content of specific reviews is ongoing as lenders receive updates which result

⁵⁶ Letter from Mary Burke, Financial Regulator, to Michael Walsh, INBS, dated 8 February 2008, page 3 and 4 (Doc ID: 0.7.120.526582).

⁵⁷ Letter from Mary Burke, Financial Regulator, to Michael Walsh, INBS, dated 8 February 2008, page 2 (Doc ID: 0.7.120.526582).

⁵⁸ Minutes of Board meeting, dated 18 February 2008, page 4 (Doc ID: 0.7.120.5941).

⁵⁹ Minutes of Board meeting, dated 28 March 2008, page 3 (Doc ID: 0.7.120.19185).

⁶⁰ Minutes of Board meeting, dated 21 April 2008, page 4 (Doc ID: 0.7.120.7090).

in changes in the risk profile of a given account. Details of accounts graded 4, 5 and 6 will be copied to the lenders on a monthly basis".⁶¹

- 9.66 The timeframe for completing this was given as May 2008, however there is no evidence from the minutes or packs of the Credit Committee throughout the Review Period – including after May 2008 – that this was ever done.

Interview evidence and witness evidence - former Credit Committee members and attendees

- 9.67 The Inquiry heard evidence from former Credit Committee members on each of the four items in the terms of reference of the Credit Committee that were the subject matter of the SPC 5 Allegations, as set out below. The minutes of the Credit Committee meetings and the Financial Regulator Correspondence showed that the four items, the subject matter of this SPC, were not recorded as having been discussed at Credit Committee meetings. As stated at paragraph 9.51 above, the Inquiry sought to establish whether the items had been discussed without being recorded in the minutes and also to ascertain the potential value of them to Credit Committee considerations.

SPC 5.1: Commercial loans in large arrears and/or deemed non-performing

- 9.68 Arrears and non-performing loans were monitored at first instance by the commercial lenders themselves. They reported in to the Provisions Committee, which considered the information provided by the lenders and made decisions on provisions accordingly. The Provisions Committee met on a quarterly basis and produced a report on arrears and on loans deemed non-performing. These reports were circulated to commercial lenders and managers on an individual basis. One of the points made by Mr Fingleton in his cross-examination of witnesses and in his own direct evidence to the Inquiry was that although these reports were not circulated to the Credit Committee as such, the members of the Credit Committee would have been aware of the content of these reports on an individual basis.
- 9.69 The SPC 5.1 Allegation contends that information in relation to arrears and non-performing loans would have provided the Credit Committee with information regarding borrower performance and identified areas of potential concern which could inform subsequent loan approval decisions.

⁶¹ Letter from Michael Walsh, INBS, to Mary Burke, Financial Regulator, dated 21 April 2008, page 4 (Doc ID: 0.7.120.290839-000001).

9.70 In the course of interviews with former attendees and members of the Credit Committee⁶², Enforcement was informed that this matter had never been discussed at Credit Committee meetings. Each of the four interviewees were consistent in their evidence that the only matters discussed by the Credit Committee were loan applications.

9.71 This interview evidence was confirmed in the course of oral evidence to the Inquiry. These former members of the Credit Committee gave evidence to the Inquiry that arrears and non-performing loans were not considered by the Credit Committee.

Tom McMEnamin

9.72 Mr McMEnamin was a member of the Credit Committee during the Review Period. He gave evidence to the Inquiry in the SPC 5 module hearings on 5 to 8 June 2018. He accepted that although he was not formally appointed, he had acted as chairperson of the Credit Committee from 2004 until November 2007.⁶³ He was asked if he recalled whether the Credit Committee reviewed and considered commercial loans that were in large arrears or were deemed non-performing between September 2004 and October 2008. He replied, "*I would have to say the Credit Committee did not*".⁶⁴

9.73 Mr McMEnamin was asked whether it would have been difficult for the Credit Committee to have been given information about commercial loans that were in large arrears or non-performing. He said that the members of the Credit Committee were aware of larger loans, and stated that: "*There wasn't a loan issued with 200,000 or 2 million arrears on it. We would have known about that*". However, he agreed with the proposition that it would not have been difficult to have given this information to the Credit Committee.⁶⁵

9.74 With respect to the arrears and non-performing loan reports, Mr Fingleton put it to Mr McMEnamin that he would have got those reports as commercial manager. They were produced monthly by the commercial lending department and were distributed to all commercial lenders. Mr McMEnamin had no recollection of receiving them but agreed with Mr Fingleton that it was likely that they had been circulated to him. Mr McMEnamin stated:

⁶² Alan Deering, Darragh Daly, Martin Noonan and John Roche.

⁶³ Transcript SPC 5 Inquiry Hearing, dated 5 June 2018, Page 24 line 4 et seq. (Doc ID: RDU_FT_D44-00000001).

⁶⁴ Transcript SPC 5 Inquiry Hearing, dated 5 June 2018, Page 19 line 25 (Doc ID: RDU_FT_D44-00000001).

⁶⁵ Transcript SPC 5 Inquiry Hearing, dated 5 June 2018, Page 71 line 19 et seq. (Doc ID: RDU_FT_D44-00000001).

*“That information , if I received it in a report, it wouldn’t have been new to me because the actual portfolio of loans that I was dealing with, I have said, I was up-to-date as to where they were, ...”*⁶⁶

9.75 In the course of cross-examination by Mr Fingleton, Mr McMenamain stated that a consideration of arrears reports would have been of benefit to the Credit Committee in considering loan applications. He agreed that individual loan managers would have had the most up to date information on their customers but he concluded:

*“Well, you know, for the existing customers to come in and ask for an increase for whatever purpose, I would have to say, you know, from general contact and discussion, I’m right to think that I or other lenders would know that this guy has missed three payments, so on and so forth, but I can’t say these non-performing loans, you know weren’t essential, to be honest”*⁶⁷

Alan Deering

9.76 Mr Alan Deering gave evidence to the Inquiry during the SPC 5 module hearing on 12 April 2018. He confirmed that he attended Credit Committee meetings from February 2005 to December 2007 in his capacity as a member of the commercial lending department and, thereafter, as a member of the Credit Committee for the remainder of the Review Period.⁶⁸ With respect to reviewing and considering commercial loans in large arrears and/or deemed non-performing, he was asked whether he recalled this task being completed by the Credit Committee. He confirmed what he had stated in his interview with Authorised Officers of the Central Bank: *“No, that’s -- no, in my understanding that was a task for the Provisions Committee”*. He confirmed to the Inquiry that he did not recall the Credit Committee considering arrears or non-performing loans either before or after his formal appointment to the Committee in 2007.⁶⁹

9.77 Mr Deering had been a member of the Credit Committee from December 2007 and was a member when the Board made the decision in 2007 to restrict commercial lending.⁷⁰ In his cross-examination of Mr Deering, Mr Fingleton asked him if seeing the

⁶⁶ Transcript SPC 5 Inquiry Hearing, dated 8 June 2018, page 14 line 17 et seq. (Doc ID: RDU_FT_D47-000000001).

⁶⁷ Transcript SPC 5 Inquiry Hearing, dated 8 June 2018, page 19 line 1 et seq. (Doc ID: RDU_FT_D47-000000001).

⁶⁸ Transcript SPC 5 Inquiry Hearing, dated 12 April 2018, page 9 line 19 et seq. (Doc ID: RDU_FT_D26-000000003).

⁶⁹ Transcript SPC 5 Inquiry Hearing, dated 12 April 2018, page 58 line 19, page 78 line 10, page 80 line 12 et seq. (Doc ID: RDU_FT_D26-000000003).

⁷⁰ Transcript SPC 5 Inquiry Hearing, dated 12 April 2018, page 96 line 6 (Doc ID: RDU_FT_D26-000000003).

reports identified in the terms of reference would have made any difference to the Credit Committee once the decision had been taken to discontinue commercial lending to a significant extent. Mr Deering agreed that these reports would not have been needed if the Credit Committee was not in fact lending.⁷¹

- 9.78 The Inquiry has seen evidence from the loan files that notwithstanding the decision to restrict lending taken by the Board in December 2007⁷², significant sums of money were advanced during the period December 2007 to September 2008, much in respect of projects already committed to. Mr Fingleton asked Mr Deering about receiving reports on arrears and non-performing loans as an underwriter. He indicated that he would not have got them as an underwriter, that they would have gone to the members of the Provisions Committee.⁷³

Darragh Daly

- 9.79 Mr Darragh Daly was a member of the Credit Committee from late 2003/early 2004 until July 2006.⁷⁴ He gave evidence to the Inquiry during the SPC 5 module hearing on 20 to 23 February 2018. When the four issues as contained in the terms of reference were opened to him, he stated: "*The only things that I recall being discussed in Credit Committee were the approval or otherwise of facilities. I don't recall any of these items being discussed at the meetings I attended*".⁷⁵

- 9.80 Mr Daly further confirmed:

*"... I would have already said from my own experience, I didn't see any evidence from review of the minutes provided by the Central Bank during an interview of any of the four matters in terms of arrears, non-performing, MIS or the fourth one was auditor's findings".*⁷⁶

- 9.81 Mr Daly was asked by the LPT if it would have been of assistance to the Credit Committee to receive reports on commercial loans in large arrears or non-performing, and the following exchange took place:

⁷¹ Transcript SPC 5 Inquiry Hearing, dated 12 April 2018, page 109 line 2 et seq. (Doc ID: RDU_FT_D26-00000003).

⁷² See Chapter 4 of this Findings Report.

⁷³ Transcript SPC 5 Inquiry Hearing, dated 12 April 2018, page 102 line 1 et seq. (Doc ID: RDU_FT_D26-00000003).

⁷⁴ Witness Statement of Darragh Daly, dated 26 September 2017, question 5 (Doc ID: RDU_WS-0000000018).

⁷⁵ Transcript SPC 5 Inquiry Hearing, dated 20 February 2018, page 41 line 13 (Doc ID: RDU_FT_D7-000000001).

⁷⁶ Transcript SPC 5 Inquiry Hearing, dated 21 February 2018, page 43 line 18 (Doc ID: RDU_FT_D8-000000001).

"A. ...During the Credit Committee that I participated in, the meetings I was at, the typical senior membership would have been myself, Tom McMEnamin, and John Roche. Tom McMEnamin and John Roche would have been receiving those reports, not in Credit Committee, but as lenders. They would have received those -- as I said they would have received those in the first week of March for the month end position as at February.

So, they would not have received it in the context of Credit Committee, but they received it in the context of their roles as commercial lenders.

...

Q. If the reports had been received in the context of the Credit Committee, do you think it is likely that they would have been discussed by the Credit Committee?

A. Yes.

...

Q. So what effect do you think it might have had on your input into the committee?

A. It certainly would have -- if there was sufficient information in respect of the actual arrears cases, it would have enabled me to have a greater input into the approval of loans".⁷⁷

9.82 Mr Daly was asked what effect these reports would have had on the Credit Committee considerations. He stated: *"So -- sorry, yes it would have enabled a better impact in terms of the Credit Committee, whether that would have been huge or not, I can't say".⁷⁸*

9.83 Mr Fingleton returned to this issue when cross-examining Mr Daly and asked him what relevance or benefit there would be in these reports going to Credit Committee in the context of their availability in the organisation generally. Mr Daly stated: *"The potential*

⁷⁷ Transcript SPC 5 Inquiry Hearing, dated 21 February 2018, page 63 line 23 et seq. (Doc ID: RDU_FT_D8-000000001).

⁷⁸ Transcript SPC 5 Inquiry Hearing, dated 21 February 2018, page 65 line 8 et seq. (Doc ID: RDU_FT_D8-000000001).

was there for that to have made -- to have made an impact on the decisions that were being made for new lending, yes".⁷⁹

9.84 Mr Fingleton further asked Mr Daly "...do you recall ever raising any issue at any Credit Committee meeting in relation to those four items?". Mr Daly responded "No" and went on to say: "*I had no awareness that those four items were to be considered at Credit Committee, so I wouldn't have questioned*".⁸⁰

9.85 From the minutes of the Credit Committee meetings, it appears that Mr Daly attended ten meetings during his time on the Credit Committee, and this was pointed out to him during interactions with the Central Bank.⁸¹

Martin Noonan

9.86 Mr Noonan was a member of the Credit Committee from July 2006⁸² until after the Review Period. When asked in his interview with Authorised Officers of the Central Bank if the Credit Committee had considered arrears and non-performing loans he replied, "No". Mr Noonan said that the Credit Committee would not have had visibility of non-performing loans as a group but would have had visibility of them individually. However, he said that arrears would not have been escalated through to the Credit Committee and when asked whether the obligation was satisfied within the terms of reference, he replied "No".⁸³

9.87 Mr Noonan gave evidence to the Inquiry during the SPC 5 module hearings on 14 and 15 March 2018. Mr Noonan was asked whether he was aware of the obligation to review and consider the items listed in the terms of reference of the Credit Committee. He said he had not been aware of it when he joined but he was aware of it before the December 2007 Credit Committee Terms of Reference were produced. He further said that to his knowledge none of the four items in the terms of reference were considered by the Credit Committee, they were considered by other groups.⁸⁴

⁷⁹ Transcript SPC 5 Inquiry Hearing, dated 22 February 2018, page 73 line 2 et seq. (Doc ID: RDU_FT_D9-000000001).

⁸⁰ Transcript SPC 5 Inquiry Hearing, dated 22 February 2018, page 49 line 21 et seq. (Doc ID: RDU_FT_D9-000000001).

⁸¹ Transcript SPC 5 Inquiry Hearing, dated 20 February 2018, page 39 line 21 et seq. (Doc ID: RDU_FT_D7-000000001).

⁸² The first time Mr Noonan's name appears on Credit Committee meeting minutes is at the meeting on 17 January 2007. See Transcript SPC 5 Inquiry Hearing, dated 15 March 2018, page 10 line 19 et seq. (Doc ID: RDU_FT_D18-000000001).

⁸³ Transcript of Interview of Martin Noonan, dated 22 February 2013, page 103 line 12 et seq. (Doc ID: 0.7.120.683759).

⁸⁴ Transcript SPC 5 Inquiry Hearing, dated 14 March 2018, page 71 line 16 et seq. (Doc ID: RDU_FT_D17-000000001).

- 9.88 A copy of an agenda in which the four items were listed was also opened to Mr Noonan and he said that he never received the agenda and that the items listed were not discussed.⁸⁵ Mr Noonan said that arrears and non-performing loans were considered by the commercial lenders themselves and by the Provisions Committee. He could not explain to the Inquiry why the Credit Committee did not do this.⁸⁶
- 9.89 When asked by the Inquiry Members whether he had ever raised with the other Credit Committee members why the four items, the subject of SPC 5, weren't being discussed, he said:

"No, not really. They were being dealt with in different foras. I accept, fully accept that they should have been discussed at the Credit Committee but -- I'll give you an example. When I -- when Gerry McGinn took over from Mr. Fingleton, as I said to you earlier, I was asked to stay on the Committee. We were not going through documentation such as that on the new committee. So, I find it hard to believe why it was so necessary in relation to the past committees except that it was in that document".⁸⁷

Brian Fitzgibbon

- 9.90 Mr Brian Fitzgibbon was a member of the Credit Committee from 19 July 2006 until November 2007. He gave evidence to the Inquiry during the SPC 5 module hearing on 27 February 2018 and he was asked specifically about the four items that were to be considered by the Credit Committee, as follows: *"...In your time on the Credit Committee were these matters that were reviewed and considered by the Credit Committee?"*. He responded: *"As I said on one occasion, I believe, when Mr. Casey [sic] credit review papers came through, but -- I believe, but none of the rest, no".⁸⁸*

John Roche

- 9.91 Mr John Roche was a member of the Credit Committee from its establishment in 2001 until 10 January 2007. When asked during his interview with the Authorised Officers of the Central Bank whether large arrears and/or non-performing loans were considered

⁸⁵ Transcript SPC 5 Inquiry Hearing, dated 14 March 2018, page 73 line 1 et seq. (Doc ID: RDU_FT_D17-00000001).

⁸⁶ Transcript SPC 5 Inquiry Hearing, dated 14 March 2018, page 80 line 5 et seq. (Doc ID: RDU_FT_D17-00000001).

⁸⁷ Transcript SPC 5 Inquiry Hearing, dated 15 March 2018, page 96 line 10 et seq. (Doc ID: RDU_FT_D18-00000001).

⁸⁸ Transcript SPC 5 Inquiry Hearing, dated 27 February 2018, page 44 line 11 et seq. (Doc ID: RDU_FT_D11-00000001).

by the Credit Committee, as required by the terms of reference, he said this had not happened.⁸⁹

9.92 Mr Roche confirmed this in his evidence to the Inquiry during the SPC 5 module hearing on 21 March 2018. He said that if a particular borrower came before the Credit Committee for approval or recommendation and he was in arrears with another facility, *“we would have got details of the amount of the arrears and, quite possibly, maybe how many payments he had missed over a period of time. So, generally what happened is, if an application came forward for somebody that was in arrears, those applications... were declined, and that’s the way it worked”*.⁹⁰

9.93 It was put to Mr Roche that in the context of the terms of reference which referred to the obligation on the part of the Credit Committee to consider commercial loans in large arrears/non-performing, that obligation wasn’t specific to existing borrowers. He agreed with that and said that if the case did not come before the Credit Committee on that day the arrears were not looked at.⁹¹

SPC 5.2: Loans submitted to Credit Committee as part of the credit review process

Frank Casey

9.94 Credit reviews were conducted by the credit review officer, Mr Frank Casey. He gave evidence to the Inquiry in the SPC 5 module hearings on 7, 8 and 9 March 2018. He joined INBS in 2003 following a thirty year career in a major Irish bank. In early 2004 he was asked to set up a grading or a credit review system. He continued in this role until the end of 2009. Mr Casey said he believed he was appointed to the role of credit review officer by Mr Noonan, possibly through Mr Purcell.⁹²

9.95 Mr Casey further stated that he worked off a report called the large exposures report which listed the top 100 exposures by group. He started with the largest exposure and worked his way down the list of loans. The top 100 exposures represented approximately 80% of the commercial loan book.⁹³

⁸⁹ Transcript of Interview of John Roche, dated 25 March 2013, page 17 line 4 et seq. (Doc ID: 0.7.120.683756).

⁹⁰ Transcript SPC 5 Inquiry Hearing, dated 21 March 2018, page 58 line 11 et seq. (Doc ID: RDU_FT_D21-000000001).

⁹¹ Transcript SPC 5 Inquiry Hearing, dated 21 March 2018, page 58 line 23 et seq. (Doc ID: RDU_FT_D21-000000001).

⁹² Transcript SPC 5 Inquiry Hearing, dated 7 March 2018, page 10 line 12 et seq. (Doc ID: RDU_FT_D13-000000001).

⁹³ Transcript SPC 5 Inquiry Hearing, dated 7 March 2018, page 14 line 6 et seq. (Doc ID: RDU_FT_D13-000000001).

- 9.96 In carrying out his credit review, Mr Casey stated that he would first look at the CLA and then get whatever supporting documentation was provided by the borrower. He would look at the facility letter and the valuation and any documentation that was available. He also looked at the repayment history on the loan and whether the loan was performing or not, *“And then I would apply a grade on the basis of the information that was presented to me, that I had identified”*.⁹⁴
- 9.97 He indicated that once he had completed his credit review, he completed a Credit Review Pro-Forma document which captured most of the pertinent information. He then assigned a grade to the loan and that grade was then inputted into the Summit system. He said that from 2007 onwards he would review the loans on a rotation basis and he would then get information as required from the lenders to see how the loan was doing or whether there was any additional information required to be added to the Credit Review Pro-Forma document.⁹⁵
- 9.98 An example of a Credit Review Pro-Forma report was opened to Mr Casey. This sample was dated from December 2004 and Mr Casey recognised it as the standard pro-forma document used throughout his time as credit review officer. Along one side of the document was a list of items to be filled in, and one of them was entitled *“Credit Committee”*. Mr Casey, who confirmed that he had designed the document, could not assist the Inquiry as to why the reference to the Credit Committee was put in or what it signified.⁹⁶
- 9.99 Mr Casey said that initially, the results of credit reviews would not have been sent to any particular person or department within INBS, but the grade assigned would be put up on the Summit system that was accessible to all commercial lenders and underwriters. He further indicated that the Credit Review Pro-Forma reports themselves were kept on a separate database and this was accessible to anyone involved in credit risk.⁹⁷ From 2006 onwards, he was asked by Mr Fingleton to give him updates on the percentage of the gradings that had been completed at that date.⁹⁸

⁹⁴ Transcript SPC 5 Inquiry Hearing, dated 7 March 2018, page 17 line 5 et seq. (Doc ID: RDU_FT_D13-000000001).

⁹⁵ Transcript SPC 5 Inquiry Hearing, dated 7 March 2018, page 17 line 5 et seq. (Doc ID: RDU_FT_D13-000000001).

⁹⁶ Transcript SPC 5 Inquiry Hearing, dated 7 March 2018, page 20 line 15 et seq. (Doc ID: RDU_FT_D13-000000001).

⁹⁷ Transcript SPC 5 Inquiry Hearing, dated 7 March 2018, page 30 line 8 et seq. (Doc ID: RDU_FT_D13-000000001).

⁹⁸ Transcript SPC 5 Inquiry Hearing, dated 7 March 2018, page 35 line 4 et seq. (Doc ID: RDU_FT_D13-000000001).

- 9.100 Mr Casey said that in his experience of credit reviews with his previous employer, the credit grade drove the management of the account whereas, in INBS: *"It didn't make any difference to their management of the account"*. He said that a loan that had been assigned a credit grade of 4 would not normally be eligible for further advances in his previous bank. However, he did not believe that was the case in INBS because he had never been approached by a commercial lender asking why a particular grade had been assigned.⁹⁹
- 9.101 He agreed with the proposition put to him by the LPT, that while the credit review function had prepared the information and the information was available, it was not used to identify potential loan losses.¹⁰⁰
- 9.102 Mr Casey stated that in October 2005 he had been made aware *"possibly through Ita Rogers or Stan Purcell, I'm not sure. I can't remember who asked me. But obviously I was made aware that this was a requirement that credit reviews go to Credit Committee"*.¹⁰¹
- 9.103 Mr Casey had emailed Mr McMenemy on 4 October 2005 in relation to 89 Credit Review Reports for review by the Credit Committee, which he stated was in response to the 2004 KPMG Management Letter recommendation. The email stated:

"Tom

In response to the 2004 KPMG report on commercial lending, the Society undertook to formally submit the credit reviews to the credit committee on a monthly basis.

Accordingly, I have forwarded to you the first tranche of 89 reviews (30 Soc 1, 18 Soc 3, 41 Soc 4). The remaining completes [sic] reviews (c50) will be submitted at the beginning of November. Thereafter new reviews will be submitted on a monthly basis.

A follow up review of the first 89 will take place within one month to ensure issues identified are addressed.

⁹⁹ Transcript SPC 5 Inquiry Hearing, dated 7 March 2018, page 47 line 8 et seq. (Doc ID: RDU_FT_D13-000000001).

¹⁰⁰ Transcript SPC 5 Inquiry Hearing, dated 7 March 2018, page 62 line 6 et seq. (Doc ID: RDU_FT_D13-000000001).

¹⁰¹ Transcript SPC 5 Inquiry Hearing, dated 7 March 2018, page 63 line 3 et seq. (Doc ID: RDU_FT_D13-000000001).

Kindly acknowledge receipt of the above.

Frank".¹⁰²

9.104 This email was copied to Ms van der Berg and she emailed Mr McMEnamin on 14 December 2005 requesting a copy of the Credit Committee meeting minutes demonstrating that the results of the credit reviews had been discussed.

"Tom

Further to email below dd 04th Oct, please see excerpt from the KPMG Management Letter 2004. Could you please supply a copy of the minutes following your meeting around October 04th when the Credit Reviews were discussed. Many thanks".¹⁰³

9.105 Ms van der Berg followed this up with another email of 19 December 2005 that stated:

"Tom

Could you please respond to request below [forwarding the 14 December 2005 email].

Many thanks,

..."¹⁰⁴

9.106 Ms van der Berg sent Mr McMEnamin a further follow-up email on 21 December 2005 stating:

"Tom

Ita [Rogers, Compliance Manager] needs to respond to the KPMG management letter by no later than tomorrow.

Could you please respond to emai [sic] below [forwarding email of 19 December 2005, 11.13].

¹⁰² Email from Frank Casey to Tom McMEnamin, dated 4 October 2005 (Doc ID: 0.7.120.223792).

¹⁰³ Email from Melody van der Berg to Tom McMEnamin, dated 14 December 2005 (Doc ID: 0.7.120.229619).

¹⁰⁴ Email from Melody van der Berg to Tom McMEnamin, dated 19 December 2005 (Doc ID: 0.7.120.230289).

Many thanks

...".¹⁰⁵

9.107 Mr McMenamain responded by email on 21 December 2005 stating:

"Melody,

The Credit Review officer (Frank Casey) does not report to me.

However he has sent me 85 reviews for the quarter ending September 05 all of which have been discussed by the credit committee [sic].

Ita [Rogers, Compliance Manager] has been advised of this fact.

I hope this is the information you are looking for.

Regards.

Tom".¹⁰⁶

9.108 As already pointed out, there is no record in the Credit Committee meeting minutes or packs of this review having occurred. In addition, evidence of former Credit Committee members indicated no recollection of output from the credit review process being reviewed and considered by the Credit Committee during the Review Period.

9.109 Mr Casey said that apart from the 89 loans referred to in the email above, he believed that he would have given Quarterly Reports to Mr McMenamain in January and April 2006. He said he was not 100% sure that this had happened but that he assumed he had done so. He explained that he would have given the Credit Review Reports in hardcopy and left them on Mr McMenamain's desk.¹⁰⁷

9.110 He said that after June 2006 his reporting line changed following the establishment of a credit risk department under Mr Daly. At this time, responsibility for KPMG Management Letters was identified under Ms van der Berg and although he continued to do his Credit Review Reports he never got any further emails or contact with regard to providing these documents to the Credit Committee. He stated:

¹⁰⁵ Email from Melody van der Berg to Tom McMenamain, dated 21 December 2005 (Doc ID: 0.7.120.231198).

¹⁰⁶ Email from Tom McMenamain to Melody van der Berg, dated 21 December 2005 (Doc ID: 0.7.120.231203).

¹⁰⁷ Transcript SPC 5 Inquiry Hearing, dated 7 March 2018, page 66 line 17 et seq. (Doc ID: RDU_FT_D13-000000001).

*"...it was the simplest thing in the world just to print them off and hand them over, you know. But I wasn't aware at that stage either that the procedure of the pro forma was part of the Terms of Reference of the Credit Committee. I wasn't aware of that".*¹⁰⁸

9.111 Mr Casey indicated that he believed he continued to provide Credit Review Reports to Mr Fingleton after Mr Daly's appointment.¹⁰⁹

Tom McMEnamin

9.112 During his evidence to the Inquiry on 5 June 2018, Mr McMEnamin was asked about the Credit Review Reports that KPMG had recommended to be considered by the Credit Committee. He said: *"My recollection was that quite a number, maybe 50 or 60, came in in one swoop and I discussed, not in depth, but I discussed them with Mr. Casey and he had no real concerns concerning it, and, from my memory, I don't think I got any on a regular basis going forward. All -- maybe six months later or whatever, a bundle of maybe a hundred came in"*. The following exchange then took place:

"Q. Okay. So you remember two occasions when Mr. Casey gave you a glut of credit reviews and these occasions were more or less six months apart, is that so?"

A. Yeah, from my best recollection is yes, they were quite some time apart.

Q. And did you discuss those credit reviews with the Credit Committee?"

A. No.

Q. On either occasion?"

*A. No".*¹¹⁰

Ita Rogers

9.113 Ms Rogers, head of compliance, gave evidence to the Inquiry in the SPC 5 module hearings on 23 and 24 April 2018. She was asked about the provision of Credit Review Reports to the Credit Committee and confirmed that the information she got was that

¹⁰⁸ Transcript SPC 5 Inquiry Hearing, dated 7 March 2018, page 68 line 2 et seq. (Doc ID: RDU_FT_D13-000000001).

¹⁰⁹ Transcript SPC 5 Inquiry Hearing, dated 7 March 2018, page 90 line 14 (Doc ID: RDU_FT_D13-000000001).

¹¹⁰ Transcript SPC 5 Inquiry Hearing, dated 5 June 2018, page 81 line 23 et seq. (Doc ID: RDU_FT_D44-000000001).

the first of the Credit Review Reports would be going to the Credit Committee on 30 September 2005. She said she had not noticed the inconsistency with the previous email in which she had been told it was in place since January 2005.¹¹¹

- 9.114 Four former Credit Committee members were asked by the Inquiry if they recalled any reference to the credit review process or whether they recalled reviewing and/or considering any loans submitted as part of the credit review process. They each stated that such a review had not taken place during their time on the the Credit Committee.

Darragh Daly

- 9.115 Mr Daly, during his evidence to the Inquiry in the SPC 5 module hearing on 22 February 2018, was asked by Mr Fingleton what benefit there would be in considering a previous loan reviewed by Mr Casey. Mr Daly stated:

"If the reviews have been sufficiently detailed, they would have given indicators as to the performance of those loans, those exposures and elements of particular markets. So the potential would have been there, as with the arrears.

...

...if the reviews had been presented and had been of a sufficiently critical nature to assist the lenders in terms of further decision making with regard to new lending and also additional facilities, yes.

...

A. If -- I imagine this type of portfolio analysis may have been of assistance to the Credit Committee in their consideration of similar types of lending, for example, same geographic area or the same industrial sector to that exposure or to other exposures".¹¹²

- 9.116 Mr Fingleton put it to Mr Daly that the Credit Review Reports only contained historic information and that this information would be incorporated into a CLA for presentation. Mr Daly stated:

"...the potential was there for, if a review is available on a large portion of the book, it does enable a lender to gain a more balanced assessment of the

¹¹¹ Transcript SPC 5 Inquiry Hearing, dated 23 April 2018, page 120 line 3 et seq. (Doc ID: RDU_FT_D28-00000003).

¹¹² Transcript SPC 5 Inquiry Hearing, dated 22 February 2018, page 74 line 7 et seq. (Doc ID: RDU_FT_D9-000000001).

overall portfolio rather than a specific case, and thereby it may enhance their ability to make a decision on a new case.

...

The irony is, as I said, a lot of information contained in the credit reviews was provided by the lenders, so in the lenders consideration of any application, I would agree with you in terms of they would generally tend to be aware given that they had provided the information for the reviews. And finally I would say, the fact that you say the review may be six months out of date, that was because of the administration difficulties that I referred to in terms of eliciting up-to-date financial information, the reviews should always have been up-to-date, they weren't".¹¹³

Brian Fitzgibbon

9.117 Mr Fitzgibbon was appointed to the Credit Committee in July 2006. During his evidence to the Inquiry in the SPC 5 module hearing on 27 February 2018, he was asked if he recalled Credit Review Reports being considered or reviewed by the Credit Committee. He said¹¹⁴:

"No. The Credit Committee, as I understood, even though I have read the Terms of Reference of the Credit Committee, it was in relation to counterparty risk. There was other committees and personnel throughout the Society to do reviews".

9.118 Mr Fitzgibbon continued:

"As I said, my take on Terms of Reference for the Irish Nationwide Credit Committee, the Credit Committee did not adhere to those Terms of Reference. The Credit Committee was simply there, looking at counterparty risk and whether it would grant or approve funds.

I think in my time I'm on the Credit Committee, there may have been one occasion, I could be wrong on this, but there may have been one occasion that credit review reports may have been presented. But in the vast majority of cases, the vast majority of cases, to the best of my knowledge and recollection,

¹¹³ Transcript SPC 5 Inquiry Hearing, dated 22 February 2018, page 78 line 12 et seq. (Doc ID: RDU_FT_D9-000000001).

¹¹⁴ Transcript SPC 5 Inquiry Hearing, dated 22 February 2018, page 17 line 16 et seq. (Doc ID: RDU_FT_D11-000000001).

is we were just looking at whether we would approve or decline Commercial Loan Applications".¹¹⁵

SPC 5.3: Relevant MIS reports

Darragh Daly

9.119 Mr Daly, during his evidence to the Inquiry in the SPC 5 module hearing on 20 February 2018, was asked for his definition of a MIS report and he stated:

"These are basically statistical extracts from the underlying database – – from the mortgage accounting system. Sorry, not all of them, but most of them are, for example arrears, non-performing, motorial [sic] loans.

...

...when I said I would see MIS as being something that comes from the system, typically it came from the system in a somewhat raw state and there was an exercise undertaken by finance every month to break that out into, for example you know the pie chart that we looked at, to prepare that kind of thing... it wouldn't have been straight from the system, it would have required input from the finance department.

...

There was monthly – – sorry, there was often daily and weekly extracts, but the more meaningful reports were on a monthly – – month end basis from Summit. And that was – – it was unworkable in some ways because it was a massive list of all the borrowers, all the connections, all the indebtedness and so on. So, there was work required to get that into a kind of meaningful report, and that was undertaken by, ... finance on a monthly basis. A lot of it was automated, there was macros applied and it was just, you know, a huge body of, volume of figures was taken and put into something, into tables and so on".¹¹⁶

9.120 Mr Daly said that commercial lenders did deal with the four items outside of the context of the Credit Committee. He said: *"And I would imagine matters were progressed directly in that way, but I don't recall it being a case in Credit Committee".* Mr Daly

¹¹⁵ Transcript SPC 5 Inquiry Hearing, dated 22 February 2018, page 29 line 19 et seq. (Doc ID: RDU_FT_D11-000000001).

¹¹⁶ Transcript SPC 5 Inquiry Hearing, dated 20 February 2018, page 101 line 18 et seq. (Doc ID: RDU_FT_D7-000000001).

confirmed that he did not get any MIS reports in relation to commercial lending as he was in residential lending during his time on the Credit Committee.¹¹⁷

Brian Fitzgibbon

9.121 Mr Fitzgibbon, who succeeded Mr Daly on the Credit Committee, gave evidence to the Inquiry during the SPC 5 module hearing on 27 February 2018. He was asked about MIS reports, and he said: "...if there was a requirement that one wanted to find out, usually these would be in respect to requirements of the Regulator/the Central Bank and/or the auditors. So, these Management Information Reports would be generated to satisfy their needs". The LPT then asked Mr Fitzgibbon whether he recalled these materials being provided to the Credit Committee and discussed in the context of the Credit Committee, and he responded "No".¹¹⁸

9.122 Mr. Fitzgibbon was asked if he would have received the four items of information in another capacity and he said he would have received 90% of the information in his capacity as loan review manager.¹¹⁹

9.123 Mr Fitzgibbon confirmed in cross-examination by Mr Fingleton that he would have known where to get the information in the MIS reports if he needed it, but that he "*never read it in a Credit Committee context at a Credit Committee meeting*".¹²⁰

9.124 Mr Fitzgibbon was asked by the LPT in the course of his evidence whether he thought having information such as was provided by MIS reports would have had a positive influence on the actions of the Credit Committee in reviewing loans generally. He said that because lending in INBS was so concentrated on residential development, reports such as sectoral exposures would not have have been helpful.¹²¹

John Murphy

9.125 Mr John Murphy¹²² was head of commercial administration in INBS when he was appointed to the Credit Committee during 2008. He gave evidence to the Inquiry during

¹¹⁷ Transcript SPC 5 Inquiry Hearing, dated 21 February 2018, page 44 line 4 et seq. (Doc ID: RDU_FT_D8-000000001).

¹¹⁸ Transcript SPC 5 Inquiry Hearing, dated 27 February 2018, page 45 line 24 et seq. (Doc ID: RDU_FT_D11-000000001).

¹¹⁹ Transcript SPC 5 Inquiry Hearing, dated 27 February 2018, page 59 line 14 et seq. (Doc ID: RDU_FT_D11-000000001).

¹²⁰ Transcript SPC 5 Inquiry Hearing, dated 27 February 2018, page 88 line 16 et seq. (Doc ID: RDU_FT_D11-000000001).

¹²¹ Transcript SPC 5 Inquiry Hearing, dated 27 February 2018, page 100 line 4 et seq. (Doc ID: RDU_FT_D11-000000001).

¹²² Mr Murphy commenced employment with INBS in January 2002. He worked in various roles in INBS; starting as a member of the commercial administration team, before moving to the redemptions team. He returned to the

the SPC 5 module hearing on 6 March 2018. He was asked if he recalled MIS reports being considered at Credit Committee meetings, and he stated: *“No, I don’t recall. I’m just looking at the concentration. I believe that might have been considered as part of the CLA, or the credit paper, in terms of the client’s overall exposure, but I don’t recall that there was a concentration risk around the sectoral analysis”*.¹²³

9.126 He further said that he did not know about other members of the Credit Committee, but that he would not have received that information in the course of his duties.¹²⁴

Martin Noonan

9.127 Mr Noonan was a member of the Credit Committee from July 2006¹²⁵ until the end of the Review Period. He gave evidence to the Inquiry in the SPC 5 module hearings on 14 and 15 March 2018. When asked specifically about MIS reports, he said that these had not been considered by the Credit Committee.¹²⁶

9.128 Mr Noonan stated that all of the MIS reports would have been available to senior management and to commercial lenders. He said he would have been aware of the reports because of his role in commercial administration. He said that although these reports had not been considered by the Credit Committee, they would have been considered by people at different times in INBS.¹²⁷ He further said that he did recall a discussion about levels of exposure to different parties, and he said that discussion took place in early 2007 but was not recorded on the Credit Committee meeting minutes.¹²⁸

SPC 5.4: Any issues raised by the internal audit department and/or other advisors or regulators (KPMG/Central Bank)

9.129 When asked by the Inquiry if they recalled issues raised by the internal audit department and/or other advisors or regulators being raised at Credit Committee

commercial lending team until his departure in mid-2008. In late 2007 to early 2008 he joined the Credit Committee.

¹²³ Transcript SPC 5 Inquiry Hearing, dated 6 March 2018, page 30 line 19 et seq. (Doc ID: RDU_FT_D12-000000001).

¹²⁴ Transcript SPC 5 Inquiry Hearing, dated 6 March 2018, page 40 line 1 et seq. (Doc ID: RDU_FT_D12-000000001).

¹²⁵ The first time Mr Noonan’s name appears on Credit Committee meeting minutes is at the meeting on 17 January 2007. See Transcript SPC 5 Inquiry Hearing, dated 15 March 2018, page 10 line 19 et seq. (Doc ID: RDU_FT_D18-000000001).

¹²⁶ See Transcript SPC 5 Inquiry Hearing, dated 15 March 2018, page 10 line 7 (Doc ID: RDU_FT_D18-000000001).

¹²⁷ See Transcript SPC 5 Inquiry Hearing, dated 15 March 2018, page 17 line 3 et seq. (Doc ID: RDU_FT_D18-000000001).

¹²⁸ See Transcript SPC 5 Inquiry Hearing, dated 15 March 2018, page 17 line 14 et seq. (Doc ID: RDU_FT_D18-000000001).

meetings, the four former members of the Credit Committee said they had no such recollection

Martin Noonan

- 9.130 When giving evidence to the Inquiry during the SPC 5 module hearing on 15 March 2018, Mr Noonan was asked about this fourth item, and whether he recalled any discussion of these matters by the Credit Committee. Mr Noonan responded: *“No. Apart from there were issues. There was no documentation shared to show what the issues were. The Internal Audit, and indeed financial side of it, dealt with some of the Regulator issues but they were not specifically dealt with at Credit Committee”*.¹²⁹

Darragh Daly

- 9.131 During his evidence to the Inquiry in the SPC 5 module hearing on 21 February 2018, the Inquiry opened examples of Financial Regulator Correspondence and KPMG recommendations concerning the Credit Committee to Mr Daly and the following exchange took place:

“Q. I see. The last category is relevant issues raised by internal audit and/or other advisors and/or regulators. And you have seen the document that I showed you from the Regulator, and you have seen the KPMG management letters... Do you think receipt by the Credit Committee of documents that were relevant to their particular function, such as those you saw this morning, would have been of assistance to the committee, or how would they have impacted on the work of the committee?”

A. To my mind that would have assisted the Credit Committee in terms of the non lending members would not have been aware, at least I don't believe they would have been aware of issues of that nature. So, it may have enabled them to speak up more. The commercial lenders, who would have been the primary movers to my mind in the Credit Committee, would have been aware of all those. And based on my knowledge of the individuals involved, I have no doubt that they took these things into account, whether they were sufficiently taken into account are not. I can't tell, but they would have been involved in, no more than I was, with residential, in liaising with the compliance department, the

¹²⁹ See Transcript SPC 5 Inquiry Hearing, dated 15 March 2018, page 19 line 21 et seq. (Doc ID: RDU_FT_D18-000000001).

commercial lenders would have been liaising with compliance in respect of responses to management letters, Regulator findings and so on.

...

Q. And then why do you think there wasn't steps taken to make sure the Credit Committee did get these reports?

A. It may have been felt that the fact that the commercial lenders were receiving these reports was sufficient".¹³⁰

John Murphy and Brian Fitzgibbon

9.132 Both Mr Murphy¹³¹ and Mr Fitzgibbon, former Credit Committee members, also confirmed to the Inquiry during their evidence in the SPC 5 module hearing that issues raised by internal audit or other advisors or regulators, such as in the KPMG Management Letters, were not raised at Credit Committee meetings.¹³²

Ita Rogers

9.133 As noted above, Ms Rogers was head of compliance in INBS during the Review Period. Mr Purcell was her line manager. She indicated during her evidence to the Inquiry in the SPC 5 module hearing on 23 April 2018 that she was the contact person with the Financial Regulator and dealt with most of the Financial Regulator Correspondence.¹³³

9.134 She explained that she would get excerpts of letters sent by the Financial Regulator and would be asked to collate the responses to that excerpt. She would then send the excerpt and responses to Mr Purcell's office where they would be incorporated into the final response. She said that when the responses were collated, Mr Purcell might suggest changes from a flow or format perspective, but the material substance would not have been altered.¹³⁴

¹³⁰ Transcript SPC 5 Inquiry Hearing, dated 21 February 2018, page 72 line 14 et seq. (Doc ID: RDU_FT_D8-000000001).

¹³¹ Mr Murphy commenced employment with INBS in January 2002. He worked in various roles in INBS throughout his tenure. In late 2007 to early 2008 he joined the Credit Committee. He gave oral evidence to the Inquiry on 6 March 2018.

¹³² Transcript SPC 5 Inquiry Hearing, dated 6 March 2018, page 31 line 4 et seq. (Doc ID: RDU_FT_D12-000000001); Transcript SPC 5 Inquiry Hearing, dated 27 February 2018, page 46 line 8 et seq. (Doc ID: RDU_FT_D11-000000001).

¹³³ Transcript SPC 5 Inquiry Hearing, dated 23 April 2018, page 55 line 8 et seq. (Doc ID: RDU_FT_D28-000000003).

¹³⁴ Transcript SPC 5 Inquiry Hearing, dated 23 April 2018, page 56 line 2 et seq. and page 74 Line 14 et seq. (Doc ID: RDU_FT_D28-000000003).

9.135 Ms Rogers stated that the information and responses for the Financial Regulator were sought from the heads of the function, they were not sought from a junior level, “*and so therefore reliance was placed on the heads of the functions that they were providing up to date and correct and accurate information*”.¹³⁵

9.136 Ms Rogers said that Financial Regulator Correspondence was always brought to the attention of Mr Purcell and she said that this correspondence was taken very seriously.¹³⁶

Evidence of Michael Fingleton

9.137 Mr Fingleton gave evidence to the Inquiry during the SPC 5 module hearings on 26 to 29 June 2018. His evidence relates to a number of the SPC 5 Allegations and so it has been set out separately below, rather than under the individual SPC 5 Allegation headings above.

9.138 He was asked what the purpose was of including the requirement that the Credit Committee would review and consider commercial loans in large arrears or deemed non-performing. He said that if he had focused on those terms, even in 2006, he would have recommended to the Board that they were no longer necessary or required, as the information was freely and readily available in other areas of the organisation. He said that between 2004 and 2008 he could see no benefit to discussions on those matters.¹³⁷

9.139 Mr Fingleton was asked about the requirement in relation to the credit review process. He said that the Credit Committee should have either reviewed the results of the credit reviews or should have come back and said there was no benefit in doing so.¹³⁸

9.140 In relation to the relevant MIS reports, Mr Fingleton said that these were part of the information that was available within INBS at the time, including to the Credit Committee members.¹³⁹

9.141 Finally, Mr Fingleton was asked about the requirement that issues raised by internal audit or other advisors and regulators should be brought to the attention of the Credit

¹³⁵ Transcript SPC 5 Inquiry Hearing, dated 23 April 2018, page 59 line 22 (Doc ID: RDU_FT_D28-00000003).

¹³⁶ Transcript SPC 5 Inquiry Hearing, dated 23 April 2018, page 91 line 7 et seq. (Doc ID: RDU_FT_D28-00000003).

¹³⁷ Transcript SPC 5 Inquiry Hearing, dated 28 June 2018, page 37 line 3 et seq. (Doc ID: RDU_FT_D54-00000001).

¹³⁸ Transcript SPC 5 Inquiry Hearing, dated 28 June 2018, page 41 line 21 et seq. (Doc ID: RDU_FT_D54-00000001).

¹³⁹ Transcript SPC 5 Inquiry Hearing, dated 28 June 2018, page 42 line 2 et seq. (Doc ID: RDU_FT_D54-00000001).

Committee. He said that he did not know why that provision had been included and that he could see no purpose to it.¹⁴⁰

9.142 Mr Fingleton provided a witness statement to the Inquiry in respect of SPC 5. He stated that the four items in the terms of reference of the Credit Committee, the subject matter of SPC 5, were no longer a requirement from January 2008. He stated:

*"At the Board Meeting dated 21st January 2008, after I had accepted the Board's request and terms to stay on as CEO for a further year, I gave the members a brief update on the Society's strategy going forward which included a reference to the function of the Credit Committee in its new role and powers to approve all loans. I informed the Board that the sole function of the Credit Committee would now be to consider and approve ALL loans presented within the new restricted lending policy of the Society. I had earlier acquainted myself with the Terms of Reference of the Committee and decided that any obligations to consider the matters as previously required to be submitted were irrelevant in the new circumstances prevailing and that the information concerned was already available at appropriate levels within the organisation and indeed to the majority of the members of the Credit Committee in their individual capacities and would have no direct relevance to the preparation and evaluation of any individual loan proposal that may be submitted to the Credit Committee for consideration".*¹⁴¹

9.143 During his evidence to the Inquiry, Mr Fingleton stated that he had presented this update in the course of a meeting with the chairman and the non-executive Board, in the absence of Mr Purcell, the primary purpose of which was to discuss his (Mr Fingleton's) remuneration. He said the statement had been made in the context of a brief update following the decision to give approval powers to the Credit Committee. He stated:

*"I had already looked at the terms of reference and I did not consider these issues that we're now – – that this module is about as being relevant to the ongoing situation. There was nothing there to add to any decisions the Society might make or the Credit Committee might make in relation to any loan".*¹⁴²

¹⁴⁰ Transcript SPC 5 Inquiry Hearing, dated 28 June 2018, page 42 line 18 et seq. (Doc ID: RDU_FT_D54-00000001).

¹⁴¹ Witness Statement of Michael Fingleton, dated 21 August 2017, page 2 (Doc ID: RDU_WS-000000011).

¹⁴² Transcript SPC 5 Inquiry Hearing, dated 28 June 2018, page 62 line 13 et seq. (Doc ID: RDU_FT_D54-00000001).

9.144 Mr Fingleton confirmed that he did not ask the Board to change or amend the terms of reference of the Credit Committee that they had approved the previous month. He said his understanding was that they had no difficulty with what he was proposing. It was put to Mr Fingleton that when the issue of the credit review process was raised in a letter from the Financial Regulator of 8 February 2008¹⁴³, the Board's response was that all Credit Review Reports would be provided to the Credit Committee. Mr Fingleton suggested that Dr Walsh and the Board had forgotten his update, but he said he had not seen the letter dated 21 April 2008 that had been sent by Dr Walsh in response to the Financial Regulator's letter.¹⁴⁴

9.145 Mr Fingleton confirmed to the Inquiry that none of the four items the subject matter of SPC 5, had been reviewed or considered by the Credit Committee from December 2007 until the end of the Review Period.¹⁴⁵ This was the period during which he had attended Credit Committee meetings.

Witness evidence - not former Credit Committee members

Killian McMahon

9.146 Mr McMahon was acting internal auditor from 6 November 2004 until he was formally appointed as internal auditor in March 2005.

9.147 He gave evidence to the Inquiry during the SPC 5 module hearings on 20 and 21 March and on 13 and 23 April 2018. In relation to the results of the credit reviews being presented to the Credit Committee, Mr McMahon said that the person responsible for making sure that was done was Mr Casey. It was also, he said, the Credit Committee's responsibility to ensure that it carried out its terms of reference. Finally, he said if the Audit Committee had made a direction in relation to the recommendations, the Audit Committee would have been responsible for ensuring that they were carried out.¹⁴⁶

9.148 In relation to the Credit Committee, Mr McMahon said that when he did audits on the Credit Committee later in the Review Period, he reviewed the minutes of the Credit

¹⁴³ Letter from Mary Burke, Financial Regulator, to Michael Walsh, INBS, dated 8 February 2008 (Doc ID: 0.7.120.526582).

¹⁴⁴ Transcript SPC 5 Inquiry Hearing, dated 28 June 2018, page 63 line 15 et seq. (Doc ID: RDU_FT_D54-00000001).

¹⁴⁵ Transcript SPC 5 Inquiry Hearing, dated 28 June 2018, page 66 line 1 et seq. (Doc ID: RDU_FT_D54-00000001).

¹⁴⁶ Transcript SPC 5 Inquiry Hearing, dated 20 March 2018, page 53 line 1 et seq. (Doc ID: RDU_FT_D20-00000003).

Committee meetings for these audits. However, prior to that, he would not have reviewed Credit Committee meeting minutes.¹⁴⁷

Con Horan

9.149 Mr Con Horan was head of banking supervision in the Financial Regulator at the commencement of the Review Period. He was appointed prudential director in February 2006 and held the position until after the Review Period. In his witness statement to the Inquiry, dated 18 October 2017, Mr Horan described the “*principles-based*” approach to performing the regulatory function. Quoting from a paper entitled “*Supervisory Objectives and Methodology*’ (17 September 2002)”, Mr Horan described this approach as follows:

“A principles-based approach to supervision, ... imposes general standards and principles on regulated institutions and essentially places an onus of responsibility for compliance with such principles, and other requirements imposed, on the boards and senior management of such institutions.

In following the principles-based approach, the Bank satisfies itself as to the probity and competence of directors and senior management as part of the authorisation process and seeks to ensure that proper systems, internal controls and risk management systems are in place.

...

*At the core of the approach, was the fact that the board of directors of a credit institution was considered to have primary responsibility for ensuring the effective, prudent and efficient administration of a credit institution”.*¹⁴⁸

9.150 In relation to Management Letters, he described such letters as: “*an important element of the supervisory process and an auditor’s assessment of a credit institution was a significant input into the overall risk analysis. These letters formed a key component of the supervisory engagement between the regulatory authority and the credit institution*”.¹⁴⁹

¹⁴⁷ Transcript SPC 5 Inquiry Hearing, dated 20 March 2018, page 16 line 5 et seq. (Doc ID: RDU_FT_D20-00000003).

¹⁴⁸ Witness Statement of Con Horan, dated 18 October 2017, page 2 et seq. (Doc ID: RDU_WS-0000000022).

¹⁴⁹ Witness Statement of Con Horan, dated 18 October 2017, page 6 (Doc ID: RDU_WS-0000000022).

9.151 In his evidence to the Inquiry during the SPC 5 module hearing on 23 May 2018, Mr Horan reiterated the importance of management and Board members. He stated:

“The role of both the board and the senior management was crucial to the way in which the principles based approach to regulation worked. I think it’s quite well articulated in speeches, etc., that there was a high degree of reliance and trust based on management and board members to run the business in the prudent fashion”.¹⁵⁰

9.152 Mr Horan said that whilst recommendations from internal auditors were not mandatory, there was an expectation that the auditor would identify issues and that management would respond. If they did not accept the recommendations they could counter them with reasons why they disagreed with the auditor.¹⁵¹

9.153 Mr Horan said that when he took over as head of banking supervision he had up to 80 credit institutions under his remit. He said that INBS had the most active relationship with the Central Bank of all the licence holders. He stated:

“There was quite a degree of concern at the kind of level of commercial lending and then really had the control environment kept pace with that”.¹⁵²

9.154 Mr Horan said that because of the concerns, the Financial Regulator had, in 2004, increased the solvency ratio by 1%. This action was repeated in 2008. He stated:

“And that is an action that, in my time, there were only the two times that action was taken [in respect of any credit institution]. It was considered to be a fairly significant measure. I think it’s been recognised in inquiries, etc. as a significant action taken by the Authority”.¹⁵³

9.155 Mr Horan was asked whether it would be usual in the regulatory context, to understand from an institution that a particular step had been taken but then find out that that was not the case. He was asked if that was something that happened often and he stated:

¹⁵⁰ Transcript SPC 5 Inquiry Hearing, dated 23 May 2018, page 13 line 14 (Doc ID: RDU_FT_D42-00000001).

¹⁵¹ Transcript SPC 5 Inquiry Hearing, dated 23 May 2018, page 22 line 23 et seq. (Doc ID: RDU_FT_D42-00000001).

¹⁵² Transcript SPC 5 Inquiry Hearing, dated 23 May 2018, page 16 line 8 et seq. (Doc ID: RDU_FT_D42-00000001).

¹⁵³ Transcript SPC 5 Inquiry Hearing, dated 23 May 2018, page 24 line 16 et seq. (Doc ID: RDU_FT_D42-00000001).

"Not to my knowledge. I mean, I think the fact that we reacted to it with the solvency increase and it was the only one that I'm aware of, certainly in my time, I think it just tells you how significant we felt those type of things were.

...

I mean I think it contributed, you know, there was a lot of issues around at that time, but that sort of thing was certainly a factor.

...If a credit committee is set up to review credit, that's the main business of the bank, clearly it should comply with its terms of reference".¹⁵⁴

9.156 Mr Horan acknowledged that in the case of INBS, where the larger loans were decided by the Board, a problem with the Credit Committee might be seen as a medium level risk. However, he said that what stood out was that the Financial Regulator had been told that something was being done and then found out that it had not in fact been done: *"that would have been a significant factor for me".¹⁵⁵*

Patrick Neary

9.157 Mr Neary was the prudential director of the Financial Regulator from 2003 to 2006 and was chief executive from 2006 to 2009.

9.158 He gave evidence during the SPC 5 module hearings on 15 and 16 May 2018 and was questioned by the Inquiry Members on the issue of the materiality of the four items listed in SPC 5. He stated:

"I suppose it goes back to my initial thoughts when I was asked to answer the questions day 1. I didn't fully understand the degree to which SPC 5 had ring-fenced the discussion and it had tightly defined it to address issue [sic], the specifics of that section of the credit policy, what the credit committee was obliged to do in relation to large exposures and MIS and all the rest of it. In the absence of a full understanding I would have thought that materiality might have been a consideration, and the degree to which, if the Society had failed to do what it was doing there, what was the import of that. ...In that context I was saying to myself well, okay, if they didn't report a list or looked and somebody didn't give them a list of large loans or somebody didn't give them a

¹⁵⁴ Transcript SPC 5 Inquiry Hearing, dated 23 May 2018, page 43 line 1 et seq. (Doc ID: RDU_FT_D42-00000001).

¹⁵⁵ Transcript SPC 5 Inquiry Hearing, dated 23 May 2018, page 45 line 10 et seq. (Doc ID: RDU_FT_D42-00000001).

list of non-performing, what's the import of that in the great scheme of things? Maybe they did it another way.

But, you know, that in itself would have been a consideration if, you know, you hadn't ring-fenced it. But, irrespective of materiality, my understanding now is, irrespective of materiality, SPC 5 is focussing on the carrying out of the procedures that were contained in that section of the credit policy. So whether there were material issues, there mightn't have been a single non-performing loan, there mightn't have been a single arrears case, there mightn't have been a single sectoral breach, there might have been nothing to report, but the fact of the matter is that it seems, right, from my understanding of the discussions in the last couple of days that's not the issue. The issue is there was representations made that these processes were being followed when in fact they weren't. So therefore I -- that's what I am by resiling [sic] from the materiality issue because it doesn't seem to be relevant to SPC 5 and was my failing in understanding the issue rather than anything else".¹⁵⁶

Alleged participation by Mr Purcell

- 9.159 In the following section of this chapter, the Inquiry outlines the allegation of participation against Mr Purcell in respect of SPC 5.
- 9.160 The Investigation Report identified what it considered to be the basis for the allegation that Mr Purcell participated in SPC 5 by reference to his roles within INBS.
- 9.161 It was firstly alleged that Mr Purcell was one of two executive directors responsible for running the day to day operations of INBS and for implementing actions agreed by the Board. In addition, in his position as secretary of the Board, it was alleged that Mr Purcell had a defined role in reporting issues raised by the Board to the Credit Committee. The Investigation Report stated that in the "Authority/Duties" section of the Credit Committee terms of reference throughout the Review Period, the following provision relevant to the role of the secretary of INBS is set out:

"Any issues raised by the Board of Directors that referred to the Credit Committee should be communicated to the members of the Credit Committee by the Secretary of the Society".¹⁵⁷

¹⁵⁶ Transcript SPC 5 Inquiry Hearing, dated 16 May 2018, page 86 line 19 et seq. (Doc ID: RDU_FT_D39-00000001).

¹⁵⁷ Investigation Report Chapter 10, paragraph 10.172 (Doc ID: RDU_REL-000000034).

9.162 Mr Purcell addressed his roles and responsibilities in INBS in his opening statement to the Inquiry on 12 December 2017 in respect of SPC 5, and his submissions in that regard are set out in full in Chapter 2 of this Findings Report.¹⁵⁸ Mr Purcell's roles and responsibilities in INBS, both the general responsibilities he had as a Board member and his submissions on his role within INBS, are included in Chapter 2 as they are of relevance to all of the SPCs considered by the Inquiry. Mr Purcell's SPC 5 specific submissions are dealt with at paragraph 9.265 et seq. below.

9.163 In the Investigation Report it was alleged that given Mr Purcell's role as an attendee at Audit Committee meetings, his role in coordinating responses to KPMG's Management Letters, and his role as one of only two executive directors in addressing recommendations contained in such Management Letters, Mr Purcell was in a position to inform both the Audit Committee and the Board of the action taken by management in response to findings made by KPMG in relation to the operation of the Credit Committee. Finally, in the Investigation Report it was alleged that Mr Purcell had a responsibility to ensure that any representations made to the Financial Regulator and external auditors were accurate.¹⁵⁹

9.164 The Investigation Report identified what it considered to be evidence of Mr Purcell's alleged participation under two categories:

- (a) contemporaneous Reports (and related Regulatory Correspondence); and
- (b) further correspondence between INBS and the Financial Regulator.

Contemporaneous Reports (and related Financial Regulator Correspondence)

9.165 In the context of Mr Purcell's participation, the Investigation Report stated that the 2004 KPMG Management Letter¹⁶⁰ included a recommendation from the external auditors, KPMG, regarding the submission of Credit Review Reports to the Credit Committee. The INBS Management Response confirmed that this would be done on a quarterly basis. The 2005 KPMG Management Letter¹⁶¹ listed this recommendation as "*implemented*" and "*closed*". This issue was brought to the Board's attention again when raised by the Financial Regulator following regulatory inspections of INBS in

¹⁵⁸ See Chapter 2, paragraph 2.47 et seq.

¹⁵⁹ Investigation Report Chapter 10, paragraph 10.175 (Doc ID: RDU_REL-000000034).

¹⁶⁰ 2004 KPMG Management Letter (Doc ID: 0.7.120.55765).

¹⁶¹ 2005 KPMG Management Letter (Doc ID: 0.7.120.55767).

June 2006. Mr Purcell was on the Board and attended the Board meetings where the above reports were reviewed and discussed.¹⁶²

9.166 In the Investigation Report it was further alleged that as the executive director present at the Audit Committee meetings and responsible for the coordination of issues arising from KPMG Management Letters, Mr Purcell was responsible for the designation of the issue as “*implemented*” and “*closed*” in the 2005 KPMG Management Letter.¹⁶³

9.167 The 2005 KPMG Management Letter, which recorded the issues raised in relation to the SPC 5 Allegations as having been “*implemented*” and “*closed*” was reviewed and discussed at a Board meeting on 24 August 2006¹⁶⁴, which was attended by Mr Purcell.

9.168 The Board considered the 2004 KPMG Management Letter in draft form at its meeting on 31 May 2005.¹⁶⁵ The final version was reviewed and discussed in detail at the Board meeting on 21 June 2005.¹⁶⁶ Mr Purcell attended both of these meetings and received the Management Letter in the Board pack for the meetings.

9.169 As already stated, in December 2005 Mr McMenamain provided Ms Rogers with email confirmation that the Credit Committee had reviewed the results of the credit reviews. The Investigation Report stated that:

*“As Ms Rogers reported to Mr Purcell, he may have been aware of this correspondence, which may have informed the closure of this recommendation in the 2005 Management Letter as ‘implemented’”.*¹⁶⁷

9.170 The 2008 Internal Audit Report¹⁶⁸ highlighted findings with respect to the lack of documented discussions about moratoria extensions, non-performing loans, relevant MIS reports and other relevant issues. A recommendation was made that the Credit Committee receive information on and consider these items within its remit.

9.171 The 2008 Internal Audit Report made findings that the minutes of the Credit Committee meetings did not reflect discussions regarding various aspects of the terms of reference.

¹⁶² Investigation Report Chapter 10, paragraph 10.177 (Doc ID: RDU_REL-000000034).

¹⁶³ Investigation Report Chapter 10, paragraph 10.178 (Doc ID: RDU_REL-000000034).

¹⁶⁴ Minutes of Board meeting, dated 24 August 2006, page 21 (Doc ID: 0.7.120.21569).

¹⁶⁵ Minutes of Board meeting, dated 31 May 2005 (Doc ID: 0.7.120.32656).

¹⁶⁶ Minutes of Board meeting, dated 21 June 2005 (Doc ID: 0.7.120.37131).

¹⁶⁷ Investigation Report Chapter 10, paragraph 10.180(2) (Doc ID: RDU_REL-000000034).

¹⁶⁸ 2008 Internal Audit Report (Doc ID: 0.7.120.431377).

9.172 This report was emailed to Mr Purcell and the Audit Committee by the internal auditor on 31 July 2008.¹⁶⁹ The report was also noted at the Audit Committee meeting on 12 September 2008.¹⁷⁰ The minutes of this Audit Committee meeting were circulated to the Board at a meeting held on 12 December 2008.¹⁷¹ Mr Purcell attended both these Audit Committee meetings and the Board meetings. The minutes of the subsequent Audit Committee meeting, held on 4 November 2008¹⁷² (outside of the Review Period) did not reference any follow up by the Audit Committee in relation to the findings highlighted in the 2008 Internal Audit Report.

9.173 The Audit Committee minutes for both the 12 September 2008 and the 4 November 2008 meetings were reviewed and discussed at the Board meeting on 12 December 2008, which was attended by Mr Purcell. The minutes for this meeting indicated that the Board discussed the Credit Committee review undertaken by internal audit in the 2008 Internal Audit Report but did not record any further follow up in relation to this report other than agreeing a letter to the Financial Regulator responding to the report.

Further correspondence between INBS and the Financial Regulator

9.174 Following an inspection in June 2006, the Financial Regulator found that the Credit Committee was not performing what the Financial Regulator referred to as the Credit Committee's credit risk management role. This role of the Credit Committee was in fact the items bullet-pointed in the terms of reference, four of which are the subject matter of SPC 5. In a letter from the Financial Regulator to Mr Fingleton, dated 20 November 2006¹⁷³, it was stated that:

"There is no evidence from a review of the minutes of the committee that it is reviewing reports produced by the Credit Review function".

9.175 Mr Purcell sent this letter of 20 November 2006 from the Financial Regulator, together with INBS's reply dated 31 January 2007, by email to *inter alia*, the non-executive directors of the Board on 5 March 2007.¹⁷⁴ The INBS response of 31 January 2007¹⁷⁵

¹⁶⁹ Email from Killian McMahon to Michael Walsh, Stan Purcell, Terence Cooney and David Brophy, dated 31 July 2008 (Doc ID: 0.7.120.293425).

¹⁷⁰ Minutes of Audit Committee meeting, dated 12 September 2008 (Doc ID: 0.7.120.56436).

¹⁷¹ Minutes of Board meeting, dated 12 December 2008 (Doc ID: 0.7.120.21207).

¹⁷² Minutes of Audit Committee meeting, dated 4 November 2008 (Doc ID: 0.7.120.56063).

¹⁷³ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Michael Fingleton, Managing Director, INBS, dated 20 November 2006 (Doc ID: 0.7.120.519059).

¹⁷⁴ Email from Stan Purcell to Michael Walsh, David Brophy & Ors., dated 5 March 2007 (Doc ID: 0.7.120.276197).

¹⁷⁵ Letter from Michael Fingleton, Managing Director, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 31 January 2007 (Doc ID: 0.7.120.443254).

committed that: *“All report submitted to and reviewed by the credit committee will be minuted in the minutes of the committee”*.

- 9.176 There is no evidence from the subsequent minutes and packs for the Credit Committee meetings that the four items the subject matter of SPC 5, or indeed any other reports, were reviewed or considered by the Credit Committee.
- 9.177 A further inspection by the Financial Regulator occurred between 4 and 14 December 2007 and a post-inspection letter was issued to INBS on 8 February 2008 which made the finding that Credit Review Reports were still not being provided to the Credit Committee in line with its terms of reference. The Financial Regulator requested that the Board consider the issues raised in its letter and respond with comments, action and resolution timeframes.¹⁷⁶
- 9.178 The Financial Regulator’s letter was considered by the Board on 18 February 2008¹⁷⁷ and the draft response to the letter was considered by the Board at its meeting on 28 March 2008¹⁷⁸ before agreeing its final response on 21 April 2008.¹⁷⁹ Mr Purcell attended each of these Board meetings as is evidenced from the minutes.
- 9.179 Mr Purcell also attended the Audit Committee meeting on 13 March 2007¹⁸⁰ where the correspondence from the Financial Regulator dated 20 November 2006 and the INBS response of 31 January 2007 were noted as having been circulated in advance.
- 9.180 In addition to confirming that the matter had been considered by the Board, INBS’s letter dated 21 April 2008 provided a commitment that Credit Review Reports would be submitted to the Credit Committee from May 2008.¹⁸¹
- 9.181 There is no evidence from the minutes and packs of the Credit Committee meetings or from the evidence of Credit Committee members at the time that the Credit Committee commenced discharging this duty in May 2008
- 9.182 In the Investigation Report it was asserted that there was no evidence based on a review of subsequent Board minutes over the remainder of the Review Period, that the Board considered this matter again. There was also no evidence that it sought further

¹⁷⁶ Letter from Mary Burke, Financial Regulator, to Michael Walsh, INBS, dated 8 February 2008, page 2 (Doc ID: 0.7.120.526582).

¹⁷⁷ Minutes of Board meeting, dated 18 February 2008, page 4 (Doc ID: 0.7.120.5941).

¹⁷⁸ Minutes of Board meeting, dated 28 March 2008, page 3 (Doc ID: 0.7.120.19185).

¹⁷⁹ Minutes of Board meeting, dated 21 April 2008, page 4 (Doc ID: 0.7.120.7090).

¹⁸⁰ Minutes of Audit Committee meeting, dated 13 March 2007 (Doc ID: 0.7.120.56372).

¹⁸¹ Letter from Michael Walsh, INBS, to Mary Burke, Financial Regulator, dated 21 April 2008 (Doc ID: 0.7.120.290839-000001).

assurances that the Credit Committee had started to review and consider such reports as required by its terms of reference, despite INBS informing the Financial Regulator that the Credit Committee meeting minutes would record all reports considered.¹⁸² The Inquiry has independently reviewed all of the relevant Board meeting minutes and is satisfied that this assertion is correct.

- 9.183 The Contemporaneous Reports and the Financial Regulator Correspondence outlined above, all contain findings of relevance to the Credit Committee on issues raised by internal audit and/or other advisors or regulators (i.e. KPMG or the Central Bank), which were required under the terms of reference of the Credit Committee to be considered and reviewed by the Credit Committee. From a review of the minutes of the Credit Committee meetings and from evidence heard in the course of the oral Inquiry hearing, it is clear that these reports and the findings in them were not referred to the Credit Committee.
- 9.184 The Inquiry notes that the relevant sections of the KPMG Contemporaneous Reports and Regulatory Correspondence were forwarded to Mr McMenemy and/or Mr Gary McCollum and their responses were incorporated into the overall response considered by the Board.
- 9.185 Mr Purcell was aware of the relevant correspondence between INBS and the Financial Regulator in relation to the 2006 and 2007 regulatory inspections and he was in attendance at Board meetings where discussions took place regarding relevant auditor reports and correspondence with the Regulator. There is no evidence based on a review of the minutes of the Credit Committee meetings and from the evidence heard from former Credit Committee members that Mr Purcell sought to ensure the consideration and review of this correspondence by the Credit Committee in accordance with its terms of reference.
- 9.186 In the Investigation Report it was alleged that as secretary to the Board, Mr Purcell had a duty to ensure that any issues raised by the Board that referred to the Credit Committee should be communicated to the members of the Credit Committee by the secretary of INBS.¹⁸³ This is a matter that the Inquiry had to decide and the determination is set out in the Inquiry Finding section below.

¹⁸² Investigation Report Chapter 10, paragraph 10.187 (Doc ID: RDU_REL-000000034).

¹⁸³ Investigation Report Chapter 10, paragraph 10.189 (Doc ID: RDU_REL-000000034).

Mr Purcell's replies to Examination and Investigation Letters

9.187 Mr Purcell's first response to an Examination Letter issued by Enforcement was dated 31 May 2012.¹⁸⁴ He was asked what approach he took to warnings presented by external auditors and/or other independent consultants appointed at the request of the Financial Regulator e.g. the 2006 Deloitte Audit Report and the 2004 KPMG Commercial Credit Review. He stated:

"In relation to specific action I took/which I was instrumental for, in 2005 in light of the KPMG Commercial Lending Review, letter(s) from the Regulator (December 2004) and KPMG Management letters I started seeking to establish a Credit Review Department under a manager separate from the Head of Commercial Lending. In late 2005 I had Melody Van Der Berg assigned in the Credit Risk function. I set out for her and for the Department I was establishing a list of items that would have to be addressed by Credit Risk. In 2006 after discussion and agreement with the MD (Michael Fingleton) and Darragh Daly I got agreement that Darragh Daly would be Credit Risk Manager. I had two very good staff members re-assigned to his department and HR recruited two qualified accountants for Credit Risk. In 2007 I got Board approval for SAS to provide software for Credit grading and Basel 2".¹⁸⁵

9.188 Mr Purcell was also asked:

"As Director and Company Secretary of INBS, you had extensive interaction with the Financial Regulator from 1999 to 2008 relating to concerns expressed by the Financial Regulator in the area of corporate governance, resources, adequacy of internal systems, internal audit, credit, liquidity breaches, the position of dominance held by Michael Fingleton and the delegation. Because of this interaction, you will have been aware that the Financial Regulator had issues regarding systems and controls within the society. Please explain the failure of the Society to adequately respond and react to these concerns".

Mr Purcell responded:

"INBS responded and reacted to the Financial Regulator's concerns and worked to resolve and improve issues. There was ongoing work to deal with

¹⁸⁴ Replies of Stan Purcell dated 31 May 2012 to the Central Bank pursuant to a Notice of Examination dated 17 January 2012, page 6 of 46 (Doc ID: 0.7.120.56484).

¹⁸⁵ Replies of Stan Purcell dated 31 May 2012 to the Central Bank pursuant to a Notice of Examination dated 17 January 2012, para. 2.52 page 20 of 41 (Doc ID: 0.7.120.56484).

*credit issues such as the formation and resourcing of the Credit Review department and the improvement of systems and processes over time. The correspondence with the Regulator set out the difficulty of recruiting people due to the expected demutualisation”.*¹⁸⁶

9.189 In his response to an Investigation Letter dated 12 December 2013, Mr Purcell denied any alleged participation in the suspected commission by INBS of SPC's 5(a), (b) and (c). He stated:

“I do not accept that there were any alleged contraventions in respect of;

- a. Regulation 16(1) of the 1992 Regulations*
- b. Section 76 (1) of the 1989 Act*
- c. Section 17 of the 1989 Act (namely part 1 of the 2005 Regulatory Document*

I deny any alleged participation in the commission of the suspected prescribed contraventions by INBS.

No specific documentation has been furnished to me identifying any suspected prescribed contraventions.

*In response to the evidence referred to, I make the following observations. Where issues were identified by internal or external audit and/or by the Irish Financial Services Regulatory Authority/Central Bank, members of the Credit Committee worked to implement recommendations made”.*¹⁸⁷

Mr Purcell's evidence to the Inquiry

Mr Purcell's witness statement

9.190 Mr Purcell furnished a witness statement in respect of SPC 5 to the Inquiry dated 19 November 2017. He denied participation in the alleged non-compliance in each of the instances listed in SPC 5 and set out at paragraph 9.3 above. Mr Purcell also denied a breach of any of the policy provisions identified in the Investigation Report. He stated

¹⁸⁶ Replies of Stan Purcell dated 31 May 2012 to the Central Bank pursuant to a Notice of Examination dated 17 January 2012, para. 3.09 page 40 of 41 (Doc ID: 0.7.120.56484).

¹⁸⁷ Response of Stan Purcell to suspected prescribed contraventions in letter of Central Bank dated 12 December 2013, page 8 (Doc ID: 0.7.120.673241-000001).

that he communicated any issues raised by the Board that referred to the Credit Committee, to the Credit Committee.¹⁸⁸

9.191 Mr Purcell said that his role in coordinating issues arising in KPMG's Management Letters involved working with the compliance manager and distributing the KPMG lending recommendations to the lending area departments. The lending area departments which reported to the Managing Director were commercial lending, credit risk (commercial mortgage administration), mortgage administration and home loans. The compliance manager followed up with the departments to obtain their Management Responses and their responses were reported to the Board, the Financial Regulator and KPMG.¹⁸⁹

9.192 Mr Purcell went on to say that, the lending departments were responsible for the responses to these recommendations as well as for the implementation of their responses. The lending departments were also responsible for the designation of issues as implemented or closed. He rejected the assertion in the Investigation Report at paragraph 10.178, that as the executive director present at Audit Committee meetings and responsible for the coordination of issues arising from KPMG Management Letters, he was responsible for the designation of the issue as "*implemented*" and "*closed*" in the 2005 KPMG Management Letter.¹⁹⁰

9.193 Mr Purcell referred to a number of documents in his witness statement that, in his view, substantiated his assertion that the lending departments were responsible for the responses to Contemporaneous Reports. He said that these documents showed that Management Responses recorded the department responsible for implementing recommendations.¹⁹¹ The four documents identified by Mr Purcell were:

- (a) The 2005 KPMG Management Letter.¹⁹²
- (b) The letter of 19 January 2007¹⁹³ to the Financial Regulator setting out updates on the implementation of recommendations in the 2005 KPMG Management Letter and 2006 Deloitte Audit Report. It set out in tabular form the issue, the

¹⁸⁸ SPC 5 Witness Statement of John S Purcell, dated 19 November 2017, page 1 (Doc ID: RDU_WS-000000023_1).

¹⁸⁹ SPC 5 Witness Statement of John S Purcell, dated 19 November 2017, page 2 (Doc ID: RDU_WS-000000023_1).

¹⁹⁰ SPC 5 Witness Statement of John S Purcell, dated 19 November 2017, page 2 (Doc ID: RDU_WS-000000023_1).

¹⁹¹ SPC 5 Witness Statement of John S Purcell, dated 19 November 2017, page 2 (Doc ID: RDU_WS-000000023_1).

¹⁹² 2005 KPMG Management Letter (Doc ID: 0.7.120.55767).

¹⁹³ Letter from Stan Purcell, INBS, to Yvonne Madden, Financial Regulator, dated 19 January 2007 (Doc ID: 0.7.120.138147).

Management Response, the update, the departmental responsibility and the current status of the implementation.

(c) The 2006 KPMG Management Letter.¹⁹⁴

(d) The 2007 KPMG Management Letter.¹⁹⁵

The KPMG Management Letters were broken into various headings: issue and effect; recommendation; Management Response; responsibility and due date. The department or individual responsible for implementation was identified under the heading of “*responsibility*”.

9.194 Mr Purcell also referenced a memorandum dated 30 August 2005 from him to Ms van der Berg¹⁹⁶ entitled “*Commercial Lending Administration Review of the sources of work requirements*”. This was an outline of the responsibilities of commercial lending administration. There were a total of 19 issues identified and four of them referred specifically to the responsibility for dealing with issues raised in KPMG Management Letters. In particular, item number 15 stated: “*Review, assess and update the status report on the progress in implementing the recommendations of the 2004 KPMG report on commercial lending*”. In addition, item number 16 stated:

“Progress reports on implementing the recommendation of the

(a) KPMG management letter 2004.

(b) KPMG management letter 2005”.

The memorandum went on to state:

“Please note: The recommendation of KPMG and the requirements of the Financial Regulator are based on the fact that the Society has in recent years been growing its commercial lending book vs. its residential lending book. We also lend an increased amount to a small number of borrowers i.e. our top exposures account for a large and increasing proportion of our overall lending book.

*So this would be seen as a ‘shift in risk profile and a more concentrated book’.
This shift and concentration requires ‘mitigants’ such as: ‘Policies, procedures,*

¹⁹⁴ 2006 KPMG Management Letter (Doc ID: 0.7.120.55766).

¹⁹⁵ 2007 KPMG Management Letter (Doc ID: 0.7.120.55769).

¹⁹⁶ Ms van der Berg was the Personal Assistant to Mr Fingleton, and she received internal correspondence on his behalf as he did not have an INBS email address.

resources, management information, internal controls and reporting structures in line with risk and sufficient to effectively manage, monitor and control that risk".¹⁹⁷

9.195 Mr Purcell further cited an email from Ms van der Berg to Mr Daly, dated 27 June 2006, listing her duties, as follows:

"KPMG Management Letters... Follow up on recommendations and ensure that they've been implemented (by the Lenders and the Credit Review Officer).

Report same to Ita Rogers".¹⁹⁸

9.196 Mr Purcell also referenced the credit risk department plan of September 2006¹⁹⁹ prepared by the credit risk manager, Mr Daly, and submitted to the Board on 27 September 2006. That plan also identified Ms van der Berg as being responsible for implementing recommendations set out in the auditors' annual Management Letters, as well as the recommendations of other lending reviews including the Financial Regulator's requirements.²⁰⁰

9.197 As proof that responsibility for implementing recommendations had been assigned to other members of senior management, Mr Purcell referred to the "*Job Specification of the Credit Risk Manager dated 9 March 2006*"²⁰¹, which stated that the credit risk manager would report to the Managing Director and the duties of the position would include: "*Implementing the recommendations set out in the Society's Auditors (KPMG) annual management letters as regards commercial lending as well as the recommendations of other lending reviews including the Financial Regulator's requirements*". He further referred to a letter dated 26 April 2013 to the Central Bank, in which Mr Daly confirmed that this document was the basis of work undertaken by the credit risk department and by himself, and that Mr Daly believed the document had been provided by Mr Purcell following a brief discussion with Mr Fingleton.²⁰²

9.198 Mr Purcell stated that the follow-up of internal audit recommendations by the internal auditor was recorded in the minutes of Audit Committee meetings on many occasions

¹⁹⁷ Memorandum from Stan Purcell to Melody van der Berg, dated 30 August 2005, page 4 (Doc ID: 0.7.120.312137-000001).

¹⁹⁸ Table listing duties of "MvdB "OC" and "FC", page 3 (Doc ID: 0.7.120.169444-000001) attached to email from Melody van der Berg to Darragh Daly, dated 27 June 2006 (Doc ID: 0.7.120.169444).

¹⁹⁹ Credit Risk Department Plan, dated September 2006 (Doc ID: 0.7.120.272799-000001).

²⁰⁰ SPC 5 Witness Statement of John S Purcell, dated 19 November 2017, page 3 (Doc ID: RDU_WS-000000023_1).

²⁰¹ Job Specification Credit Risk Manager, dated 6 March 2006, page 4 et seq. (Doc ID: AD-0.7.120.500899).

²⁰² SPC 5 Witness Statement of John S Purcell, dated 19 November 2017, page 4 (Doc ID: RDU_WS-000000023_1).

during the Review Period. He said that notwithstanding the Audit Committee's requirement for the internal auditor to follow up on the recommendations, the internal auditor in a paper dated September 2008²⁰³ identified the person responsible for recommendations not implemented in a timely manner. Mr Purcell stated that where the recommendations related to lending, the relevant lending area manager was said to be the person responsible and the executive director responsible was identified as Mr Fingleton.²⁰⁴

9.199 Mr Purcell then addressed the allegations contained in paragraph 10.189 of the Investigation Report, in which it was alleged that his participation in the suspected failure of the Credit Committee to consider "*any issues raised by internal audit and/or other advisors/regulators (KPMG/Central Bank)*", was evidenced by the fact that these matters did not appear in any Credit Committee minutes. Mr Purcell stated:

"I was not a member of the Credit Committee at any time and I did not attend Credit Committee meetings. I did not receive minutes of Credit Committee meetings during the Review period.

Replies to the Financial Regulator's letters and KPMG management letters in matters relating to the lending area were based on the responses of the lending department responsible for the particular issue.

All the reports and letters about lending raised by KPMG, Internal Audit and the Financial Regulator were given to the Commercial Lending Manager, Tom McMenamain (Head of Function for the Commercial Lending area)... and the Managing Director who were the most senior and permanent members of the Credit Committee during the Review period".²⁰⁵

9.200 Mr Purcell also referenced the Credit Committee agenda for meetings held on 20 June 2005²⁰⁶ and 20 April 2006²⁰⁷, which listed as an agenda item "*Any issues raised by Internal Audit and/or other Advisors/Regulators (KPMG/Financial Regulator/Board of Directors)*".²⁰⁸

²⁰³ Table of Recommendations not implemented in a timely manner, dated 1 September 2008 (Doc ID: 0.7.120.56461).

²⁰⁴ SPC 5 Witness Statement of John S Purcell, dated 19 November 2017, page 4 (Doc ID: RDU_WS-00000023_1).

²⁰⁵ SPC 5 Witness Statement of John S Purcell, dated 19 November 2017, page 5 (Doc ID: RDU_WS-00000023_1).

²⁰⁶ Credit Committee Agenda for meeting dated 20 June 2005 (Doc ID: 0.7.120.36416).

²⁰⁷ Credit Committee Agenda for meeting dated 20 April 2006 (Doc ID: 0.7.120.29212).

²⁰⁸ SPC 5 Witness Statement of John S Purcell, dated 19 November 2017, page 5 (Doc ID: RDU_WS-00000023_1).

Mr Purcell's oral evidence

9.201 Mr Purcell gave evidence to the Inquiry during the SPC 5 module hearings on 11 to 14 June 2018.

9.202 At the start of his testimony Mr Purcell was asked about his role within INBS. He confirmed that he was a member of the Board from 1994.²⁰⁹ He further confirmed that together with Mr Fingleton he represented management within the organisation. He added *"But there were other senior managers who had a lot of authority and responsibility in relation to the areas they looked after"*.²¹⁰

9.203 Mr Purcell was asked if he accepted the factual position, as had been identified by a number of witnesses to the Inquiry, that the Credit Committee did not receive any material relating to the four identified items in the terms of reference. The following exchange took place:

"A. Well, I have listened to the evidence of Tom McMnamin and others and from that evidence, without going through it all, it would appear that there was credit reviews submitted to Tom McMnamin himself based on e-mails from Frank Casey. But it appears that they didn't -- they weren't put before the Credit Committee.

Q. And what about the other categories... arrears and non-performing reports?

A. Well, from the evidence, especially of Tom McMnamin, it would seem that that was not happening.

Q. And what about letters from the Regulator or KPMG or other advisors?

A. Well, letters from those particular sources were circulated to Tom McMnamin by Ita and by me maybe on occasions, but it seems from the evidence of people that they were not considered by the Credit Committee.

Q. Yes. And then what about the minutes, do you accept that the minutes didn't record the consideration by the Credit Committee of... any of those matters?

A. The minutes, when many of them were opened and when I reviewed a lot of them, they did not record that, no.

²⁰⁹ Transcript SPC 5 Inquiry Hearing, dated 11 June 2018, page 9 line 8 (Doc ID: RDU_FT_D48-000000001).

²¹⁰ Transcript SPC 5 Inquiry Hearing, dated 11 June 2018, page 14 line 25 (Doc ID: RDU_FT_D48-000000001).

Q. And in relation to the MIS reports, do you think the position was the same?

A. It appears to be yes".²¹¹

9.204 Mr Purcell was asked if he had any knowledge of where those four identified items and the obligation to consider them came from. He said that he did not know for sure but that he believed that the 16 October 2003 Commercial Credit Committee Terms of Reference had been drafted by Mr Fitzgibbon in his role as "systems development manager". He said that he had no involvement with the terms of reference that were drafted in 2003. He was questioned further on whether he had any involvement in the particular part of the terms of reference with the four identified items. He stated: "No. No, I didn't focus on the four identified items at any stage".²¹²

9.205 Mr Purcell was asked about the 19 July 2006 Commercial Credit Committee Terms of Reference. He confirmed that he would have presented the amended terms of reference to the Board meeting. He said that the amendments to the 2003 version would have been discussed with Mr McMEnamin, Mr McMahan and also Mr Fingleton. He was asked what consideration the Board would have given to the new terms of reference and whether the Board would have had an opportunity to consider them before they met. Mr Purcell said that they would have been sent out with the Board papers some days in advance of the meeting. He was asked whether he could recall any discussion about the amendments in 2006 or in December 2007, when the terms of reference were amended once again. Mr Purcell said that he couldn't remember any discussion of the amendments on either occasion.²¹³

9.206 Mr Purcell was asked, in respect of amendments to the terms of reference and the four identified items, did he ever consider changing those four identified items, and he responded "No". He was then asked whether anybody ever asked him to change them, and he responded "No" again.²¹⁴

9.207 Mr Purcell was asked whether he had any involvement in preparing agendas for the Credit Committee. He said that he could not recall any involvement. The LPT opened

²¹¹ Transcript SPC 5 Inquiry Hearing, dated 11 June 2018, page 17 line 26 et seq. (Doc ID: RDU_FT_D48-000000001).

²¹² Transcript SPC 5 Inquiry Hearing, dated 11 June 2018, page 38 line 10 et seq. (Doc ID: RDU_FT_D48-000000001).

²¹³ Transcript SPC 5 Inquiry Hearing, dated 11 June 2018, page 43 line 2 et seq. (Doc ID: RDU_FT_D48-000000001).

²¹⁴ Transcript SPC 5 Inquiry Hearing, dated 11 June 2018, page 55 line 22 et seq. (Doc ID: RDU_FT_D48-000000001).

an email from Ms Rogers to Mr McMenemy dated 29 August 2005²¹⁵, attaching an internal memorandum in which Ms Rogers referred to the recommendations raised in previous KPMG Management Letters and internal audit reports in relation to the items that should be discussed at Credit Committee meetings, and she indicated that the Credit Committee was required to review and consider the items which she had listed as part of the draft Credit Committee agenda. Mr Purcell acknowledged that Ms Rogers would probably have talked to him before sending out such a memorandum and that they may have discussed the matter, but he had no recollection of doing so. He agreed that as Ms Rogers' line manager she would have kept him updated on what she was doing and, for example, would never have sent out a letter to the Financial Regulator without showing it to him first. He was asked whether he knew at that time, in late 2005, that the Credit Committee had to consider these matters as part of their terms of reference. He responded "*Well, I don't recall, but probably I would have been familiar with the terms of reference in a kind of general sense*".²¹⁶

9.208 Mr Purcell agreed with the evidence provided by Ms Rogers that she would not have followed up with Mr McMenemy to ensure that the Credit Committee had followed through on her email. He said that it was up to the head of function, in this case Mr McMenemy. Mr Purcell also agreed with Ms Rogers' testimony that responsibility for monitoring whether the instructions in her email were carried out rested with internal audit.²¹⁷ He stated:

"You know, it was clearly a matter for the Internal Auditor, as Ms. Rogers says, to monitor.

...

*Also, Ms. Rogers worked on the basis that when a senior manager said he would carry out a certain function, that she relied on that particular person to do that".*²¹⁸

9.209 Mr Purcell was asked about Mr Fingleton's evidence, as outlined above, that he had informed the Board once he had become actively involved in the Credit Committee,

²¹⁵ Email from Ita Rogers to Tom McMenemy, dated 29 August 2005 (Doc ID: 0.7.120.216753) attaching Internal Memo, dated 29 August 2005 (Doc ID: 0.7.120.216753-000001).

²¹⁶ Transcript SPC 5 Inquiry Hearing, dated 11 June 2018, page 56 line 12 et seq. (Doc ID: RDU_FT_D48-000000001).

²¹⁷ Transcript SPC 5 Inquiry Hearing, dated 11 June 2018, page 71 line 8 et seq. (Doc ID: RDU_FT_D48-000000001).

²¹⁸ Transcript SPC 5 Inquiry Hearing, dated 11 June 2018, page 74 line 8 et seq. (Doc ID: RDU_FT_D48-000000001).

post-December 2007, that there was no requirement for the Credit Committee to consider the four identified matters because there was a different approach to lending. Mr Fingleton's witness statement was opened to Mr Purcell. The minutes of the Board meeting on 21 January 2008 were also opened to Mr Purcell and he confirmed that there was no record of this change to the terms of reference of the Credit Committee in those minutes. Mr Purcell agreed that the change as described by Mr Fingleton was very significant, however he did not know whether the Credit Committee had been informed about the change. He said that such a change would require to be recorded in the minutes of the meeting, because it involved changing the terms of reference of the Credit Committee.²¹⁹

9.210 Mr Purcell was asked if he recalled Mr Fingleton informing the Board on that matter. Mr Purcell said that he understood from Mr Fingleton's evidence that informing the Board had occurred after he, Mr Purcell, had left the meeting. He stated: "*But to answer your other question, do I recollect it? I don't*". Mr Purcell added that he did not recollect any Board member mentioning this to him nor Mr Fingleton telling him about it.²²⁰

9.211 Mr Purcell was asked about responses to KPMG Management Letters and Financial Regulator Correspondence. He was referred to the email, dated 24 November 2005²²¹, that Mr Purcell had sent to Mr Fitzgibbon in which he identified the recommendations set out in the red boxes of the 2004 KPMG Commercial Credit Review, specifically the recommendation that credit reviews performed by Mr Casey should be reported to the Credit Committee. In that email, Mr Purcell had stated:

"...Have to be implemented in the work you were doing on the 30th September '04 commercial loan balances.

*...Reports at 30th September incorporating those recommendations should be given to me on 16th December '04 for circulation to the Board".*²²²

9.212 Mr Purcell drew the Inquiry's attention to the minutes of the Audit Committee meeting that took place on 23 November 2004²²³ which recorded that the internal auditor had

²¹⁹ Transcript SPC 5 Inquiry Hearing, dated 11 June 2018, page 98 line 11 et seq. (Doc ID: RDU_FT_D48-00000001).

²²⁰ Transcript SPC 5 Inquiry Hearing, dated 11 June 2018, page 98 line 17 et seq. (Doc ID: RDU_FT_D48-00000001).

²²¹ Email from Stan Purcell to Brian Fitzgibbon, dated 24 November 2004, (Doc ID: 0.7.120.229623).

²²² Transcript SPC 5 Inquiry Hearing, dated 11 June 2018, page 103 line 20 et seq. (Doc ID: RDU_FT_D48-00000001).

²²³ Minutes of Audit Committee meeting, dated 23 November 2004 (Doc ID: 0.7.120.56226).

been asked by the Audit Committee to follow up on the implementation of these recommendations. The minutes stated:

*“The chairman mentioned in relation to the commercial lending review carried out by KPMG that the items highlighted in red on the KPMG report must be addressed promptly to ensure that they do not reappear as concerns. The internal auditor would follow up on the completion of these items”.*²²⁴

9.213 Mr Purcell was asked about emails between Dr Walsh, the chairman, and Dr Con Power, a non-executive director, the first of which was dated 1 January 2005 and was copied to Mr Purcell.²²⁵ This email was in respect of the letter from the Financial Regulator dated 9 December 2004 in which the Financial Regulator, Dr Liam O’Reilly, identified a number of items of serious concern in relation to the management of INBS. This letter is outlined in full at Chapter 12 of this Findings Report. Dr Power, was particularly concerned about the content of the letter and sent an email to Dr Walsh requesting a special Board meeting to discuss a response. Dr Walsh replied to him that:

“Michael and Stan are both very focused on getting a comprehensive response available for the Board to review.

You will recall that Stan undertook to deal with all the key issues raised by KPMG in advance of the current audit. We will have a full review at the Board meeting next week”.

Dr Power responded to this email from Dr Walsh²²⁶, stating:

*“...Michael, thanks for your e-mail. Yes, I had assumed that you would have discussed the matter in detail with both Michael and Stan. Additionally, I do indeed recall that Stan undertook to deal with the all the key issues raised by KPMG in advance of the current audit. It is vital that we get a comprehensive reference to IFSRA as soon as practicable after the Board meeting on 18th January”.*²²⁷

²²⁴ Transcript SPC 5 Inquiry Hearing, dated 11 June 2018, page 110 line 2 et seq. (Doc ID: RDU_FT_D48-000000001).

²²⁵ Email chain between Con Power and Michael Walsh, copied to Stan Purcell, dated January 2005 (Doc ID: 0.7.120.246876).

²²⁶ Email from Con Power to Michael Walsh, dated 10 January 2005 (Doc ID: 0.7.120.189041).

²²⁷ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 11 line 6 et seq. (Doc ID: RDU_FT_D49-000000001).

9.214 An email from Mr Purcell to Dr Walsh dated 26 January 2005²²⁸ was also opened to Mr Purcell, in which he indicated that he was awaiting information from various people to update other things. Attached to this email was a draft of the response that ultimately went out to the Financial Regulator. Mr Purcell was asked if he recalled being involved in the drafting of the letter and he said:

"I was involved, there were a number of people -- in fact most Board members and some members of the senior managers were involved in that letter... -- Belfast manager, Mr. Fingleton. And a number of other people, including myself, would have contributed to that letter. ...

And directors such as Michael Walsh and Con Power would have edited it and changed it a bit as well".

He agreed that this level of involvement was because of the importance that INBS placed on responding adequately to the Financial Regulator's letter of 9 December 2004.²²⁹

9.215 The LPT put it to Mr Purcell that it appeared he had given an undertaking to Dr Walsh and Dr Power that he would ensure the completion of the recommendations in relation to the 2004 KPMG Commercial Credit Review, and Mr Purcell responded as follows:

"Well, what it said there, that I would deal with them. And I dealt with them in a particular manner.

...

...in relation to the red box items, I worked through Brian Fitzgibbon. Brian Fitzgibbon, as pointed out in a letter to Con Horan in October 2004, and also in the letter of 1st February 2005, had a particular position in commercial lending administration. Frank Casey reported to him. So Brian Fitzgibbon dealt with the red box items... and completed the schedule that I was -- you know, that would be part of a letter that would eventually go to the Regulator".²³⁰

9.216 It was put to Mr Purcell that Mr Fitzgibbon had only remained in the relevant position until April 2005 and there had been responses to the Financial Regulator in June 2005,

²²⁸ Email from Stan Purcell to Con Power, dated 26 January 2005 (Doc ID: 0.7.120.253483).

²²⁹ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 14 line 16 et seq. (Doc ID: RDU_FT_D49-000000001).

²³⁰ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 19 line 20 et seq. (Doc ID: RDU_FT_D49-000000001).

November 2005 and December 2005. The LPT put it to Mr Purcell that it appeared at that stage that he was the person taking responsibility for the responses, and Mr Purcell responded:

“Well, I mean, you see, the red box items, they were commercial lending recommendations...”

*“The business owner always remained the Commercial Lending department”.*²³¹

9.217 Mr Purcell was asked about the response to the Financial Regulator’s letter dated 21 April 2005²³² which had requested that a status report on the progress in implementing the recommendations of the 2004 KPMG Commercial Credit Review be provided by the end of June 2005. This response was dated 29 June 2005²³³ and it stated:

“KPMG recommended that credit reviews performed by Frank Casey should be reported to the credit committee. Completed credit reviews are now submitted to the credit committee”.

Mr Purcell confirmed that he had prepared the response letter and the schedule attached. He said he would have done so after consultation with Mr Fitzgibbon and Mr McMenamin and possibly Mr Casey. He was also referred to emails from Ms Rogers in which she said the results of credit reviews were going to the Credit Committee. In particular he was referred to an email from Ms Rogers to Mr Fitzgibbon and Mr McMenamin, dated 21 June 2005²³⁴, which attached a status report on the 2004 KPMG Commercial Credit Review stating: *“All credit reviews completed are formally submitted to the Credit Committee on a monthly basis”*. Ms Rogers noted, *“...when this report is finalised it will be submitted to the FSR and Commercial will be committed to achieving and implementing all the recommendations in the report, on an ongoing basis”*.

Mr Purcell said that he expected that Ms Rogers had got information from Mr McMenamin in preparing this email and he noted that the wording in the version that was ultimately sent to the Financial Regulator was slightly different. In the document

²³¹ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 20 line 23 et seq. (Doc ID: RDU_FT_D49-000000001).

²³² Letter from Liam O’Reilly, Financial Regulator, to Michael Walsh, INBS, dated 21 April 2005 (Doc ID: 0.7.120.50619).

²³³ Letter from Michael Walsh, INBS, to Liam O’Reilly, Financial Regulator, dated 29 June 2005 (Doc ID: 0.7.120.17067).

²³⁴ Email from Ita Rogers to Tom McMenamin and Brian Fitzgibbon, dated 21 June 2005 (Doc ID: 0.7.120.213634) attaching Status report on the progress in implementing the Recommendations of the 2004 KPMG Report on Commercial Lending (Doc ID: 0.7.120.213634-000001).

attached to her email the status was “*implemented*” whereas it was described as “*work in progress*” in the response letter to the Financial Regulator. Mr Purcell could not recall why this change had been made.²³⁵

9.218 Mr Purcell was asked whether he accepted that the information that was sent to the Financial Regulator on 29 June 2005 was manifestly wrong, and he responded: “*In the light of, you know, what has been said here in recent, you know, in all of the evidence, it obviously wasn’t correct. But at the time it was presented to us as being correct*”.²³⁶

9.219 Mr Purcell was asked whether it occurred to him, given it was a matter he had been entrusted by the Board, that he could have simply looked at the minutes of the Credit Committee. He responded: “*It didn’t occur to me, because we were, as we did in all of these matters, we relied on the business owner to inform us*”.²³⁷

9.220 The Financial Regulator sought an update on the recommendations contained in the 2004 KPMG Management Letter. This update was furnished by Ms Rogers on 21 November 2005²³⁸ after it had been reviewed by Mr Purcell. With respect to Credit Review Reports, this document stated:

“Credit Reviews, to specifically include the Credit Risk grading on individual accounts, will be submitted to the Credit Committee on a quarterly basis.

Issues arising will be discussed and appropriate action steps implemented. The Credit Review officer will monitor the results of action steps”.

The implementation date was given as September 2005 and under the heading “*Status*” the document stated:

“First report was submitted to the Credit Committee in October 2005.

The Credit Review Officer will monitor the results of action steps and ensure that the recommendations have been implemented”.

9.221 Mr Purcell said that this update would have been prepared by Ms Rogers following consultation with Mr McMenamin. Mr Purcell said that Ms Rogers would not

²³⁵ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 24 line 23 et seq. (Doc ID: RDU_FT_D49-000000001).

²³⁶ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 29 line 20 et seq. (Doc ID: RDU_FT_D49-000000001).

²³⁷ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 33 line 3 et seq. (Doc ID: RDU_FT_D49-000000001).

²³⁸ KPMG Management Letter 2004, Update on Recommendation, dated 21 November 2005 (Doc ID: 0.7.120.266089-000001).

necessarily have looked for or received documentary evidence as to the veracity of what she had been told but would accept the word of the business manager. Mr Purcell was asked whether it would have been better practice to have required documentary evidence, and Mr Purcell indicated that internal audit monitored those matters.²³⁹

9.222 Mr Purcell was asked whether it occurred to him when he signed off the 21 November 2005 document that it was not consistent with what he had told the Financial Regulator in the 29 June 2005 document. He said he could not recall, but that it was possible that the emails sent by Ms van der Berg to Mr McMenemy, that are set out in detail at paragraph 9.104 et seq. above, arose because there was an inconsistency between the two replies.²⁴⁰

9.223 The LPT noted Mr McMenemy's response to the emails from Ms van der Berg, which indicated that Mr Casey had sent 85 reviews, all of which had been discussed by the Credit Committee, and that Ms Rogers had been advised of that fact. Mr Purcell was referred to Mr McMenemy's evidence where he stated that he never gave the reviews to the Credit Committee, so the Credit Committee could not have discussed them, and he was asked whether he was surprised by that. Mr Purcell responded "Yes". He was further asked whether he had known that before, and he responded "No".²⁴¹

9.224 Mr Purcell was asked if it was his understanding at the time that the Credit Committee had a credit review function. He said he was aware of what was in the terms of reference. He was then asked whether he, unlike many of the members of the Credit Committee, actually understood that their job was not just to approve or reject loans. Mr Purcell responded:

"Well, it was in the terms of reference.

...

And those terms of reference, we know were sent to Tom McMenemy, Darragh Daly and I think another person, maybe perhaps John Roche. I mean, these were people who were experienced people in that area".²⁴²

²³⁹ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 52 line 14 et seq. (Doc ID: RDU_FT_D49-00000001).

²⁴⁰ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 56 line 4 et seq. (Doc ID: RDU_FT_D49-00000001).

²⁴¹ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 64 line 5 et seq. (Doc ID: RDU_FT_D49-00000001).

²⁴² Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 67 line 19 et seq. (Doc ID: RDU_FT_D49-00000001).

9.225 Mr Purcell informed the Inquiry that he had believed that Mr Fingleton had been attending Credit Committee meetings and only discovered that this was not the case following a letter from the Financial Regulator dated 20 November 2006. He said that he understood Mr Fingleton intended to attend meetings from that date onwards, but in fact he did not attend any meetings until December 2007. Dr Walsh also gave evidence to this effect.²⁴³

9.226 Mr Purcell was asked about the letter from the Financial Regulator dated 20 November 2006, which followed on from an inspection of INBS between 6 and 14 June 2006. The letter identified a number of issues in relation to the Credit Committee that are set out in full at paragraph 9.57 above. Mr Purcell was asked for his response to these findings. He said his recollection was that in meetings with the Financial Regulator, Mr McMenemy stated that this work was being done but it was not being recorded in the minutes. He said that this was confirmed by Ms Yvonne Madden of the Financial Regulator's office in her evidence.²⁴⁴

9.227 The LPT noted that the letter dated 20 November 2006 also stated:

"KPMG recommended that credit reviews performed by Frank Casey should be reported to the Credit Committee. The Society advised that reviews are reported to the Credit Committee and the Board".

Mr Purcell stated that Ms Rogers' evidence was that she had received this information from Mr McMenemy.²⁴⁵

9.228 It was put to Mr Purcell that this was now the third occasion upon which the Financial Regulator had been informed that the Credit Committee was performing its credit risk function, when it in fact was not doing so. Mr Purcell responded:

*"I mean I thought they were carrying out what was required. I mean I think the import here is that Tom said to her they were actually doing the work but not minuting it, and that's why it was a medium priority".*²⁴⁶

²⁴³ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 73 line 1 et seq. (Doc ID: RDU_FT_D49-00000001).

²⁴⁴ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 97 line 10 et seq. (Doc ID: RDU_FT_D49-00000001).

²⁴⁵ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 99 line 17 et seq. (Doc ID: RDU_FT_D49-00000001).

²⁴⁶ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 102 line 11 et seq. (Doc ID: RDU_FT_D49-00000001).

9.229 Mr Purcell confirmed to the Inquiry that he would have been very concerned if he had said something to the Financial Regulator that turned out to be incorrect. He was asked whether he had spoken to Mr McMenamain about the issues raised in the letter of 20 November 2006 insofar as they related to the Credit Committee. He said that he did not recollect speaking with Mr McMenamain on the issues.²⁴⁷

9.230 The letter of 20 November 2006 required that the minutes of the Credit Committee meetings must evidence the fact that the committee was exercising its role. The minutes must show that the committee was reviewing credit risk reports and they must show that it was exercising its credit risk management role. Mr Purcell was asked whether after 20 November 2006 he had checked the minutes of the Credit Committee meetings to make sure that this was being complied with. The following exchange took place:

"A. I didn't.

Q. Why was that?

A. Because I never had an executive role in relation to the Credit Committee or lending generally.

Q. Did you ever talk to Mr. McMenamain or Mr. Fingleton to make sure that they were in fact complying?

A. I don't recollect, but I would point out that the activities of the Credit Committee were audited on a number of occasions

...

Q. Yes. But something was clearly already going quite wrong here and for the first time it was explicitly drawn to your attention; isn't that right?

A. It was explicitly drawn to the attention in a letter to the Chief Executive".²⁴⁸

9.231 Mr Purcell was asked about the follow-up correspondence to the 20 November 2006 letter. He confirmed that there was significant correspondence after that date. One of the emails that was put to Mr Purcell was from Ms Rogers, dated 10 May 2007²⁴⁹, in

²⁴⁷ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 103 line 6 et seq. (Doc ID: RDU_FT_D49-000000001).

²⁴⁸ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 106 line 10 et seq. (Doc ID: RDU_FT_D49-000000001).

²⁴⁹ Email from Ita Rogers to Stan Purcell, dated 10 May 2007 (Doc ID: 0.7.120.276842).

which she noted that she awaited confirmation of when the Credit Committee commenced recording the reports it received in its minutes. Mr Purcell could not explain why this question needed to be asked some 11 months after the initial inspection by the Financial Regulator and six months after the letter of 20 November 2006, the date on which Mr Purcell said he became aware of the issue.²⁵⁰

9.232 As secretary to the Board, Mr Purcell had a direct reporting line from the Credit Committee to the Board in relation to the credit risk management role of the Credit Committee. Mr Purcell indicated that he discovered for the first time from the letter of 20 November 2006, that Mr Fingleton was not attending Credit Committee meetings. This was notwithstanding the fact that Mr Fingleton had been listed as a member of the Credit Committee since before 2003. Mr Purcell stated this “...*meant that there was no one who was attending the Credit Committee meetings who was reporting to the Board*”. He said that he had no recollection of speaking with Mr Fingleton in connection with the letter of 20 November 2006 in general, or in connection with his attendance at the Credit Committee in particular. Mr Purcell pointed out that the letter was addressed to the chief executive, and he said that he would have collated the responses but the responses would have been from the people who owned “*the particular problem involved*”.²⁵¹

9.233 Mr Purcell was referred to the INBS response to the Financial Regulator’s letter of 20 November 2006, which was dated 31 January 2007 and was signed by Mr Fingleton. Mr Purcell confirmed that he would have drafted some of that letter. The INBS response to all of the issues identified at “M20” of the Financial Regulator’s letter was:

*“All reports submitted to and reviewed by the Credit Committee will be minuted in the minutes of the committee”.*²⁵²

9.234 Mr Purcell was asked whether he believed that that was a complete response to the concerns of the Financial Regulator. He agreed that “... *it’s a bit terse all right*”.²⁵³

9.235 Mr Purcell noted that the Financial Regulator was identifying a number of the items from the Credit Committee terms of reference. He stated:

²⁵⁰ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 108 line 15 et seq. (Doc ID: RDU_FT_D49-00000001).

²⁵¹ Transcript SPC 5 Inquiry Hearing, dated 12 June 2018, page 105 line 2 et seq. (Doc ID: RDU_FT_D49-00000001).

²⁵² Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 32 line 16 et seq. (Doc ID: RDU_FT_D50-00000001).

²⁵³ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 34 line 7 et seq. (Doc ID: RDU_FT_D50-00000001).

*“And they obviously, they are -- the reason for them is that it is part of the credit risk management role; in other words, the review of those is for the credit risk management role of the Credit Committee”.*²⁵⁴

9.236 Mr Purcell said that most of the reports referred to by the Financial Regulator and as set out in the terms of reference of the Credit Committee, such as arrears and non-performing loans, MIS reports and Credit Review Reports would have been readily available. It was put to Mr Purcell that there is a difference between members of the Credit Committee receiving reports qua committee in a pack that goes to the committee and how they may receive them in some other context. Mr Purcell agreed that the evidence showed that the only documentation received by the members of the Credit Committee were the CLA's to be approved. He said it was a matter for each individual committee to arrange how reports were to be furnished.²⁵⁵

9.237 In relation to the KPMG correspondence that specifically related to the Credit Committee, Mr Purcell was asked how that correspondence would have got to Mr McMenemy. He said it would either have got to him through Ms Rogers or in the earlier days he himself might have handed the relevant extract to Mr McMenemy. He stated that while he knew the requirement in the terms of reference of the Credit Committee, he did not deal with the Credit Committee on an ongoing basis.²⁵⁶

9.238 Mr Purcell was asked about MIS reports and he confirmed that this was something he was familiar with because he collated these reports for the Board. He was asked whether these reports were ever conveyed by him to the Credit Committee. He said that most of the reports were generated within the commercial lending department by people who were in daily contact with each other.²⁵⁷

9.239 In relation to findings of internal audit, Mr Purcell was asked whose responsibility it was to make sure that material from internal audits and/or the Audit Committee would go to the Credit Committee. Mr McMenemy was not a member of the Audit Committee and therefore would not be aware of any findings or recommendations arising at Audit

²⁵⁴ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 35 line 7 et seq. (Doc ID: RDU_FT_D50-00000001).

²⁵⁵ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 35 line 22 et seq. (Doc ID: RDU_FT_D50-00000001).

²⁵⁶ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 40 line 11 et seq. (Doc ID: RDU_FT_D50-00000001).

²⁵⁷ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 43 line 16 et seq. (Doc ID: RDU_FT_D50-00000001).

Committee meetings. Mr Purcell said that any reports generated by the internal auditor would have been disseminated by the auditor.²⁵⁸

9.240 Mr Purcell was asked about the 2007 Commercial Lending Internal Audit Report²⁵⁹ which recommended that:

“The minutes of the Credit Committee meetings should document the discussion held in respect of loans, apart from those which have been approved or declined i.e. loans with moratoria, loans in arrears etc. This will ensure there is documentary evidence of these loans being reviewed by the Credit Committee. Finding rating: 2. The staff members responsible for this are all of the 2 [sic] Commercial Lenders. This recommendation should be implemented immediately”.

Mr Purcell was then referred to a follow-up email from internal audit to Mr McMenemy, dated 8 August 2007, in which the following observations were made:

*“In relation to recommendation no. 11 for the Credit Committee minutes, I have reviewed the folders and I have seen the minutes for loans which have been declined and placed on hold. However the recommendation is for the documentation of discussions held in relation to loans with moratoria, loans in arrears etc. These items are listed in the terms of reference for the Credit Committee and should be documented if discussed”.*²⁶⁰

9.241 Mr Purcell stated that he had never seen that email and did not know anything about it. One month later the 2007 Commercial Lending Internal Audit Report was included on the agenda for the Audit Committee meeting, but this particular recommendation was not adverted to and was not followed up with by the Audit Committee. He said that his role on the Audit Committee was secretarial and that he was not responsible for setting the agenda or for directing what would be discussed at meetings.²⁶¹

9.242 Mr Purcell was then asked about the letter of 14 March 2007²⁶² sent by the Financial Regulator to Mr Fingleton. The letter stated:

²⁵⁸ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 46 line 14 et seq. (Doc ID: RDU_FT_D50-000000001).

²⁵⁹ 2007 Commercial Lending Internal Audit Report (Doc ID: 0.7.120.295232-000001).

²⁶⁰ Email from Patricia Canniffe to Tom McMenemy, dated 8 August 2007 (Doc ID: 0.7.120.320597). Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 52 line 6 (Doc ID: RDU_FT_D50-000000001).

²⁶¹ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 54 line 15 et seq. (Doc ID: RDU_FT_D50-000000001).

²⁶² Letter from Yvonne Madden, Financial Regulator, to Michael Fingleton, INBS, dated 14 March 2007 (Doc ID: 0.7.120.133691).

“Further to your letter dated 31 January 2007 in reply to the post inspection letter dated 20 November, I should be obliged if you would also address the following and amalgamate same with a progress report on all recommendations in the quarterly report as outlined in my letter to Mr Purcell.

...

M20 Credit Risk Management Role.

I note that the recommendation made regarding the credit committee formally reporting to the Board in relation to the exercise of the credit risk management and review role has not been addressed and accordingly, I should be obliged if you could address this matter”.

9.243 Mr Purcell confirmed that he recalled receiving this letter addressed to the Managing Director, and that *“Ita probably would have, through me, discussed a response or sought a response in relation to that item from Tom McMnamin”*.²⁶³

9.244 Mr Purcell was referred to INBS’s response, dated 17 May 2007²⁶⁴ signed by Mr Fingleton, which stated:

“The Credit Committee reviews all reports submitted to it and will minute it from June 2007

...

Both the Commercial Lending and Credit Risk departments are audited and the Internal Audit reports are issued to the Audit Committee. Any concerns in relation to the exercise of either function will be contained in such reports. In addition, the Credit Committee will report directly to the Board and the Credit Risk department report quarterly to the Board. Should any concerns arise in relation to a mortgage, both the Credit Committee and the Credit Risk Department have the ability to bring it to the attention of the Board given the present reporting lines”.²⁶⁵

²⁶³ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 65 line 5 et seq. (Doc ID: RDU_FT_D50-000000001).

²⁶⁴ Letter from Michael Fingleton, INBS to Yvonne Madden, Financial Regulator, dated 17 May 2007 (Doc ID: 0.7.120.443301).

²⁶⁵ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 68 line 10 et seq. (Doc ID: RDU_FT_D50-000000001).

9.245 This response was not presented in draft form to the Board, but appears to have been sent out directly. Mr Purcell said that the particular response at “M20” would have been provided by the commercial lenders, or it would have been agreed with the chief executive. Mr Purcell was asked whether he would have had any substantive input into the response and he said: “*Not in relation to things that related to commercial lending*”. He said that reporting from the Credit Committee to the Board was the responsibility of Mr Fingleton.²⁶⁶

9.246 It was put to Mr Purcell that the Credit Committee never reported at all, even after this letter, in relation to any credit risk function, and he responded:

“Well, Mr. Fingleton would have reported to the Board, you know, on various matters in relation to, you know, credit risk and things like that if – – I can’t recollect. I know what you mean all right, yeah”.

It was then put to Mr Purcell that the response, as outlined above, could reasonably be read by the Regulator as meaning that what had been asked to be done would be done. Mr Purcell agreed with this.²⁶⁷

9.247 Mr Purcell was asked about an inspection by the Financial Regulator of five credit institutions that took place in December 2007. The report from this inspection was issued on 24 December 2007, and it makes the following high priority finding in relation to INBS:

*“The inspectors were advised that the results of credit reviews should be provided to the Credit Committee. However, Darragh Daly also advised that this has not been taking place”.*²⁶⁸

9.248 Mr Purcell said he had no input into that inspection because it related to commercial lending across the five institutions. Mr Purcell indicated that this was the first time he became aware that the results of the credit reviews were not going to the Credit Committee. He was asked what his reaction was and the following exchange took place:

“A. ...I think I was dismayed when we learned about it.

²⁶⁶ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 73 line 2 et seq. (Doc ID: RDU_FT_D50-000000001).

²⁶⁷ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 77 line 7 et seq. (Doc ID: RDU_FT_D50-000000001).

²⁶⁸ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 79 line 11 et seq. (Doc ID: RDU_FT_D50-000000001).

Q. ...Because it did mean, didn't it, that you had been writing to the Regulator with assurances that were not true?

A. Yeah. Well, we were writing on what we believed to be true.

Q. Yeah. But it's of concern, isn't it, I presume as the Secretary of the Society?

A. Well, it was. And it was of concern to the Board... as you will see, or if you wish to look at documents and meetings".²⁶⁹

9.249 Following this inspection and report, the Financial Regulator wrote to the chairman of INBS, Dr Walsh, and stated:

"The findings of this inspection in INBS calls into question the adequacy of controls and risk management in place in INBS for large commercial property loans and suggest that a significant degree of approval authority rests with a single individual, Mr Fingleton, who also appears to be the only source of information on some of these large clients. It is also a matter of concern that findings continue to arise in relation to the operation of the credit committee and it is clear that the operation of this committee needs to be strengthened".

The appendix to this letter stated:

"High Priority

H1 - Credit Reviews

...

The inspectors were advised that although the results of "credit reviews" should be provided to the Credit Committee, this has not been taking place. In this regard, the Terms of Reference of the Credit Committee state that the Credit Committee will review and consider any loans submitted to it as part of the credit review process.

Recommendations

²⁶⁹ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 81 line 1 et seq. (Doc ID: RDU_FT_D50-000000001).

2. Details of all credit review performed should be forwarded to the Credit Committee".²⁷⁰

9.250 The Board's response to this letter from the Financial Regulator was dated 21 April 2008.²⁷¹ In relation to the Credit Committee, this letter stated:

"The credit committee's terms of reference were reviewed in December 2007 and its membership was increased. The Society has also implemented the recommendations in relation to M3 - Credit Committee outlined in your letter dated 8 February 2008".

In the schedule to this letter the specific recommendation in relation to Credit Review Reports being forwarded to the Credit Committee is dealt with. It stated:

"INBS Comment

Credit risk review reports will be submitted to the Credit Committee when reviews are carried out. Reviews are carried out at different intervals depending on the circumstances of the loan. Informal contact with lenders about the content of specific reviews is ongoing as lenders receive updates which result in changes in the risk profile of a given account. Details of accounts graded 4, 5 and 6 will be copied to the lenders on a monthly basis".

Timeframe

May 2008".

9.251 Mr Purcell was asked about this response and whether the Credit Review Reports were in fact provided to the Credit Committee to his knowledge. He stated:

"I don't know, I fear to say they were. I can't recollect at this stage".

9.252 It was pointed out that from the internal audit that was carried out in respect of the period January to June 2008, there was still no Credit Review Reports going to the Credit Committee. The following exchange took place:

"A. No, you are correct, yes.

²⁷⁰ Letter from Mary Burke, Financial Regulator, to Michael Walsh, INBS, dated 8 February 2008 (Doc ID: 0.7.120.526582).

²⁷¹ Letter from Michael Walsh, INBS, to Mary Burke, Financial Regulator, dated 21 April 2008, page 4 (Doc ID: 0.7.120.290839-000001).

Q. Why was it so hard to send the credit risk reviews to the Credit Committee?

A. I don't know.

Q. It seems like the actual step this required was really such a small step, wasn't it?

A. I think so, I would agree, yeah. It should have been something that should have been done immediately.

Q. ...Can I ask did this issue that has been raised, the knowledge that they had not been sent to the Credit Committee, did that raise any alarm bells in your head in respect of the way in which Mr. McMenamain was dealing with the Credit Committee?

A. Well, I know the Audit Committee were very concerned with it and this issue went on throughout the entire of 2008.

...

It was discussed by the Audit Committee, the operation review was carried out by Killian. I know it was noted as discussed in later Audit Committee minutes".²⁷²

9.253 Mr Purcell was asked why the Audit Committee appeared to be the only people involved in circumstances where this was a problem that had already been identified. Mr Purcell said that the Audit Committee directed the internal auditor to review the matter to ensure that it was being done. This internal review found that it was not being done. It was put to Mr Purcell, having regard to his undertaking to the Board in 2005 that the recommendations of the 2004 KPMG Management Letter would be carried out, that he knew at this point that they were not being done, and he was asked whether it occurred to him at this point that he should take direct action himself. He responded:

"Well I mean the matter was regarded by the Board as serious.... And the board had a number of meetings on it.... And then the Audit Committee, which essentially was all of the Board except me at that stage -- took over looking at the matter and it is mentioned in the minutes again.

²⁷² Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 93 line 8 et seq. (Doc ID: RDU_FT_D50-000000001).

...

But I mean the actual thing, the Audit Committee was very concerned that it was not been done".

Mr Purcell agreed that the 2007 Commercial Lending Internal Audit Report, had already identified the issue raised by the Financial Regulator. He said he could not recall but that he presumed it would have been discussed and would have been a matter to be followed up by the internal audit department.²⁷³

9.254 Mr Purcell was referred to an internal memorandum dated 22 July 2008²⁷⁴ prepared by the Financial Regulator, which recorded this response from INBS. It stated:

"INBS Specific Findings

H1

Credit Committee

...

RESPONSE *INBS confirmed that credit risk review reports will be submitted to the Credit Committee when reviews are carried out from May 2008. It advised that reviews are carried out at different intervals depending on the circumstances of the loan. Informal contact with lenders about the content of specific reviews is ongoing as lenders receive updates which result in changes in the risk profile of a given account. Details of accounts graded will be copied to the lenders on a monthly basis*

FOLLOW UP *Given that INBS has not advised as in Credit Reviews above that credit reviews will be conducted at least an [sic] annual basis, it has not specifically met requirement and should be requested to do so. In addition, as part of our ongoing recommendation to INBS to enhance documentation surrounding loan reviews, INBS should be requested to ensure that its contact with borrowers and the results thereof be documented. Its comments regarding "Details of accounts graded will be copied to the lenders on a monthly basis" is not clear and INBS should be requested to explain".*

²⁷³ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 94 line 22 et seq. (Doc ID: RDU_FT_D50-00000001).

²⁷⁴ Memorandum from Yvonne Madden to File, dated 22 July 2008 (Doc ID: AD-0.7.120.1124242).

Mr Purcell had no recollection of any discussion on this matter.²⁷⁵

9.255 Mr Purcell was asked about the evidence of the former chairman, Dr Walsh, in which he said that he found it frustrating that the executive were not carrying out the wishes of the Board. In his witness statement²⁷⁶, Dr Walsh stated:

“Mr Purcell was Finance Director of the Society. In that role, he was the point of contact for KPMG. Mr Purcell also attended all audit committee meetings as secretary to that committee. Further, Mr Purcell was head of the compliance function and the compliance manager, Ms Rogers, reported to him. Ms Rogers and Mr Purcell were the contact points for the Financial Regulator. Mr Purcell was also a member of the Provisions Committee and the Asset and Liability Committee.

As noted by Ms Rogers in her statement, communications received by her from the Financial Regulator were circulated by her to the relevant business units for their inputs. While Ms Rogers says she would co-ordinate the responses, Mr Purcell would sign off on any communications. Not all communications with the Financial Regulator would come to the Board. Ms Rogers says that she was the liaison point between KPMG and the relevant business function. Her role was to collate responses to KPMG management letters from the relevant business functions.

Mr Purcell was in a unique position to be aware of issues raised by KPMG, Internal Audit, the Audit Committee and the Board. As Company Secretary, it was Mr Purcell’s responsibility to communicate any such issues to the Credit Committee. The Board believed the assurances given by Mr Purcell to the Board, KPMG, the Financial Regulator or otherwise and had no reason not to do so.

Like the Managing Director, the Finance Director also gave assurances to the Board that issues raised had been, or would be addressed and the Board had no reason not to accept those assurances. I note that Mr Power recalls once [sic] such incident where Mr Purcell undertook to me to deal effectively and completely with all key issues raised by KPMG in advance of an audit in 2005”.

²⁷⁵ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 98 line 2 et seq. (Doc ID: RDU_FT_D50-000000001).

²⁷⁶ Witness Statement of Michael Walsh, dated 13 November 2017 (Doc ID: RDU_WS-0000000024).

In response to this, Mr Purcell reiterated that he had dealt with those matters through Mr Fitzgibbon.²⁷⁷

9.256 Further sections of Dr Walsh's witness statement were put to Mr Purcell, in the context of Dr Walsh responding to the allegations against him. Dr Walsh had stated:

"It would have been a shock to the non-executive board members to find the Board's direction was not been implemented given the role of the Finance Director, and, that the Managing Director was on the Credit Committee".

Mr Purcell responded that in relation to reporting issues, he did raise issues raised by the Board with the Credit Committee. He stated:

"As I say I did it, probably you could say it was under three levels. There was formal letters, there was weekly contact with Tom about individual loan applications and all letters and all communication that we would have got from the Financial Regulator and KPMG did go to Tom McMenamin. I think Ita regarded that if she sent to Tom McMenamin he would cascade it down I think was the word she used.

...

So I did fulfil that obligation in relation to the Credit Committee".²⁷⁸

9.257 Mr Purcell was asked about the four items in the terms of reference of the Credit Committee. He was asked why he thought they had been put there either by Mr Fitzgibbon or Mr Maurice Harte or anybody else, *"why would someone with the knowledge of lending have included that obligation to review and consider those matters?"²⁷⁹*

9.258 Mr Purcell responded and there was a further exchange, as follows:

"A. Because they probably -- well they felt that they were matters that should be considered by the credit committee.

Q. And why would they need to be considered by a credit committee?

²⁷⁷ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 102 line 12 et seq. (Doc ID: RDU_FT_D50-000000001).

²⁷⁸ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 107 line 20 et seq. (Doc ID: RDU_FT_D50-000000001).

²⁷⁹ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 111 line 11 et seq. (Doc ID: RDU_FT_D50-000000001).

A. Well, it would inform the Credit Committee of things that they need to take into account.

Q. And do you accept that these were matters that the Credit Committee did need to take into account, that a credit committee needed to take into account?

A. Well I mean I am looking at it from the point of view of, they were in the terms of reference, they were put in, we'll say, whether it was by Maurice Harte or by Brian Fitzgibbon or both of them together, they were put in with the reason and this should have been considered by the Committee".

Mr Purcell said that whilst he could not comment on the value of any of the reports to the consideration of loan applications by the Credit Committee, he believed that they should have been considered because they were put in the terms of reference for a reason.²⁸⁰

9.259 In his cross-examination by Mr Fingleton, Mr Purcell confirmed that he first became aware of the requirement for the Credit Committee to review and consider, and provide reports on arrears and non-performing loans to the Board, following the letter from the Financial Regulator in January 2007.²⁸¹

9.260 Mr Fingleton asked him why he did not request reports from the Credit Committee once he became aware of the requirement. Mr Purcell said that he would have expected Mr Fingleton to report orally to the Board. He said that he recalled Mr Fingleton making verbal reports at Board meetings over the time.²⁸² Mr Purcell said that his recollection and understanding was that when the Credit Committee reported directly to the Board those reports would emanate from the Credit Committee and would be verbally made to the Board by Mr Fingleton.²⁸³

9.261 Mr Fingleton asked Mr Purcell who was responsible for credit reviews. Mr Purcell confirmed that Mr Casey was responsible and continued to be responsible after the appointment of Mr Daly as credit risk manager. Mr Casey had given evidence that he believed once Mr Daly had been appointed it was no longer his responsibility to provide

²⁸⁰ Transcript SPC 5 Inquiry Hearing, dated 13 June 2018, page 111 line 24 et seq. (Doc ID: RDU_FT_D50-00000001).

²⁸¹ Transcript SPC 5 Inquiry Hearing, dated 14 June 2018, page 15 line 17 et seq. (Doc ID: RDU_FT_D51-00000001).

²⁸² Transcript SPC 5 Inquiry Hearing, dated 14 June 2018, page 17 line 2 et seq. (Doc ID: RDU_FT_D51-00000001).

²⁸³ Transcript SPC 5 Inquiry Hearing, dated 14 June 2018, page 19 line 20 et seq. (Doc ID: RDU_FT_D51-00000001).

the results of the credit reviews to the Credit Committee. Mr Purcell did not agree with this.²⁸⁴

9.262 On the issue of MIS reports, Mr Purcell agreed with Mr Fingleton that these reports were available to the Board and several other departments.²⁸⁵

9.263 Mr Purcell was cross-examined by Enforcement, as follows:

“Q. Would you accept that being a director involves an element of curiosity, that you need to ask questions and interrogate things?”

A. It can arise in a situation, yeah.

Q. So, in other words, you're not simply a postbox whereby person A sends a document to you , you pass it to person B, then maybe the document comes back from person B to person A; as a director, as opposed to any other employee , you need to be curious, you need to read documents, you need to ask questions and you need to talk to people to see what's actually happening, would that be a fair description?”

A. If matters come to your attention, yes, indeed, or if you are aware of something.

Q. ...But presumably also, not merely if they came to your attention, but you have to ask questions in order to see if there were things you should be concerned about, would that be correct?”

A. That's possible, yes, that's possible.

Q. Would you describe yourself, again talking about this period of time in your role, as a curious person, as someone who would ask questions and talk to people in order to find out what was happening?”

Enforcement gave the example of when Mr Purcell discovered, in November 2006, that Mr Fingleton had never attended any Credit Committee meetings. Mr Purcell was asked what he had done when that fact came to his attention. Mr Purcell replied that he could not recall whether he had done anything and that the matter had been dealt

²⁸⁴ Transcript SPC 5 Inquiry Hearing, dated 14 June 2018, page 29 line 4 et seq. (Doc ID: RDU_FT_D51-00000001).

²⁸⁵ Transcript SPC 5 Inquiry Hearing, dated 14 June 2018, page 32 line 16 et seq. (Doc ID: RDU_FT_D51-00000001).

with by the Board. Mr Purcell conceded that the matter was very serious but he did not recall any discussion with other Board members on the matter.²⁸⁶

9.264 Mr Purcell was asked about evidence given by Mr McMenamain to the effect that it was Mr Fingleton who gave the “thumbs up” to a customer or not. The following exchange took place:

“Q. And we also know that the Credit Committee wasn’t really functioning, it doesn’t seem to have sat as a quorum, wasn’t following its terms of reference; what was your view of the Credit Committee, was there any reality to it at all or was it just ticking a box?”

A. My view now is that, my view now is that the Credit Committee wasn’t carrying out duties it should have been carrying out.

Q. Does that explain the lack of curiosity at the time that the reason more questions weren’t being asked about what it was doing was because it wasn’t being taken seriously or something which had any real...?”

A. No, I can’t say that. I mean at the time, when you say at the time, matters like that were discussed in the context of a Board not otherwise. At the time I was quite a busy person and my curiosity was immense when it related to matters I was dealing with directly. You know, I have to deal with a number of issues there on an ongoing basis. That letter of 20th November was discussed in the context of a board and we dealt with it as a board. That was where I would respond to you or how I would respond.

Q. When you saw this correspondence from the Regulator where queries were raised, it all came through you, answers were given and then the following year the same query have to be raised because it appeared things weren’t happening; again did you talk to anyone, did you proactively say ‘what’s happening there, how could these simple issues not be dealt with, what’s going on’?”

*A. Well, it depends on what the issue was... But all of those matters were discussed at a board meeting or by board members”.*²⁸⁷

²⁸⁶ Transcript SPC 5 Inquiry Hearing, dated 14 June 2018, page 93 line 17 et seq. (Doc ID: RDU_FT_D51-00000001).

²⁸⁷ Transcript SPC 5 Inquiry Hearing, dated 14 June 2018, page 97 line 5 et seq. (Doc ID: RDU_FT_D51-00000001).

Mr Purcell's submissions

9.265 Mr Purcell provided closing submissions to the Inquiry, dated 16 August 2018, following the oral hearings in the SPC 5 module.²⁸⁸ He appended two documents in support of his submissions. The first was his witness statement in relation to SPC 5, dated 19 November 2017, the contents of which are outlined in detail at paragraph 9.190 et seq. above. The second was his opening statement for the SPC 5 module, dated 12 December 2017, which, as noted at paragraph 9.162 above, has been set out in full in Chapter 2 of this Findings Report.

9.266 In his closing submissions, Mr Purcell summarised his witness statement, dated 19 November 2017, as follows:

"1. Witness Statement 19 November 2017 (Appendix 1- herewith)

In my witness statement I said:

- *Working with the compliance manager, I co-ordinated responses to the recommendations in KPMG's management letters that related to the lending area departments.*
- *The lending departments were responsible for the responses to these recommendations, the implementation of the responses and for the designation of issues as opened or closed.*
- *The responsibilities of the lending departments are substantiated in this regard by items 1 to 7 of my witness statement.*
- *I was not a member of the Credit Committee at any time. I did not attend Credit Committee meetings and I did not receive minutes of Credit Committee meetings during the review period.*
- *I was not a member of the Audit Committee. My role as Secretary of the Committee was limited to recording and issuing the minutes.*
- *I addressed issues raised by Mr. Fingleton in his witness statement dated 21 August 2017".*

²⁸⁸ Closing Submission of John S Purcell, dated 16 August 2018 (Doc ID: RDU_ENF_AUTH-000000022). Note Mr Purcell provided two versions of his closing submissions, the second version included his signature.

9.267 Mr Purcell then summarised his opening statement, dated 12 December 2017, as follows:

"2. Opening Statement 12 December 2017 (Appendix 2- herewith)

This opening statement is my printed version of the statement I gave to the Inquiry on 12 December 2017.

The opening statement sets out:

- 1) My roles and responsibilities in the period 2004 to 2008 (The Review Period).*
- 2) How KPMG management letter recommendations and the requirements of the financial regulator were dealt with.*
- 3) That I was not a member of the Credit Committee whereas the Manging [sic] Director was a member of the Credit Committee.*
- 4) My role in communicating any issues raised by the board of directors that referred to the Credit Committee to the Credit Committee.*
- 5) My limited work as Secretary of the Audit Committee".*

9.268 Mr Purcell also addressed his cross-examination of witnesses. He stated:

"3. Cross Examination of Witnesses

In my cross examination of witnesses the following was said by them in relation to responsibilities.

Darragh Daly (ref 1)

Mr Daly agreed that:

- His duties included implementing the recommendations of the KPMG management letters as regards commercial lending as well as the recommendations of other lending reviews.*
- The terms of reference of the Credit Risk department dated 31 October 2006 (reference 0.7.120.13615), signed by Mr Fingleton and sent to the Regulator, set out clearly the responsibilities of the Credit Risk department which reported to the Managing Director, Mr Fingleton.*

Killian McMahon (ref 2)

1.Killian McMahon agreed that Darragh Daly’s Job Specification (ref 0.7.120.500899), the Terms of Reference of the Credit Risk Department (ref 0.7.120.13615) the Credit Risk Department Plan (0.7.120.272799-000001) and the Financial Regulator Memo (0.7.120.1121626) set out clearly the responsibility from implementing the KPMG and other recommendations as regards commercial lending.

2.Killian also said (page 23) that “when I (Killian) went looking to see whether recommendations were implemented the Business Head was responsible” and that “the Executive Director responsible for commercial lending recommendations would be the Managing Director”.

Ita Rogers (ref 3)

Ita Rogers agreed when I (J.S. Purcell) referred to her email of 21 June 2005 (0.7.120.213634) that the commercial lending business head had the responsibility on an ongoing basis for implementing the recommendations of the Commercial Credit Review of October 2004.

Ita also agreed with point 1 (in bold) under Killian McMahon above.

David Brophy (ref 4), Vincent Reilly (ref 5) and Michael Walsh (ref 6)

David Brophy, Vincent Reilly and Michael Walsh all agreed with point 1 under Killian McMahon above.

Con Power (ref 7)

At page 78, I (J.S. Purcell) said “The normal organisation structure of reporting was that particular departments had the responsibility for completing its own recommendations” ?. Con replied “Yeah and indeed in one of my emails to Killian I pointed out to him that it should be made clear to each functional department head that they had the primary responsibility.”

Ref (1.) Date of Hearing 23/02/18 – Pages 7 to 17 – D. Daly

Ref (2.) Date of Hearing 23/03/18 – Pages 18 to 29 – K. Mc Mahon

Ref (3) Date of Hearing 24/04/18 – Pages 70 – 81 – I. Rogers

Ref (4) Date of Hearing 26/04/2018 – Pages 31 – 36 D. Brophy

Ref (5) Date of Hearing 27/04/2018 – Page 88 – 93 – V. Reilly

Ref (6) Date of Hearing 22/05/18 – Pages 58 – 63 M. Walsh

Ref (7) Date of Hearing 11/04/18 – Pages 63 – 78 – C. Power’.

9.269 Mr Purcell outlined witness evidence with respect to Senior Management in INBS as follows:

“The following was said by witnesses about senior management

Darragh Daly said Michael Fingleton and Stan Purcell were senior management. Brian Fitzgibbon said Michael Fingleton and Stan Purcell only were senior management. Con Power when asked who is senior management said “Executive Directors, Internal Auditor, Compliance Manager and each Head of Function”. Michael Fingleton said (27 June 2018 Hearing Page 67) that Mr Purcell and himself would not be the only senior management, the lenders would be included and all the heads of function as senior management”.

9.270 In conclusion Mr Purcell dealt with senior management and organisation structure and responsibilities. He stated:

“4. Senior Management, Organisation Structure (Chart) and Responsibilities

INBS’s Rules

INBS’s Rules (ref 0.7.120.1097630) Page 9- Interpretation- state:

“Officer means any Director, Chief Executive or Secretary and also Senior Management, Officials and Executives.”

On the above definition then, Senior Management is a category separate to those who would attend board meetings.

1992 Regulations, CRD and CEBS Guidelines

Regulation 16(3) of the 1992 Regulation and Article 22 of the CRD state: (reference pages 41 and 53 of the Investigation Report):

“Every credit institution shall have robust governance arrangements including a clear organisation structure with well defined, transparent and consistent lines of responsibility”.

The 2006 CEBS Guidelines state that: “Reporting lines and allocation of responsibility and authority within an institution shall be clear, precise, well defined, transparent, coherent and enforced”.

I say that INBS’s Organisation Chart (structure) (examples at 0.7.120.423499 and page 117 of the Vendors Due Diligence Report, 0.7.120.55785) together with documents such as the Terms of Reference of the Credit Risk Department, KPMG management letters and letters to the Financial Regulator which show the department/person responsible and Ita Roger’s email dated 21 June 2005 (0.7.120.213634) conform to the requirement of Regulation 16(3) of the 1992 Regulations and the CEBS guidelines.

Organisation chart and responsibilities within INBS

Within INBS - in line with the organisation chart – the senior management responsible for any particular area/activity depended on the function/department involved.

For example, Senior management in relation to the property department was the managing director and the property manager.

Senior management in relation to the treasury department – was the managing director, myself as finance director and the treasury manager.

Senior management in relation to commercial lending was the managing director and the head of the commercial lending function.

In my role as finance director and secretary I was not responsible for the lending area departments”.

INQUIRY FINDING – SPC 5

Finding in relation to INBS

9.271 The Inquiry is satisfied, based on the witness evidence and the documents outlined above, that the Credit Committee failed to perform the particular functions identified in SPC 5, namely:

- (a) INBS's Credit Committee did not review and consider commercial loans in large arrears and/or deemed non-performing.
- (b) INBS's Credit Committee did not review and consider loans submitted as part of the credit review process (as no such loans were submitted to it).
- (c) INBS's Credit Committee did not review and consider relevant MIS reports (for example, sectoral exposure, customer exposure or concentration).
- (d) INBS's Credit Committee did not review and consider any issues raised by INBS's internal audit department and/or other advisors or regulators (i.e. KPMG or the Central Bank) at any time during the Review Period, amounting to a breach of policy as outlined in the terms of reference of the Credit Committee.

9.272 The Inquiry accepts that the relevant reports and information the subject matter of SPC 5 were substantially available to the senior members of the Credit Committee, including some non-lending members. However, whilst this is a consideration the Inquiry is mindful of, it does not accept that the fact that the four items listed above were available to the commercial lenders within INBS is a sufficient discharge of the responsibility imposed by the terms of reference of the Credit Committee. Consideration of a report in the context of a Credit Committee meeting is a significantly different matter than the consideration by individual lenders of such reports. In addition, not all members of the Credit Committee were commercial lenders and these members would not have received the reports other than as members of the Credit Committee. The Inquiry notes that the Board did receive these reports, indicating that it would have been a straightforward matter to have also provided them to the Credit Committee.

9.273 In considering the materiality of the failure by INBS to consider the four items listed in SPC 5, the Inquiry noted the evidence of former members of the Credit Committee who asserted that they believed that these reports would have assisted the Credit Committee in considering loan applications before it. The evidence of Mr Fingleton was not in agreement with this.

9.274 The breaches of policy identified in SPC 5 illustrate a problem with policy routinely not being complied with. This creates a risk of non-adherence with other commercial policies.

9.275 In failing to perform the functions identified in SPC 5, the Inquiry makes the following findings in respect of the legislative provisions and condition on INBS's authorisation underpinning SPC 5(a), 5(b) and 5(c):

(a) Regulation 16(1) of the 1992 Regulations

The Inquiry finds that from 1 August 2004 to 30 September 2008, INBS failed to manage its business in accordance with sound administrative and accounting principles and failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed. Accordingly, the Inquiry finds that a contravention of Regulation 16(1) of 1992 Regulations occurred.

(b) Section 76(1) of the 1989 Act

The Inquiry finds that from 1 August 2004 to 30 September 2008, INBS failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon. Accordingly, the Inquiry finds that a contravention of section 76(1) of the 1989 Act occurred.

(c) Part 1 of the 2005 Regulatory Document

The Inquiry finds that from 10 July 2007 to 30 September 2008, INBS failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. Accordingly, the Inquiry finds that a contravention of Part 1 of the 2005 Regulatory Document occurred.

Finding in relation to Mr Purcell's alleged participation

9.276 In considering Mr Purcell's participation in SPC 5, which involves the failure of the Credit Committee to perform four specific functions set out in the terms of reference, the Inquiry has considered Mr Purcell's opening statement and closing submissions but make the preliminary point that insofar as Mr Purcell was found to have participated in any of the contraventions in SPC 5, this participation was based on his membership of the Board of INBS and not on his personal role within INBS.

9.277 The Inquiry agrees with Mr Purcell's evidence that with respect to the recommendation in the 2004 KPMG Management Letter, that the results of credit reviews should be referred to the Credit Committee, he was entitled to rely on assurances provided to the head of compliance by Mr McMenemy. The Inquiry does not believe that it is reasonable to expect that Mr Purcell would look beyond the assurances given by Mr McMenemy and inspect the minutes of the Credit Committee for himself.

9.278 The correspondence from the Financial Regulator dated 20 November 2006 (as outlined at paragraph 9.56 et seq. above) puts Mr Purcell on notice that the Credit Committee was not functioning appropriately. The findings contained in the 20 November 2006 letter should have raised immediate concerns and the Board should have taken responsibility to ensure that the issues identified were appropriately dealt with. Not only did this letter identify issues with regard to the terms of reference of the Credit Committee, but it identified extremely serious shortcomings in the operation of the Credit Committee. It must have been apparent to the Board that Mr Fingleton had not been engaging with the Credit Committee and therefore could not be relied upon to provide accurate responses to the concerns raised by the Financial Regulator. In such circumstances, it was not enough to allow matters to be handled in the same way as they previously had been. Mr Purcell's responsibility arises from his membership of the Board. The first line of responsibility lies with Mr Fingleton, it is then a matter for the Audit Committee and the non-executive directors. Ultimately, however, responsibility rests with the Board to ensure that the Financial Regulator is provided with full and accurate information.

9.279 The Inquiry considered the evidence of Mr Horan in relation to the high degree of reliance and trust placed on board members in a "*principles-based*" regulatory framework, as being of particular significance. The Inquiry believes that the Board's responsibility in such a regulatory environment was significant and required a more "*hands-on*" approach than that displayed by the Board.

9.280 In respect of the four particular functions identified in SPC 5, the Inquiry makes the following findings with respect to participation by Mr Purcell:

SPC 5.1 Allegation

9.281 This issue was not raised in any contemporaneous documents before the 2008 Internal Audit Report, which is close to the end of the Review Period.

- 9.282 However, it was raised in Financial Regulator Correspondence on 20 November 2006 and 14 March 2007, as outlined at paragraph 9.56 et seq. above. This correspondence specifically listed the four items in the terms of reference and stated that there was no evidence *“from a review of the minutes”* that the Credit Committee was performing its credit risk management role i.e. reviewing arrears and non-performing loans. The 20 November 2006 letter stated: *“...the Terms of Reference sets out the credit risk management role of the committee e.g reviewing relevant MIS reports, reviewing arrears and non-performing loans etc There is no evidence from a review of the minutes of the committee that it is performing this role. ...There is no reporting line from the Credit Committee to the Board in relation to the credit risk management role of the committee”*.²⁸⁹
- 9.283 As outlined at paragraph 9.58 above, Mr Purcell sent the letter of 20 November 2006, together with the INBS reply of 31 January 2007, to the non-executive directors of the Board. The response stated that *“All reports submitted to and reviewed by the credit committee will be minuted in the minutes of the committee”*.²⁹⁰
- 9.284 When the Financial Regulator followed up on this and asked, in its letter dated 14 March 2007, from what date the Credit Committee would minute reports submitted, the INBS response, dated 17 May 2007, was: *“The Credit Committee reviews all reports submitted to it and will minute it from June 2007”*.²⁹¹
- 9.285 Mr Purcell has given evidence that he did not check the minutes of the Credit Committee after sending the letter of 31 January 2007 or the response of 17 May 2007, but relied on information provided by Mr McMEnamin.
- 9.286 The Inquiry finds that INBS was in breach of this policy requirement. The Inquiry also finds that because of the nature of the correspondence with the Financial Regulator on the matter, as outlined above, the Board did participate in this contravention, and as a member of the Board Mr Purcell is found to have participated in this contravention.

²⁸⁹ Letter from Yvonne Madden, Financial Regulator, to Michael Fingleton, INBS, dated 20 November 2006, page 11 (Doc ID: 0.7.120.519059).

²⁹⁰ Letter from Michael Fingleton, INBS, to Yvonne Madden, Financial Regulator, dated 31 January 2007, page 5 (Doc ID: 0.7.120.443254).

²⁹¹ Letter from Michael Fingleton, INBS to Yvonne Madden, Financial Regulator, dated 17 May 2007, page 3 (Doc ID: 0.7.120.443301).

9.287 Accordingly, for the reasons set out above, the Inquiry finds that the allegation of participation by Mr Purcell in SPC 5.1, and in the commission by INBS of SPCs 5(a), 5(b) and 5(c), is proven.

SPC 5.2 Allegation

9.288 This issue was raised in the 2004 KPMG Management Letter, the 2005 KPMG Management Letter and 2008 Internal Audit Report. The 2004 KPMG Management Letter recommended that: *“management should now consider the merits of formally reporting the results of credit reviews performed by the Credit Review Officer to the credit committee on a quarterly basis”*. INBS’s Management Response was that Credit Review Reports would be submitted to the Credit Committee on a quarterly basis.²⁹²

9.289 In an update to the Financial Regulator, dated 22 December 2005, INBS stated that the first report was submitted to the Credit Committee in October 2005 and that the credit review officer would monitor the results of action steps and ensure that the recommendations are implemented. The Financial Regulator had asked whether the credit review officer had begun the process of monitoring and implementing any recommendations made by the Credit Committee following the Credit Review Report. The response from INBS was: *“The credit review officer has commenced following up on queries raised by the Credit committee”*.²⁹³

9.290 This was, of course, an incorrect statement. As outlined in the body of this chapter, 89 Credit Review Reports were forwarded to Mr McMenemy by the credit review officer, Mr Casey, by email dated 4 October 2005. However, as testified to by Mr McMenemy, he never submitted these reviews to the Credit Committee. He sent an email to Ms van der Berg, dated 21 December 2005, stating that these 89 Credit Review Reports had been discussed by the Credit Committee. Evidence from former Credit Committee members and from the minutes of the Credit Committee meetings show that this did not occur.

9.291 When this item was raised in the 2005 KPMG Management Letter, its status was listed as *“Closed”*. The Inquiry does not find that Mr Purcell had any input into

²⁹² 2004 KPMG Management Letter, page 4 (Doc ID: 0.7.120.55765).

²⁹³ Letter from Ita Rogers, INBS, to Joyce Sharkey, dated 22 December 2005, page 2 of 7 (Doc ID: 0.7.120.872863).

this response but would have relied, and would have been entitled to rely, on information from the department head, in this case Mr McMEnamin.

- 9.292 The matter was raised in Financial Regulator Correspondence dated 20 November 2006. As outlined above, that letter stated: *“There is no evidence from a review of the minutes of the committee that it was reviewing reports produced by the Credit Review function”*. As further outlined above, the Management Response was that *“All reports submitted to and reviewed by the credit committee will be minuted in the minutes of the committee”*. The issue of credit reviews was not specifically raised in the follow-up letter from the Financial Regulator, dated 14 March 2007, but that letter did refer to the *“review role”* of the Credit Committee. INBS’s response was to state that all reports would be minuted from June 2007.
- 9.293 Following an inspection by the Financial Regulator conducted between 4 and 14 December 2007, the Financial Regulator issued a post-inspection letter dated 8 February 2008.²⁹⁴ This letter identified that the results of credit reviews were not being provided to the Credit Committee. The INBS response dated 21 April 2008 stated: *“Credit risk review reports will be submitted to the Credit Committee when review are carried out”*.²⁹⁵ The timeframe for completing this was given as May 2008, however there is no evidence from the minutes or packs of the Credit Committee meetings that this was ever done.
- 9.294 Credit Review Reports were never reviewed by the Credit Committee at any time during the Review Period. Whilst the Board was entitled to rely on Mr McMEnamin’s assertion that this was being done with respect to the 2005 KPMG Management Letter, the fact that the Financial Regulator could, by simply inspecting Credit Committee meeting minutes, establish that it was not being done was significant. Contrary to what was said by the head of commercial lending, the Board failed to ensure that the results of credit reviews were being reviewed by the Credit Committee, whilst assuring the Financial Regulator that this was being done.

²⁹⁴ Letter from Mary Burke, Financial Regulator, to Michael Walsh, INBS, dated 8 February 2008 (Doc ID: 0.7.120.526582).

²⁹⁵ Letter from Michael Walsh, INBS, to Mary Burke, Financial Regulator, dated 21 April 2008, page 4 (Doc ID: 0.7.120.290839-000001).

- 9.295 The Inquiry has found that INBS was in breach of this policy requirement. The response of the Board to Financial Regulator Correspondence on this matter amounts to participation in this breach by Mr Purcell as a member of the Board.
- 9.296 Accordingly, for the reasons set out above, the Inquiry finds that the allegation of participation by Mr Purcell in SPC 5.2, and in the commission by INBS of SPCs 5(a), 5(b) and 5(c), is proven.

SPC 5.3 Allegation

- 9.297 This issue was not raised in any contemporaneous documents before the 2008 Internal Audit Report, which is close to the end of the Review Period.
- 9.298 It was raised in Financial Regulator Correspondence, as stated above. The letter of 20 November 2006 noted that reports were not reviewed by the Credit Committee. In response to the follow-up letter from the Financial Regulator, INBS stated that these reports would be reviewed and minuted from June 2007. The issue was not raised again by the Financial Regulator following the inspection of INBS between 4 and 14 December 2007, although the minutes of the Credit Committee meetings would have shown that these reports had not been reviewed, or if they had, that the review was not minuted.
- 9.299 The Inquiry has found that INBS was in breach of this policy requirement. However, the Inquiry finds that the limited correspondence with the Financial Regulator on the matter does not amount to participation by the Board in this breach and therefore there can be no finding of participation against Mr Purcell.
- 9.300 Accordingly, for the reasons set out above, the Inquiry finds that the allegation of participation by Mr Purcell in SPC 5.3, and in the commission by INBS of SPCs 5(a), 5(b) and 5(c), is not proven.

SPC 5.4 Allegation

- 9.301 This issue was not raised in any contemporaneous documents and was not directly raised by the Financial Regulator in correspondence. It was, however, clearly stated in the terms of reference of the Credit Committee.
- 9.302 The Inquiry has found that INBS was in breach of this policy requirement. However, the Inquiry finds that because this issue was not brought to the

attention of Mr Purcell with sufficient clarity, he is found not to have participated in this breach.

9.303 Accordingly, for the reasons set out above, the Inquiry finds that the allegation of participation by Mr Purcell in SPC 5.4, and in the commission by INBS of SPCs 5(a), 5(b) and 5(c), is not proven.

CHAPTER 10

SPC 6

INTRODUCTION

10.1 SPC 6 relates to INBS's alleged failure to ensure that certain reports relevant to commercial lending and credit risk management were provided to INBS's Board in accordance with INBS's internal policies.

10.2 The three individual SPCs are as follows:

SPC 6 (a)

It is suspected that from 21 December 2005 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to INBS's Board in accordance with INBS's internal policies, and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain persons concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 6 (b)

It is suspected that from 21 December 2005 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to INBS's Board in accordance with INBS's internal policies, and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by section 76(1) of the 1989 Act. It is also suspected that certain persons concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 6 (c)

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to INBS's Board in accordance with INBS's internal policies, and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain persons

concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 6 ALLEGATIONS

- 10.3 The following four allegations of non-compliance by INBS with its internal policies, were advanced in respect of SPC 6.¹
- (a) SPC 6.1 alleged that the Board did not receive reports on exceptions to commercial lending policies.
 - (b) SPC 6.2 alleged that the Board did not receive the required quarterly commercial lending report (**Quarterly Reports**) for the following five quarters: June 2007; December 2007; March 2008; June 2008; and September 2008.
 - (c) SPC 6.3 alleged that the Board did not receive a report on the results of annual credit risk stress tests, which were to have been completed annually.
 - (d) SPC 6.4 alleged that the Board did not receive reports on compliance with geographic concentration risk limits.
- 10.4 In the Investigation Report it was alleged that apart from an obligation to comply with INBS policy during the Review Period, the Board itself should have operated as a key internal control within INBS to monitor and manage credit risk. It was alleged that INBS failed to manage its commercial lending and business in accordance with its internal policies relating to the functioning of the Board and reporting to the Board – and so failed to put in place, establish or maintain systems of control in relation to the functioning of the Board. It was alleged this would constitute a breach of the relevant legislative provisions and relevant condition on INBS’s authorisation set out above.
- 10.5 In paragraph 11.7 of the Investigation Report, it was alleged that the failure to receive and consider these reports constituted a failure to follow internal policies, as a result of which the Board did not receive certain information which would have assisted it in the performance of the Board’s other roles and functions. In particular, it was alleged that each of the reports listed at paragraph 10.3 above provided contextual information for the Board that would have served to inform the Board when performing its roles in

¹ The SPC 6 Allegations are outlined in Chapter 11, paragraph 11.5, of the Investigation Report (Doc ID: RDU_REL-000000035).

relation to: (i) the setting of strategy and risk appetite; and (ii) approving commercial loans.

- 10.6 The provision of this information to the Board should be seen in the context of the significant portion of INBS's overall loan book by value that was comprised of commercial lending. The Investigation Report identified that from 2004 to 2008, the commercial loan book grew from €3,591 million to €8,183 million, and that by the end of 2008, the commercial loan book represented 78% of the total loan book of INBS.²
- 10.7 The Investigation Report provided an explanation regarding each of the reports listed at paragraph 10.3 above. The following descriptions outlined in the Investigation Report have not been disputed and provide a useful overview of what these reports were intended to inform the Board of³:
- (a) Reports on exceptions to lending policies provided an aggregated view regarding the extent of lending which was exceptional to lending policy, and the nature of such exceptions. A report on exceptions to commercial lending policies could have taken varying forms. For example, INBS did prepare reports on exceptions to residential lending policy and these reports provided details of each loan approved as an exception, categorised in relation to the exception type e.g. "affordability", "income limit", "LTV" etc. The residential exceptions report set out the nature of the exception and the rationale for approving it. It also provided a subtotal of the value of each exception category along with the sum of all exceptions included in the report for the period.
 - (b) Quarterly Reports provided the Board with details of INBS's largest exposures, information on the sectoral and geographic profile of the commercial loan book, details regarding commercial loan provisions and commercial loans with moratoria.
 - (c) The purpose of performing a credit risk stress test was to identify possible events or future changes in economic conditions that may have unfavourable effects on the credit institutions credit exposures.
 - (d) Geographic lending concentration arises where a significant proportion of a lending portfolio is in a common geographic location. A significant geographic

² Investigation Report Chapter 11, paragraph 11.8 (Doc ID: RDU_REL-000000035).

³ Investigation Report Chapter 11, paragraph 11.9 (Doc ID: RDU_REL-000000035).

concentration within the lending portfolio gave rise to a concentration risk that required to be monitored.

10.8 As outlined above, the failure to ensure that these reports were provided to INBS's Board in accordance with internal policies would, it is alleged, have had a potential impact on the Board's role and function in relation to the setting and monitoring of strategy, risk appetite and loan approval. This is the issue that the Inquiry has examined in the following paragraphs.

10.9 The relevant internal policy provisions which INBS and Mr Purcell are alleged to have breached under SPC 6 are identified in Appendix 16 to this Findings Report, and are summarised under each of the SPC 6 Allegations below.

RELEVANT INFORMATION AND SOURCES OF EVIDENCE

10.10 In addressing the SPC 6 Allegations, the following information and sources of evidence were considered by the Inquiry:

- (a) Relevant INBS policy documents.
- (b) Contemporaneous Reports.
- (c) Corporate governance documentation.
- (d) Financial Regulator Correspondence.
- (e) Interview evidence⁴ and Section 41A Responses (from individuals interviewed by Enforcement in the course of its Investigation) which were opened to witnesses.
- (f) Witness evidence.
- (g) Mr Purcell's replies to Examination and Investigation Letters.
- (h) Mr Purcell's submissions.⁵
- (i) Mr Purcell's evidence.

⁴ Interviews were conducted by Authorised Officers of the Central Bank during the period February 2013 to January 2014 to assist with the Investigation. Transcripts of these interviews were provided to the Inquiry.

⁵ As outlined in Chapter 2, paragraph 2.5, Mr Purcell represented himself during the Inquiry and accordingly made written and oral submissions to the Inquiry, in addition to and distinct from the evidence he provided under oath and in his witness statements.

SPC 6.1

10.11 SPC 6.1 alleged that the Board did not receive reports on exceptions to commercial lending policies.

Relevant INBS policy documents

10.12 The policy provisions relating to the provision of reports on exceptions to the Board are:

- (a) Section 2 of the 2005 Impairment Provisioning Policy⁶;
- (b) Section 2 of the 2006 Impairment Provisioning Policy⁷;
- (c) Page 6 of the 2006 Notes on the Implementation of Impairment Provisioning Policy⁸;
- (d) Section 2 of the 2007 Impairment Provisioning Policy⁹;
- (e) Page 6 of the 2007 Notes on the Implementation of Impairment Provisioning Policy¹⁰;

10.13 These policies are set out in more detail at Appendix 16 of this Findings Report. For convenience they are summarised below.

10.14 The 2005, 2006 and 2007 Impairment Provisioning Policies stated that INBS monitored and managed credit risk through *inter alia*:

“Regular reports to the management and the Board on:

...

- *Exceptions to lending policies...”*¹¹

⁶ 2005 Impairment Provisioning Policy, page 1 (Doc ID: 0.7.120.25083).

⁷ 2006 Impairment Provisioning Policy, page 1 (Doc ID: 0.7.120.449670).

⁸ 2006 Notes on the Implementation of Impairment Provisioning Policy, page 6 (Doc ID: 0.7.120.449946).

⁹ 2007 Impairment Provisioning Policy, page 1 (Doc ID: 0.7.120.449577).

¹⁰ 2007 Notes on the Implementation of Impairment Provisioning Policy, page 6 (Doc ID: 0.7.120.449696).

¹¹ 2005 Impairment Provisioning Policy, page 1 (Doc ID: 0.7.120.25083).

- 10.15 The 2006 and 2007 Notes on the Implementation of Impairment Provisioning Policy repeat this provision except that it is also stated in respect of reports on exceptions to lending policies that reasons should be given for departure.¹²

Corporate governance documentation - Board meeting packs and minutes

- 10.16 The Inquiry considered the Board meeting packs and minutes during the Review Period and found that no reports in respect of exceptions to commercial lending policies were contained in the Board packs. The only reports on exceptions found to have been presented to the Board during the Review Period related to residential lending.

Interview evidence and responses to Section 41A Notices

Darragh Daly

- 10.17 In an interview of Mr Darragh Daly, former head of credit risk in INBS, by Authorised Officers of the Central Bank on 20 February 2013, Mr Daly stated that: *“the only exception reporting that I am aware of is strictly in relation to residential lending”* and, in response to a follow-up; *“I’m not aware of any exceptional reporting on commercial lending”*.¹³
- 10.18 In his Section 41A Response to the question as to whether he was aware of anyone raising concerns about the significant level of credit approvals being granted which constituted exceptions to lending policy, Mr Daly stated that whilst enhanced reporting was applied in respect of exceptions to residential lending from 2003 onwards, he did not recall this issue been raised in respect of commercial lending.¹⁴

Witness evidence

Darragh Daly

- 10.19 Mr Daly gave evidence to the Inquiry during the SPC 6 module hearing on 10 April 2019. On being asked about his role as credit risk manager, he confirmed that he

¹² 2006 Notes on the Implementation of Impairment Provisioning Policy, page 6 (Doc ID: 0.7.120.449946); 2007 Notes on the Implementation of Impairment Provisioning Policy, page 6 (Doc ID: 0.7.120.449696).

¹³ Transcript of Interview with Mr Darragh Daly, dated 20 February 2013, page 52 line 25 to page 53 line 8 (Doc ID: 0.7.120.683747).

¹⁴ Darragh Daly Section 41A Response, dated 22 February 2012, pages 4 and 5 of 8 (Doc ID: RDU_REL12-00000472).

reported to the Managing Director and “*would have had probably daily interactions*” with him.¹⁵

10.20 In relation to reporting commercial exceptions to the Board, Mr Daly confirmed what he had stated in the interview referenced at paragraph 10.17, i.e., that he was “*not aware of either a requirement for or the reporting of commercial lending by [sic] exceptions at any time*”.¹⁶ He further confirmed that the only exceptions reporting he was aware of was in relation to residential lending and he indicated that he had involvement with that in his former role (prior to his appointment as credit risk manager in 2006). He indicated that from 2006 onwards, following his appointment as credit risk manager, he did not have any engagement with reporting exceptions to the Board.

10.21 Mr Daly was referred to the 2006 Notes on the Implementation of Impairment Provisioning Policy¹⁷ that was approved by the Board in November 2006. Mr Daly stated that given he was five months into his new role, and they were “*grappling trying to understand elements of it*”, he did not believe he “*would have been aware or been exposed or had any input into*” this policy document.¹⁸ Mr Daly was referred in particular to page 6 of the document which stated that “*the Society monitors and assesses the level of credit risk through...*” and it gives a number of bullet points, one of which is “*Regular reports to the Board on... Exceptions to Lending Policy, giving reasons for departure*”.¹⁹ It was noted during the hearing that the document suggests that there was exceptions reporting to the Board taking place at that time and Mr Daly was asked whether it was his understanding that this was taking place. Mr Daly reiterated that “*the only exceptions that I was ever aware of or heard any reference to, was in respect of residential lending exceptions*”.²⁰

David Brophy

10.22 Mr David Brophy gave evidence to the Inquiry during the SPC 6 module hearing on 11 April 2019.²¹ Mr Brophy was a non-executive director in INBS from February 2006 until April 2009. During the course of his evidence he was referred to the 2006 Notes on

¹⁵ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 18 line 8 (Doc ID: RDU_SPC6FT_D7-000000001).

¹⁶ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 37 lines 7 to 10 (Doc ID: RDU_SPC6FT_D7-000000001).

¹⁷ 2006 Notes on the Implementation of Impairment Provisioning Policy (Doc ID: 0.7.120.449946).

¹⁸ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 38 lines 17 to 18 (Doc ID: RDU_SPC6FT_D7-000000001).

¹⁹ 2006 Notes on the Implementation of Impairment Provisioning Policy, page 6 (Doc ID: 0.7.120.449946).

²⁰ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 39 lines 23 to 25 (Doc ID: RDU_SPC6FT_D7-000000001).

²¹ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 7 to 66 (Doc ID: RDU_SPC6FT_D8-000000001).

the Implementation of Impairment Provisioning Policy²² and he was asked for his view on what the reports on exceptions to lending policy encompassed. He stated:

“...I can’t see this applying to anything other than to residential lending –

...

Sorry, because of the approach that the Society took to approving commercial loans. I mean the loans of a million plus were brought to the Board for approval. Each loan that was sent up for approval, having gone through the process, was itself the subject of a paper... So if there was something... that was an exception in relation to that particular loan, it would have been highlighted or should have been highlighted in that, so the Board would have been taking a knowing decision. So, I’m just not sure...what a report on exceptions to commercial lending would have included or informed us that we didn’t already know”.²³

10.23 Mr Brophy was then asked whether his interpretation of the relevant policy for each of the years 2005, 2006 and 2007 was that it did not apply to commercial exceptions, to which he replied *“Well, my honest answer is I just can’t recall”*.²⁴

10.24 Mr Brophy was referred to page 23 of the 27 June 2007 Credit Risk Management Policy, which stated that: *“The Society monitors all exceptions to its credit lending policies and reports these to the Board”*. It further stated on the same page, in relation to residential lending, that: *“A monthly report detailing exceptions to the Residential Lending Policy is submitted to the Board”*; and stated in relation to commercial lending that: *“All exceptions are brought to the attention of the Board”*.²⁵

10.25 Mr Brophy was asked whether the requirement to bring exceptions to the attention of the Board was for loans that were normally approved by the Board or loans that were below the threshold for approval, and he indicated that *“it was intended to apply to... all loans, but primarily loans over a million because that’s what they were. There were*

²² 2006 Notes on the Implementation of Impairment Provisioning Policy (Doc ID: 0.7.120.449946).

²³ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 11 to 12 (Doc ID: RDU_SPC6FT_D8-000000001).

²⁴ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 16 line 1 (Doc ID: RDU_SPC6FT_D8-000000001).

²⁵ 27 June 2007 Credit Risk Management Policy (Doc ID: 0.7.120.431329).

very few below a million” and that it was “consistent with the fact that I do recall there being an exception at some point”.²⁶

Michael Walsh

10.26 Dr Michael Walsh was chairman of the Board of INBS during the Review Period. He gave evidence to the Inquiry during the SPC 6 module hearing on 11 April 2019.²⁷ During his evidence he was referred to the 2005 Impairment Provisioning Policy which provided for “Regular reports to the management and the Board on: ...Exceptions to lending policies”.²⁸

10.27 It was put to Dr Walsh that this did not seem to be confined to exceptions to lending policies on the residential element, but it appeared to be the case that the only reference in the Board meeting minutes or packs during the relevant period was to exceptions to residential lending policies. Dr Walsh stated that:

“all of the commercial loans were actually coming to the Board for approval, ... So, you know, I would have viewed any commercial loan that was done and approved by the Board as to no longer be what I would describe as an exception. You know, an exception is really where somebody is actually being forced to make, at least in my world, forced to make decisions above and beyond their own discretions”.

Whereas, he indicated “the residential loans wouldn't have been coming to the Board for approval”.²⁹

10.28 It was put to Dr Walsh that:

“if effectively most commercial lending was approved at Board level, given the scale of the lending on the commercial side as opposed to the residential side, why was there a policy stipulating there'll be a regular report to the Board on exceptions to lending policies generally to include the commercial side?”³⁰

10.29 It was further noted by the LPT that the subsequent versions of the Impairment Provisioning Policies in 2006 and 2007 reiterated the requirement for a regular report to the Board on exceptions to lending policies, when throughout that period the only

²⁶ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 36 line 14 to 21 (Doc ID: RDU_SPC6FT_D8-000000001).

²⁷ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 6 to 87 (Doc ID: RDU_SPC6FT_D6-000000001).

²⁸ 2005 Impairment Provisioning Policy, page 1 (Doc ID: 0.7.120.25083).

²⁹ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 12 (Doc ID: RDU_SPC6FT_D6-000000001).

³⁰ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 12 (Doc ID: RDU_SPC6FT_D6-000000001).

exceptions being reported to the Board were on the residential side. Dr Walsh was asked whether the Board considered that the policy was too broad and that the Board did not need to get regular reports on exceptions to commercial lending because it was making those decisions. Dr Walsh had stated that *“all commercial lending that was approved by the Board... was outside the policies... the Board knew exactly what it was doing at the time”* and also that *“from the Board point of view the Board wouldn't have viewed what the Board was deciding as being exceptions”*. Dr Walsh accepted the LPT's view that, *“the need to have a policy of that breadth going beyond residential lending is simply otiose”*, and it was not needed at all, but noted the exception to this if there were decisions being taken on the commercial side that were not coming to the Board. He subsequently indicated that if there was an exception to lending policy on the commercial side made below Board level he would expect that to be reported to the Board, giving reasons for the departure from policy.³¹

10.30 It was noted that the 2005 Impairment Provisioning Policy did not seem to have been complied with in the two ways identified above (i.e. reporting on exceptions to lending policies and sectoral and geographic concentration), and Dr Walsh was asked whether it occurred to him, as the chairman or as a Board member, that this was happening. He indicated that *“the Board was actually making decisions in relation to the commercial lending”* and *“I would have expected to be notified if things had actually breached that policy more than anything”*, and he confirmed that nobody had said to him that the 2005 Impairment Provisioning Policy was not being carried out fully.³²

10.31 There were two subsequent iterations of the Impairment Provisioning Policy (in 2006 and 2007) which had similar provision for regular reports on exceptions to lending policies and sectoral and geographic concentration. Dr Walsh agreed this would indicate that the Board had come to the view on each occasion that the policy was still appropriate. Regarding the 2007 Impairment Provisioning Policy, Dr Walsh confirmed that this policy was adopted on 27 November 2007 at a time when the decision to restrict lending (which was ultimately made in December 2007) was on the horizon. Dr Walsh further confirmed that the 2007 Impairment Provisioning Policy required that the reports on exceptions and reasons for exceptions and the reports on sectoral and geographical concentration be provided at monthly Board meetings. He accepted that this was not happening and suggested that assurances may have been given by

³¹ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 12, 13 and 33 (Doc ID: RDU_SPC6FT_D6-000000001).

³² Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 19 line 7 to 29 (Doc ID: RDU_SPC6FT_D6-000000001).

management that these reports would be provided in the future. He said that the Board would have expected these reports to be provided to it, and that the primary responsibility for providing these reports rested with the executive directors.³³

10.32 Dr Walsh accepted that while it was not unusual for stress tests to be based on a period sometime back, as it was quite an involved exercise, for the purposes of the regular reports stipulated in the Impairment Provisioning Policies you would expect the information relied on to be up to date (within the last six to 12 months). Dr Walsh accepted that the stress test was not a substitute for the requirements of the Impairment Provisioning Policy. Dr Walsh noted that at that time, in February 2007, management would have been compiling a lot of the information for the purpose of the Project Harmony Report³⁴, but he accepted that this report (which effectively was a snapshot of the particular period of time up to December 2006), was also not a substitute for the requirements of the Impairment Provisioning Policy.³⁵

10.33 Mr Purcell commenced his cross-examination of Dr Walsh by referring Dr Walsh to the December 2005 Impairment Provisioning Policy document and highlighting section 2, which concerned how INBS managed and monitored credit risk.³⁶ He put it to Dr Walsh that having regard to the policy document which had been sent to the Board, and the Board's knowledge and intentions, that a requirement for a report on exceptions to commercial lending was never introduced. Dr Walsh agreed, and re-iterated his view that "*given the commercial decisions that were being taken at Board level, I [he] wouldn't have viewed them as being exceptions*". Dr Walsh affirmed under questioning that the document was not introducing a new policy.³⁷

10.34 Prior to Mr Purcell's cross-examination, Dr Walsh was referred to the September 2008 Deloitte Review, which included a commitment from management that there would be a Quarterly Report made to the Board by quarter 3 of 2008 on various items including exceptions.³⁸ Dr Walsh confirmed that the Board was happy to proceed with the implementation of Deloitte's recommendation, despite the turmoil in the economy and other clear priorities at that time. He said that throughout that period and beyond it to

³³ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 59, et seq. (Doc ID: RDU_SPC6FT_D6-00000001).

³⁴ The Project Harmony Report was a vendor due diligence report prepared by KPMG and referred to a period ending in December 2006 (Doc ID: 0.7.120.55785).

³⁵ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 39 to 52 (Doc ID: RDU_SPC6FT_D6-00000001).

³⁶ 2005 Impairment Provisioning Policy (Doc ID: 0.7.120.25083).

³⁷ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 90 to 91 (Doc ID: RDU_SPC6FT_D6-00000001).

³⁸ September 2008 Deloitte Review, page 23 (Doc ID: 0.7.120.430877).

the start of 2009, both he and the Board were of the view that the policies discussed above were appropriate for the business of INBS.³⁹

10.35 Dr Walsh was also asked by the Inquiry Members if the decision made by the Board on 17 December 2007 to cease lending related to all lending or just commercial lending. Dr Walsh confirmed that it was just commercial lending, but that they had stopped actively marketing residential and domestic loans. It was put to Dr Walsh that this was slightly incongruous, where at the same meeting that that decision to halt lending was made, i.e. the 17 December 2007 Board meeting, the amended residential and commercial lending policies were also reviewed and approved.⁴⁰ Dr Walsh indicated that this was done where it was felt that amendments to the policy were required where prospective acquirers of INBS thought that “*the way we were doing (sic.) was abnormal*”, and so to bring it in line “*So what happened was, the policy was amended, and yet despite the policy being amended, you know, the Board really sought to, you know, bring back, I suppose, an element of control to itself, so it was over viewing things*”.⁴¹

10.36 Dr Walsh also commented, in response to questioning from the Inquiry Members, that the decision to delegate the power to approve loans to the Credit Committee caused “*a lot of conflict in the January meeting in particular*”, where following the Board’s December decision to cease commercial lending, “*there was an awful lot of lending done between that period of time*” by the Credit Committee.⁴²

Alleged participation by Mr Purcell

10.37 The allegation of participation by Mr Purcell in SPC 6 was identified in the Investigation Report as threefold, and was summarised by the LPT as follows⁴³:

- (a) Mr Purcell, as a Board member, would have been aware (from the Contemporaneous Reports received by him and the correspondence issued by him to the Financial Regulator) that the Board was not receiving all the information required by policy in order to perform its duty to oversee credit risk,

³⁹ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 79 et seq. (Doc ID: RDU_SPC6FT_D6-000000001).

⁴⁰ Minutes of Board meeting, dated 17 December 2007, pages 12 to 13 (Doc ID: 0.7.120.38856).

⁴¹ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 97 line 17 et seq. (Doc ID: RDU_SPC6FT_D6-000000001).

⁴² Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 97 (Doc ID: RDU_SPC6FT_D6-000000001).

⁴³ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, pages 98 to 99 (Doc ID: RDU_SPC6FT_D2-000000001).

and he had responsibility, as a Board member, to ensure that he received the relevant reports required by policy in order to fulfil his role as a Board member.

- (b) Mr Purcell, as a member of senior management, had responsibility to ensure that the Board received the relevant reports and that the policy requirements were implemented.
- (c) Mr Purcell was an attendee of Audit Committee meetings and would have had responsibility to ensure that actions were undertaken to address audit findings made in respect of the provision of the relevant reports.

10.38 This Findings Report sets out Mr Purcell's roles and responsibilities within INBS at Chapter 2. With respect to participation in the SPC 6 Allegations, the Investigation Report stated:

"11.156 The Board was responsible for overseeing credit risk. Mr Purcell, as a Board member, had a duty to ensure he was provided with all information required to perform his role including reports which were required by policy. In approving those policies, the Board had decided that this information was necessary in order to discharge its duties. As a member of the Board Mr Purcell would have been aware that the Board was not receiving all the information required by policy to perform its duties.

11.157 Prior to 17 December 2007 the Board was also responsible for approving commercial loans exceeding authority levels which had been delegated to the Credit Committee between 1 August 2004 and 17 December 2007 under the Credit Committee Terms of Reference. The receipt of the reports [the subject matter of SPC 6] would have provided additional information and context for the Board in their decision to approve or reject specific commercial loan applications.

11.158 As a Board member Mr Purcell would have known that information required by policy was not being provided to the Board, in addition he received Contemporaneous Reports prepared by KPMG (as external auditor) and Deloitte (as internal auditor) raising concerns in relation to reporting to the Board. In particular, Contemporaneous Reports that Mr Purcell received highlighted that the quarterly commercial lending report and annual report on credit risk stress testing had not been provided to the Board...

11.159 Mr Purcell had a dual responsibility in this regard: 1) as a Board member, he was responsible for ensuring that he received the relevant credit risk reports, as required by policy in order to fulfil his role as a Board member 2) as a member of senior management, he had a responsibility to ensure that the Board was provided with the relevant credit risk reports and that the policy requirements in this regard were implemented. In addition... Mr Purcell corresponded with the Financial Regulator regarding preparation of credit risk reports and the submission of a report on the results of an annual stress test to the Board and therefore had knowledge of INBS's failure to do so.

11.160 As a member of senior management and as an executive director who attended audit committee meetings Mr Purcell had responsibility for ensuring actions were undertaken to address audit findings in respect of the provision of reports to the Board in a timely manner. Mr Purcell also had a duty, as an executive director and as a member of senior management, to ensure that issues in respect of the provision of reports to the Board which were highlighted to the Board (for example, in Contemporaneous Reports or regulatory correspondence) were appropriately addressed by the business".⁴⁴

Mr Purcell's submissions

10.39 In relation to the allegation that the Board did not receive reports on exceptions to commercial lending policies, Mr Purcell, during his submissions to the Inquiry on the second day of the SPC 6 module hearing on 3 April 2019, stated that the alleged non-compliance with relevant internal policies was based on a misunderstanding of section 2 of the 2005 Impairment Provisioning Policy.⁴⁵⁴⁶ He noted that he was involved in preparing the Impairment Provisioning Policies and the Notes on the Implementation of Impairment Provisioning Policy. He submitted that the reference in section 2 to exceptions to lending policies was in the context of a number of reports that existed at the time which were sent to the Board, and this reference was not seeking to bring into existence a new report or any addition to an existing report. He stated that the reports on exceptions to lending policies that went to the Board related to residential lending only and not commercial lending and, as such, the Investigation Report was incorrect in stating that the Impairment Provisioning Policy required reports on exceptions to

⁴⁴ Investigation Report, Chapter 11, paragraph 11.156 to 11.160 (Doc ID: RDU_REL-000000035).

⁴⁵ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 107 to 109 (Doc ID: RDU_SPC6FT_D2-00000001).

⁴⁶ 2005 Impairment Provisioning Policy, page 1 (Doc ID: 0.7.120.25083).

commercial lending policies to be prepared and submitted to the Board. Accordingly, he submitted that the Impairment Provisioning Policies were not breached, as alleged.

10.40 In his written closing submissions, dated 22 May 2020⁴⁷, Mr Purcell denied participation in the alleged commission by INBS of SPC 6. In relation to the failure of the Board to receive and consider exceptions reports on commercial lending, Mr Purcell repeated his assertion that the reference in the 2005 Impairment Provisioning Policy to exceptions to lending policies was in the context of reports that existed at the time relating to residential lending only. These were sent to management and the Board on a regular basis. The 2005 Impairment Provisioning Policy, he submitted, was not seeking to bring into existence a new report or an addition to an existing report. Accordingly, Mr Purcell submitted that the Investigation Report was incorrect in stating that the Impairment Provisioning Policy required reports on exceptions to commercial lending policy to be prepared and submitted to the Board.⁴⁸

Mr Purcell's evidence

10.41 In his evidence to the Inquiry on the ninth day of the SPC 6 module hearing on 12 April 2019, Mr Purcell confirmed that his interpretation of the requirement in the subsequent 2006 Impairment Provisioning Policy⁴⁹ was the same i.e. that it was also limited to residential lending.⁵⁰ Mr Purcell was then asked about the impact of not having reports on exceptions going to the Board in respect of commercial lending. He responded, as follows:

"...at this stage I can't say exactly what the impact would have been, but, I mean, it wasn't done, it was deemed by others that it was covered in other ways, I think some people said that. But it would have been probably -- if it was there, it would have been a helpful report, but that's... but it wasn't there and it wasn't sort of brought into existence to be there".⁵¹

10.42 Mr Purcell was referred to Mr Brophy's previous evidence on this matter, which was that the Board was giving approvals for the vast majority of commercial lending and, in those circumstances, knew themselves what exceptions they were giving, so it was

⁴⁷ Written Submissions of John S Purcell, dated 22 May 2020 (Doc ID: RDU_REL467-000000002).

⁴⁸ Written Submissions of John S Purcell, dated 22 May 2020, page 1 (Doc ID: RDU_REL467-000000002).

⁴⁹ 2006 Impairment Provisioning Policy (Doc ID: 0.7.120.449670).

⁵⁰ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 45 line 25 (Doc ID: RDU_SPC6FT_D9-000000001).

⁵¹ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 47 line 13 to 20 (Doc ID: RDU_SPC6FT_D9-000000001).

not as important.⁵² Mr Purcell was asked whether having the aggregate information so that the Board could see their overall approach to exceptions, as distinct from their individual decisions on exceptions, may have an impact. Mr Purcell stated that “...*extra good information, timely, proper information is always helpful*”.⁵³

10.43 Mr Purcell was referred to the 27 June 2007 Credit Risk Management Policy that identified an overriding requirement that “*The Society monitors all exceptions to its credit lending policies and reports these to the Board*”.⁵⁴ It was noted that the policy distinguishes between residential lending and commercial lending, in particular it identified that a monthly report detailing exceptions to residential lending policy be submitted to the Board, but in respect of commercial lending that “*All exceptions are brought to the attention of the Board*”.⁵⁵ It was noted by the LPT that one can see how the overriding requirement was done for residential, because there was a monthly report but, Mr Purcell was asked, how was it done for commercial if, as he maintained, there was no policy obliging a monthly report to be done or any report. Mr Purcell indicated that an exception to the loan would be in the CLA and that is how the Board would know about it and “*that was how it was reported*”.⁵⁶

10.44 Mr Purcell was referred to the allegations of participation against him as identified in the Investigation Report and summarised at paragraph 10.37 above.⁵⁷ On the issue of knowledge, Mr Purcell accepted that he knew the reports to the Board were being delayed.⁵⁸

INQUIRY FINDING – SPC 6.1

Finding in relation to INBS

10.45 **The Inquiry is satisfied, based on the evidence above, that the only exception reporting that occurred in INBS was in relation to residential lending. Evidence**

⁵² Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 47 line 21 to 26 (Doc ID: RDU_SPC6FT_D9-000000001).

⁵³ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 48 line 15 (Doc ID: RDU_SPC6FT_D9-000000001).

⁵⁴ 27 June 2007 Credit Risk Management Policy, page 23 (Doc ID: 0.7.120.431329).

⁵⁵ 27 June 2007 Credit Risk Management Policy, page 23 (Doc ID: 0.7.120.431329).

⁵⁶ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 60 to 61 (Doc ID: RDU_SPC6FT_D9-000000001).

⁵⁷ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 61 to 65 (Doc ID: RDU_SPC6FT_D9-000000001).

⁵⁸ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 64 line 16 to 19 (Doc ID: RDU_SPC6FT_D9-000000001).

of former directors indicated that reports on exceptions to commercial lending were not presented to the Board.⁵⁹

- 10.46 The 2005, 2006 and 2007 Impairment Provisioning Policies stated that INBS monitors and manages credit risk through regular reports to the management and the Board on, *inter alia*, exceptions to lending policies. Mr Purcell has contended that the Impairment Provisioning Policies did not create new policy with regard to monitoring and managing credit risk. Rather, he stated, the policy outlined the practice at the time.
- 10.47 The Inquiry finds that the failure by the Board of INBS to consider reports on commercial lending exceptions to lending policy was a breach of its credit risk management responsibilities. However, the Inquiry agrees with Mr Purcell's submission that section 2 of the 2005, 2006 and 2007 Impairment Provisioning Policies was a description of how INBS managed and monitored credit risk and did not create policy in that regard.
- 10.48 The Inquiry finds that there was no breach of policy on the part of INBS in relation to the SPC 6.1 Allegation. Accordingly, the Inquiry finds that there was no breach of the relevant legislative provisions and the condition imposed on INBS's authorisation identified at paragraph 10.2 above and therefore no commission by INBS of SPCs 6(a), 6(b) or 6(c).

Finding in relation to Mr Purcell's participation

- 10.49 In light of the above finding in relation to INBS, the allegation of participation against Mr Purcell accordingly falls away.

SPC 6.2

- 10.50 SPC 6.2 alleged that the Board did not receive the required Quarterly Reports for the following five quarters: June 2007; December 2007; March 2008; June 2008; and September 2008.

Relevant INBS policy documents

- 10.51 The policy provisions relating to the provision of Quarterly Reports to the Board are:

⁵⁹ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 9 et seq. (Doc ID: RDU_SPC6FT_D6-000000001). See also Witness Statement of Michael Walsh, dated 27 March 2018 (Doc ID: RDU_REL72-000000030).

- (a) Section 2 of the 2005 Impairment Provisioning Policy⁶⁰;
- (b) Section 2 of the 2006 Impairment Provisioning Policy⁶¹;
- (c) Page 6 of the 2006 Notes on the Implementation of Impairment Provisioning Policy⁶²;
- (d) Section 2 of the 2007 Impairment Provisioning Policy⁶³;
- (e) Page 6 of the 2007 Notes on the Implementation of Impairment Provisioning Policy⁶⁴;
- (f) Section (iii) of the 31 October 2006 Credit Risk Department Terms of Reference.⁶⁵

10.52 These policies are set out in full at Appendix 16 of this Findings Report. In brief, the 2005, 2006 and 2007 Impairment Provisioning Policies stated that INBS monitors and manages credit risk through *inter alia*:

“Regular Reports to the management and the Board on:

...

- *Quarterly review of commercial lending”*.⁶⁶

10.53 The 2006 and 2007 Notes on the Implementation of Impairment Provisioning Policy repeat this provision.⁶⁷

10.54 The responsibility to prepare the Quarterly Reports was assigned to the credit risk department under section (iii) of the 31 October 2006 Credit Risk Department Terms of Reference, which included the following duty:

“The preparation of quarterly Commercial Lending Reviews for submission to the Board of the Society”.⁶⁸

⁶⁰ 2005 Impairment Provisioning Policy, page 1 (Doc ID: 0.7.120.25083).

⁶¹ 2006 Impairment Provisioning Policy, page 1 (Doc ID: 0.7.120.449670).

⁶² 2006 Notes on the Implementation of Impairment Provisioning Policy, page 6 (Doc ID: 0.7.120.449946).

⁶³ 2007 Impairment Provisioning Policy, page 1 (Doc ID: 0.7.120.449577).

⁶⁴ 2007 Notes on the Implementation of Impairment Provisioning Policy, page 6 (Doc ID: 0.7.120.449696).

⁶⁵ 31 October 2006 Credit Risk Department Terms of Reference, page 9 (Doc ID: 0.7.120.13615).

⁶⁶ 2005 Impairment Provisioning Policy, page 1 (Doc ID: 0.7.120.25083); 2006 Impairment Provisioning Policy, page 1 (Doc ID: 0.7.120.449670); 2007 Impairment Provisioning Policy, page 1 (Doc ID: 0.7.120.449577).

⁶⁷ 2006 Notes on the Implementation of Impairment Provisioning Policy (Doc ID: 0.7.120.449946); 2007 Notes on the Implementation of Impairment Provisioning Policy, page 6 (Doc ID: 0.7.120.449696).

⁶⁸ 31 October 2006 Credit Risk Department Terms of Reference, page 9 (Doc ID: 0.7.120.13615).

Contemporaneous Reports

10.55 INBS's failure to prepare and submit Quarterly Reports to the Board was raised in the following two Contemporaneous Reports prepared by Deloitte:

September 2008 Deloitte Review

10.56 This report identified deficiencies in relation to the reporting and Board oversight of credit risk management and in particular found that there was no evidence of either the Board or the Credit Committee considering the credit risk of INBS. Deloitte recommended that:

"At a minimum the quarterly credit risk reports should be produced and presented for consideration by the Board. In addition the Credit Risk Management function should be providing the Board and credit committee with timely information on the composition of the loan book".⁶⁹

10.57 INBS management responded to this finding and recommendation stating that:

"The quarterly board reporting pack has not been produced since September 2007 due to the Credit Risk Department having to complete other projects and tasks.

From Quarter 3 2008, quarterly Board reports will be provided".⁷⁰

10.58 Although the minutes of an Audit Committee meeting on 4 November 2008⁷¹ and the subsequent Board meeting on 12 December 2008⁷² record that the September 2008 Deloitte Review was discussed, they did not record any specific discussion on Deloitte's finding that the Quarterly Report was not being produced.

10.59 The minutes of the Audit Committee meeting noted that the committee asked the internal auditor to prepare a report for circulation to the Board and the Financial Regulator setting out the reasons why certain of Deloitte's recommendations had not been addressed and what the up to date position was in relation to all recommendations.⁷³ In a memorandum from Mr Killian McMahon, internal auditor, to the Board dated 4 December 2008, the internal auditor stated that Deloitte's

⁶⁹ September 2008 Deloitte Review, page 23 (Doc ID: 0.7.120.430877).

⁷⁰ September 2008 Deloitte Review, page 23 (Doc ID: 0.7.120.430877).

⁷¹ Minutes of Audit Committee meeting, dated 4 November 2008, page 3 recommendation 1 (Doc ID: 0.7.120.56063).

⁷² Minutes of Board meeting, dated 12 December 2008, page 2 (Doc ID: 0.7.120.21207).

⁷³ Minutes of Audit Committee meeting, dated 4 November 2008, page 4 (Doc ID: 0.7.120.56063).

recommendation “*should have been implemented by 30 November 2008 but has not been implemented as Credit Risk have been working on completing reports for PwC*”. He indicated that he would “*follow up on the implementation status of this recommendation in February 2009*”.⁷⁴

2009 Deloitte Review

- 10.60 This report noted the same finding and recommendation with respect to Quarterly Reports as was noted in the September 2008 Deloitte Review.⁷⁵ This indicated that the INBS management commitment in the September 2008 Deloitte Review to prepare Quarterly Reports from quarter 3 2008 had not been implemented, and that the issue raised in the September 2008 Deloitte Review had still not been remedied.
- 10.61 INBS management responded to the finding and recommendation in this report, stating that: “*The PwC documents produced during the period from September 2008 to January 2009 contained substantially more detail than would have been set out in quarterly Credit Risk reports and all were provided to the Board for consideration*”. INBS management further committed that “[a] Board report will be produced for Q1 2009 which will address the points raised in this recommendation”.⁷⁶
- 10.62 The Inquiry assumes that the “*PwC documents*” refer to the “*Project Atlas INBS High Level Review*”⁷⁷ carried out by PwC. The Inquiry notes a number of limitations in relation to the scope of that review including that: PwC did not visit INBS’s premises; the review was based on information obtained primarily from INBS’s August 2008 management accounts and discussions with management; and PwC did not check relevant underlying documentation. On the basis of these limitations, the Inquiry is of the view that the PwC review could not be considered a proxy for the Quarterly Reports.

Corporate governance documentation – Board meeting packs and minutes

- 10.63 The Inquiry considered the Board meeting packs and minutes relating to the period following the introduction of the first relevant policy provision in December 2005 (section 2 of the 2005 Impairment Provisioning Policy), and for the remainder of the

⁷⁴ Memorandum from Killian McMahon to Board and Chief Executive, dated 4 December 2008, page 4 (Doc ID: 0.7.120.305715-000001).

⁷⁵ 2009 Deloitte Review, page 12 (Doc ID: 0.7.120.508410).

⁷⁶ 2009 Deloitte Review, page 12 (Doc ID: 0.7.120.508410).

⁷⁷ PwC Project Atlas INBS High Level Review (Draft), dated 1 October 2008 (Doc ID: 0.7.120.297232-000001).

Review Period. No Quarterly Reports were provided in respect of the quarters ended: June 2007; December 2007; March 2008; June 2008; and September 2008.

10.64 The Inquiry has examined the Quarterly Reports that were provided to the Board from December 2005 until September 2007. These reports contained all or some of the following information:

- (a) list of Top 100 exposures;
- (b) list of Top 50 exposures;
- (c) list of top thirty exposures;
- (d) classification of loans by commercial development, land with planning permission, etc.;
- (e) geographic split of the loan book;
- (f) loan book provisions;
- (g) summary details for top 30 commercial loans;
- (h) loans with full or partial moratoria;
- (i) instances of actions to implement KPMG Management Letter recommendations; and
- (j) a summary of customer accounts with profit share agreements.

Witness evidence

Yvonne Madden

10.65 Ms Yvonne Madden gave evidence to the Inquiry during the SPC 6 module hearing on 3 April 2019 and 5 April 2019. Ms Madden was the officer in the banking supervision department of the Financial Regulator with responsibility for INBS. She was asked what the benefit was of Quarterly Reports being provided to the Board. She stated that the Board was:

“...responsible for setting out the strategy of an organisation and basically agreeing and approving policies, procedures and processes in relation to how an institution manages the risks inherent in its book. So the Board would also be responsible for setting things like risk tolerances... So in order for the Board

to identify the risk, measure it, monitor it, manage it and mitigate it to the extent possible, these reports that would... allow it to discharge that function. So that's the primary purpose".

10.66 She further stated that:

"the Board would have a responsibility for approving policies on an annual basis, say for example in relation to credit risk, and as part of those policies it would stipulate that these type of reports are there for that purpose to a certain extent".⁷⁸

10.67 Ms Madden was referred to the September 2008 Deloitte Review.⁷⁹ This report indicated that Deloitte reviewed both the Board and Credit Committee meeting minutes and *"were unable to evidence either body considering the credit risk of the Society"* and *"On foot of further investigation... were advised that the Credit Risk Management function has not produced its quarterly board reporting pack since September 2007 and thus has not been discussed by the Board since December 2007"*. Management's response to this was *"The quarterly board reporting pack has not been produced since September 2007 due to the Credit Risk Department having to complete other projects and tasks. From Quarter 3 2008, quarterly Board reports will be provided"*.⁸⁰

10.68 Ms Madden indicated *"...that wasn't an acceptable answer so, we would have wrote to the society around December 2008 requesting the Board to take a greater role in relation to credit risk management to ensure it was aligned with its policies"*.⁸¹

10.69 Ms Madden was then referred to a memorandum from her to the deputy head of banking supervision, guaranteed bank unit in the Financial Regulator dated 10 December 2008,⁸² in which Ms Madden referred to the September 2008 Deloitte Review and the issues raised, including that Deloitte could not see evidence that the Board was overseeing credit risk management.

10.70 In this memorandum, Ms Madden indicated that she had spoken to Mr Purcell in relation to the September 2008 Deloitte Review and expressed her concerns that: *"(1) issues previously raised remain, despite management assurances that these have*

⁷⁸ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 63 to 64 (Doc ID: RDU_SPC6FT_D2-00000004).

⁷⁹ September 2008 Deloitte Review, page 23 (Doc ID: 0.7.120.430877).

⁸⁰ September 2008 Deloitte Review, page 23 (Doc ID: 0.7.120.430877).

⁸¹ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 66 line 12 to 16 (Doc ID: RDU_SPC6FT_D2-00000004).

⁸² Memorandum from Yvonne Madden to Donncha Connelly, dated 10 December 2008 (Doc ID: AD-0.7.120.132034).

been resolved” and “(2) further issues pointing to weaknesses in credit risk management have emerged”.⁸³ Ms Madden further indicated in the memorandum that she had requested Mr Purcell to “request the Board of INBS to outline to the Financial Regulator its view on the Report and what action it proposes to take” and that the Financial Regulator “are awaiting a response on this matter”.

10.71 She also noted in the same memorandum that she had “seen a draft copy of the Audit Committee minutes of 4 November and these outlined that the committee was disappointed at the progress in implementing recommendations and requested the internal auditor to prepare a report for circulation to the Board and the Financial Regulator setting out why certain recommendations were not addressed and what is the up to date position on implementation of recommendations”.

10.72 A letter from Mr Purcell to Ms Madden dated 12 December 2008 was opened in evidence.⁸⁴ This letter referenced Ms Madden’s telephone call to him on 14 November 2008 when she requested that the Board submit its views on the September 2008 Deloitte Review. It was noted that the letter indicated, in respect of the “New recommendations made in the September 2008 report” concerning “Reporting and board oversight of credit risk management” that the recommendation about delivery of quarterly risk management material and timely information “should have been implemented by 30 November 2008 but has not been implemented as credit risk has been working on completing reports for PwC”.⁸⁵

Colm McDonnell

10.73 Mr Colm McDonnell was the partner in Deloitte responsible for the two Contemporaneous Reports referred to above. Mr McDonnell gave evidence to the Inquiry during the SPC 6 module hearing on 8 April 2019.⁸⁶ He was referred to the September 2008 Deloitte Review and, in particular, the finding that Deloitte “were unable to evidence” either the Board or the Credit Committee “considering the credit risk of the Society” and “the Credit Risk Management function has not produced its quarterly board reporting pack since September 2007 and thus has not been discussed by the Board since December 2007”.⁸⁷ It was noted by the LPT that the September

⁸³ Memorandum from Yvonne Madden to Donncha Connelly, dated 10 December 2008, page 6 et seq. (Doc ID: AD-0.7.120.132034).

⁸⁴ Letter from Stan Purcell to Yvonne Madden, dated 12 December 2008 (Doc ID: 0.7.120.309719-000001).

⁸⁵ Letter from Stan Purcell to Yvonne Madden, dated 12 December 2008, page 3 (Doc ID: 0.7.120.309719-000001).

⁸⁶ Transcript SPC 6 Inquiry Hearing, dated 8 April 2019 (Doc ID: RDU_SPC6FT_D9-000000001).

⁸⁷ September 2008 Deloitte Review, page 23 (Doc ID: 0.7.120.430877).

2008 Deloitte Review referenced two policy documents (the Credit Risk Management Policy and the Notes on the Implementation of the Impairment Policy) and these policies stipulated that regular reports must be provided to the Board encompassing exceptions to lending policy giving reasons for departure; concentration of the loan book by sectoral analysis and geographically; and commercial lending reviews on a quarterly basis.⁸⁸

10.74 Mr McDonnell stated that in making the finding, Deloitte was indicating to the reader that none of the things that should have been considered were being considered, and it was noted that the credit risk management pack should include the information or documents that were to be provided under the various policies. He stated:

*“So really, the finding is it’s a Priority 1, so it’s a critical finding, and we’re saying to the reader of the report at this particular point in time that when we looked at the Board and Credit Committee, we couldn’t see evidence that they had actioned what they were supposed to be actioning in the period that was part of our review. And, as you say yourself, it kind of speaks for itself in terms of, like we have called it out and we’ve called it out clearly”.*⁸⁹

10.75 Mr McDonnell was then referred to the recommendation made by Deloitte that:

“At a minimum the quarterly credit risk reports should be produced and presented for consideration by the Board. In addition the Credit Risk Management function should be providing the Board and credit committee with timely information on the composition of the loan book. Such information should, at a minimum, analyse the Society’s loan book by:

- *Sector*
- *Credit Grade*
- *Geographic location*
- *Maturity”.*⁹⁰

⁸⁸ Transcript SPC 6 Inquiry Hearing, dated 8 April 2019, page 22 to 23 (Doc ID: RDU_SPC6FT_D5-000000001).

⁸⁹ Transcript SPC 6 Inquiry Hearing, dated 8 April 2019, page 20 line 29 (Doc ID: RDU_SPC6FT_D5-000000001).

⁹⁰ September 2008 Deloitte Review, page 23 (Doc ID: 0.7.120.430877).

- 10.76 He was asked how frequently he thought the information on the composition of the loan book should be provided, and he stated: “*certainly... it should be done quarterly*”.⁹¹
- 10.77 Mr McDonnell was referred to the Management Response that: “*The quarterly Board reporting pack has not been produced since September 2007 due to the Credit Risk Department having to complete other projects and tasks. From the Quarter 3, 2008, quarterly Board reports will be provided*”. Mr McDonnell confirmed that the matter was assigned as a “*Priority 1*” requirement, being “*one that needs to be brought to the attention of senior management and the Board*” and is “*not a trivial matter*”. He also stated that “*in a normal course of events you wouldn’t expect many Priority 1s to be in a report*”.⁹²
- 10.78 Deloitte’s second engagement letter, dated 19 January 2009⁹³, for the purposes of the 2009 Deloitte Review was opened to Mr McDonnell. It was noted by the LPT that the terms and scope were similar to their previous engagement letter save that there was a new feature requiring Deloitte to present their findings to the INBS Audit Committee. Mr McDonnell confirmed that Deloitte did present their findings on the 2009 Deloitte Review to the Audit Committee and the Audit Committee’s response was positive “*in terms of there was more... understanding of the findings and that actually there was going to be things done*”.⁹⁴
- 10.79 Again, it was put to Mr McDonnell that a similar recommendation was made in the 2009 Deloitte Review, and the Management Response indicated that there was to be a Board report produced for quarter 1 2009 that would address the recommendation.⁹⁵ Mr McDonnell confirmed that his understanding of this response was that the recommendation was going to be implemented.⁹⁶
- 10.80 Finally, it was noted by the LPT that there was some suggestion that in fact there was no need for this sort of quarterly or regular analysis of INBS’s loan book because INBS had effectively ceased to lend any fresh facilities, and Mr McDonnell was asked whether anyone from the Audit Committee or management had ever said this to him. He indicated that he “*wouldn’t have taken that as a credible response because*

⁹¹ Transcript SPC 6 Inquiry Hearing, dated 8 April 2019, page 27 line 5 (Doc ID: RDU_SPC6FT_D5-000000001).

⁹² Transcript SPC 6 Inquiry Hearing, dated 8 April 2019, page 29 line 15 to 20 (Doc ID: RDU_SPC6FT_D5-000000001).

⁹³ Letter from Deloitte to Stan Purcell, dated 19 January 2009 (Doc ID: RDU_REL61-000000026).

⁹⁴ Transcript SPC 6 Inquiry Hearing, dated 8 April 2019, page 31 line 11 to 13 (Doc ID: RDU_SPC6FT_D5-000000001).

⁹⁵ 2009 Deloitte Review, page 12 (Doc ID: 0.7.120.508410).

⁹⁶ Transcript SPC 6 Inquiry Hearing, dated 8 April 2019, page 34 (Doc ID: RDU_SPC6FT_D9-000000001).

effectively the idea is that you are looking at existing loans as well as new loans. So, I wouldn't have bought that. I don't remember anyone ever saying that because that actually would have stuck in my head that they didn't understand the purpose of what we were suggesting was".⁹⁷

Darragh Daly

10.81 Mr Daly gave evidence to the Inquiry on this issue during the SPC 6 module hearing on 10 April 2019.

10.82 He was referred to an email dated 9 March 2007 sent by him to a number of colleagues⁹⁸, in which he noted the feedback received from the Board (via Mr Purcell) on the quarter 4 2006 Quarterly Report and he identified areas that needed to be addressed in light of this feedback. In particular, Mr Daly indicated in that email of 9 March 2007 that he would be:

"progressing the valuation issue with MPF and we'll have to incorporate some of the other issues in to the Summit download.

For Q1 2007, we have to ensure that all summit valuations, classifications, sectorals and prop usage etc are all accurate for the Board report, both in terms of the review database and Summit..."

10.83 Mr Daly confirmed that the feedback related to the utility of the Quarterly Reports provided to the Board and that the feedback had looked for more detailed information to be provided. Mr Daly was asked what he understood Mr Purcell's role to be in communicating the Board's feedback to Mr Daly. He indicated that Mr Purcell was the liaison point in terms of responses from the Board (that they wished to communicate to Mr Daly) and was also the liaison in matters to be communicated by Mr Daly to the Board.⁹⁹

10.84 Mr Daly accepted that the credit risk department did not prepare Quarterly Reports for five periods commencing the quarter ended June 2007.¹⁰⁰

⁹⁷ Transcript SPC 6 Inquiry Hearing, dated 8 April 2019, page 35 (Doc ID: RDU_SPC6FT_D5-000000001).

⁹⁸ Email from Darragh Daly to colleagues, dated 9 March 2007 (Doc ID: 0.7.120.171609).

⁹⁹ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 23 to 24 (Doc ID: RDU_SPC6FT_D7-000000001).

¹⁰⁰ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 30 et seq. (Doc ID: RDU_SPC6FT_D7-000000001).

10.85 Mr Daly was referred to the Project Harmony Report¹⁰¹ and the suggestion in his witness statement that there were substantial overlaps between the data one expected in the Quarterly Reports and what was in the Project Harmony Report. He accepted, when put to him, that while the data would have been similar for both, it was for different periods, and he expanded on this as follows:

*“The quarterly reviews were, I would have called them - and I believe I have referenced this before - as being opinion-based. There was an absolute lack of data in respect of an analysis or performance. It was a suggestion that Darragh’s loan was going well and Mary’s loan wasn’t going well, and so on. It was opinion-based. This, and indeed our subsequent reports, which expanded to include in terms of some of the roles spec there, were more data-specific. So I would draw some reference to the fact that this was the initiation of a data collection gathering process and assessment of the loans. I thought there was more in this document in relation to individual elements of the loan portfolio, but I don’t recall at this remove”.*¹⁰²

10.86 Mr Daly was referred to his interview evidence¹⁰³ in which he indicated that the credit risk department stopped carrying out the quarterly reviews to conduct other work and that was on the instruction of “*either Michael Fingleton or Stan Purcell*”. Mr Daly was asked whether he had any clearer recollection as to who had instructed him not to prepare the quarterly review. He indicated that he did not, although he noted that “*there may not have been a specific request to see something, but there was -- there was an instruction to prioritise something else*” and he assumed that this instruction was given by Mr Fingleton or Mr Purcell.¹⁰⁴

10.87 Mr Daly was referred to the September 2008 Deloitte Review Management Response that stated that Quarterly Reports had not been produced since September 2007 due to the credit risk department having to complete other projects and tasks¹⁰⁵, and he was asked whether he fed into that response at the time. Mr Daly said that he

¹⁰¹ The KPMG vendor due diligence report, dated 20 June 2007 (Doc ID: 0.7.120.55785).

¹⁰² Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 30 to 31 (Doc ID: RDU_SPC6FT_D7-000000001).

¹⁰³ Transcript of Interview with Mr Darragh Daly, dated 20 February 2013, page 130 (Doc ID: 0.7.120.683747).

¹⁰⁴ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 34 line 16 to 26 (Doc ID: RDU_SPC6FT_D7-000000001).

¹⁰⁵ September 2008 Deloitte Review, page 23 (Doc ID: 0.7.120.430877).

presumed so. He stated that he could not be sure who would have asked him to input into it "*but I would have felt it likely to be Stan Purcell and/or Ita Rogers*".¹⁰⁶

David Brophy

10.88 Mr Brophy gave evidence to the Inquiry on the issue during the SPC 6 module hearing on 11 April 2019. He accepted that in the relevant 2005, 2006 and 2007 Impairment Provisioning Policies, there was a requirement that quarterly commercial lending reviews be provided to the Board, and that in the 31 October 2006 Credit Risk Department Terms of Reference that responsibility was given to the credit risk department.¹⁰⁷ It was put to him that Quarterly Reports were produced in 2005; throughout 2006; one was produced in March 2007; none were produced in June 2007; one was produced in September 2007; and then nothing after that. Mr Brophy assumed this was correct but could not recall.¹⁰⁸

10.89 Mr Brophy was asked whether the Board noticed when the Quarterly Reports stopped. He stated that he could not recall whether it was an item of discussion. It was put to Mr Brophy that the Board was without the benefit of those reports in its lending capacity, and he was asked whether that was a disadvantage. He indicated that "*going over a course of a few months, allowing for the concentration and the pre-existing knowledge and familiarity with the book, I wouldn't think it would have been critical in the short term*" but that it could have become an issue if INBS had continued lending throughout 2008. It was put to Mr Brophy that with the Quarterly Reports, there was a lot of valuable information in one place. He agreed but noted that they had similar information from a lot of other sources.¹⁰⁹

Michael Walsh

10.90 Dr Walsh gave evidence to the Inquiry during the SPC 6 module hearing on 9 April 2019. It was put to Dr Walsh that the Board found the quarterly review of commercial lending a helpful tool in the decisions it was making, and that on a couple of occasions the Board put back the review so it could consider it fully. Dr Walsh agreed and indicated that "*what those quarterly reports were actually doing was giving us an overview on really kind of the top clients and... the book was relatively concentrated*

¹⁰⁶ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 35 line 27 (Doc ID: RDU_SPC6FT_D7-000000001).

¹⁰⁷ 31 October 2006 Credit Risk Department Terms of Reference, page 9 (Doc ID: 0.7.120.13615).

¹⁰⁸ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 38 to 40 (Doc ID: RDU_SPC6FT_D8-000000001).

¹⁰⁹ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 42 to 43 (Doc ID: RDU_SPC6FT_D8-000000001).

across the top 30 loans, so, you know, by actually reviewing those you had a pretty good feel for, you know, overall where things were in terms of relationships".¹¹⁰

10.91 Dr Walsh was asked about the September 2008 Deloitte Review that appeared to raise a concern that the Board was not considering the credit risk of INBS. It was noted that Deloitte's recommendation was that there would be a quarterly report made to the Board and the Management Response was that from quarter 3 of 2008, quarterly Board reports would be provided. It was further noted that this commitment to implement the recommendation was made notwithstanding all of the turmoil going on in INBS at that time. Dr Walsh agreed and confirmed that *"the Board was happy enough to proceed with the implementation of that recommendation".¹¹¹*

10.92 Dr Walsh was then referred to the evidence of Mr McDonnell¹¹² during which he indicated that at a meeting of the Audit Committee in early December 2009, which he attended, the Audit Committee were very receptive to the recommendations and he took away from that that they would, in fact, be implemented.¹¹³ In response, Dr Walsh went back to the earlier May 2008 Deloitte Review and indicated that the Board and the Audit Committee were:

"very anxious to make sure...that all of the Deloitte recommendations in May 2008 should not only be implemented, but they should be continuously implemented, because...the Board was...concerned that...they were being told something was implemented and then...you discover it wasn't".¹¹⁴

10.93 Dr Walsh added:

"So I think at the Audit Committee meeting that discussed the Deloitte May document, there was a very clear direction given to the Internal Auditor that he was to review the status of the Deloitte recommendations in July and to review them again the following January, so, you know, we were actually setting up a process. And obviously the Board was very concerned...when you had the December '08 Deloitte report, which, despite everything, still had a series of breaches and a series of promises and that's what gave rise to that particular minute".

¹¹⁰ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 15 to 16 (Doc ID: RDU_SPC6FT_D6-000000001).

¹¹¹ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 80 to 81 (Doc ID: RDU_SPC6FT_D6-000000001).

¹¹² Transcript SPC 6 Inquiry Hearing, dated 8 April 2019, (Doc ID: RDU_SPC6FT_D5-000000001).

¹¹³ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 82 to 83 (Doc ID: RDU_SPC6FT_D6-000000001).

¹¹⁴ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 83 to 84 (Doc ID: RDU_SPC6FT_D6-000000001).

10.94 Dr Walsh noted “*that actual meeting would have been probably after my resignation*”. He went on to confirm that throughout the period and beyond it to the start of 2009, his view was that the relevant policies “*were appropriate for the business of the Society*”.¹¹⁵

Alleged participation by Mr Purcell

10.95 Mr Purcell’s alleged participation in SPC 6 as identified in the Investigation Report is dealt with in general at paragraph 10.37 above. In relation to his participation in the SPC 6.2 Allegation, that Quarterly Reports were not provided to the Board after March 2007, the Investigation Report stated that by virtue of his position as an executive director and Board member, and also as an attendee at Audit Committee meetings, Mr Purcell would have been aware of the September 2008 Deloitte Review and the 2009 Deloitte Review, and the recommendations contained therein.

Mr Purcell’s replies to Examination and Investigation Letters

10.96 In his voluntary responses to the Examination and Investigation Letters, Mr Purcell denied participation in the commission of the SPCs by INBS.¹¹⁶

Mr Purcell’s submissions

10.97 During his opening submissions in the SPC 6 module hearing on 3 April 2019, and in relation to the allegation that the Board did not receive quarterly commercial lending reports for a number of quarters, Mr Purcell submitted that the preparation and submission of these reports to the Board was the responsibility of the credit risk department.¹¹⁷ He referred to a number of specific documents which he submitted clearly indicated that the credit risk manager (Mr Daly), the Managing Director, the Board and the Financial Regulator were all aware of where the responsibility lay and the reporting arrangements in place.¹¹⁸

10.98 Mr Purcell referred to the interview evidence of Mr Daly in which Mr Daly indicated that the credit risk department stopped carrying out the quarterly commercial lending reviews in order to conduct other work and that this was done on the instruction of

¹¹⁵ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 84 (Doc ID: RDU_SPC6FT_D6-00000001).

¹¹⁶ Replies of Stan Purcell dated 31 May 2012 to the Central Bank pursuant to a Notice of Examination dated 17 January 2012 page 3 of 41 (Doc ID: 0.7.120.56484). Response of Stan Purcell to SPCs set out in letter of Central Bank dated 12 December 2013, page 9 (Doc ID: 0.7.120.673241-000001).

¹¹⁷ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 109 line 6 et seq. (Doc ID: RDU_SPC6FT_D2-00000001).

¹¹⁸ 31 October 2006 Credit Risk Department Terms of Reference (Doc ID: 0.7.120.13615); Internal Financial Regulator Memorandum from Joyce Sharkey to Yvonne Madden, dated 5 January 2007 (Doc ID: AD-0.7.120.1121626); The Credit Risk Department plan, dated 25 September 2006, submitted to the Board on 27 September 2006 (Doc ID: 0.7.120.36378); and the job specification of the Credit Risk manager, dated 9 March 2006 (Doc ID: AD-0.7.120.500899).

*“either Michael Fingleton or Stan Purcell”.*¹¹⁹ Mr Purcell stated that *“I did not and could not have given this instruction as I did not have the authority to give this instruction to Mr. Daly. As clearly set out in documentation, Mr. Daly reported to the Managing Director”.*¹²⁰

10.99 Mr Purcell then submitted that, in early 2008, priority was given to various other projects that the credit risk department was working on, and as a result the quarterly commercial lending review was delayed. He stated that *“Darragh Daly told me he had agreed this priority and delay with the Managing Director”.* Mr Purcell further submitted that in mid-2008 he had produced a report (to use in discussions with Lloyds Bank and credit rating agencies) which incorporated commercial lending information based on *inter alia* information from the credit risk database. Mr Purcell stated that:

“On the 17 September 2008, I sent, by e-mail, a copy of an Excel spreadsheet which was used to produce the report. I sent this to Darragh Daly. My intention was to have him or his department use this information to help produce the quarterly lending review for June 2008.

*My recollection of Mr. Daly's position at the time was that he and his department were still too busy on other projects to produce the quarterly commercial lending review”.*¹²¹

10.100 Mr Purcell noted that the issue of credit risk management's failure to produce Quarterly Reports since September 2007 was raised in the September 2008 Deloitte Review and the Management Response to this was that the report was not produced since September 2007 due to the credit risk department having to complete other projects and tasks.¹²²

10.101 In relation to Quarterly Reports to the Board, Mr Purcell stated in his written closing submissions, dated 22 May 2020, that the credit risk department was responsible for the preparation and submission of quarterly commercial lending reviews to the Board and that the credit risk manager was instructed by the Managing Director to delay preparing the Quarterly Reports and to prioritise a number of projects. Mr Purcell submitted that, in September 2008, he sent the credit risk manager a spreadsheet of information (which he had compiled for the purposes of seeking a standby facility) with

¹¹⁹ Transcript of Interview with Mr Darragh Daly, dated 20 February 2013, page 130 (Doc ID: 0.7.120.683747).

¹²⁰ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 111 (Doc ID: RDU_SPC6FT_D2-00000001).

¹²¹ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 111 to 112 (Doc ID: RDU_SPC6FT_D2-00000001).

¹²² September 2008 Deloitte Review, page 23 (Doc ID: 0.7.120.430877).

the intention that this information would be used by the credit risk manager to produce the Quarterly Report, however the credit risk manager's position at the time was that his department was still too busy on other projects to produce the Quarterly Report.¹²³

Mr Purcell's evidence

10.102 In his evidence to the Inquiry on the ninth day of the SPC 6 module hearing, Mr Purcell accepted the LPT's contention that the Quarterly Reports were not provided to the Board on the dates identified, i.e. June 2007 and for the remainder of 2007 apart from September, and then for 2008, and that there was a failure by INBS to provide the Quarterly Reports, in breach of the requisite policy.¹²⁴

10.103 As set out above, the overriding allegation had two parts. Regarding the first part of the allegation (that by failing to ensure the Quarterly Reports went to the Board, INBS failed to manage its business in accordance with sound administrative and accounting principles), Mr Purcell referred to the 2005 Impairment Provisioning Policy¹²⁵ and indicated that the Quarterly Report was only one element of the control and management of credit risk and it was "*not the only leg to the stool*". Mr Purcell accepted that the 31 October 2006 Credit Risk Department Terms of Reference¹²⁶ indicated that it was "*quite an important leg*" of the stool, however he stated that the relative importance of it changed depending on the time period being considered and should be put in the "*context of the overall*".¹²⁷

10.104 Regarding the second part of the allegation (that INBS failed to put in place and maintain internal control and reporting arrangements and procedures to ensure the business was so managed), Mr Purcell accepted that the Quarterly Reports "*should have been provided*" but he reiterated that the context was important too.¹²⁸

10.105 In relation to the Quarterly Reports, Mr Purcell reiterated that a decision was taken to delay the Quarterly Reports due to other priorities (and this decision was conveyed to him by Mr Daly). He indicated that he was not aware of any issue with resources or

¹²³ Written Submissions of John S Purcell, dated 22 May 2020, page 2 (Doc ID: RDU_REL467-000000002).

¹²⁴ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 14 line 8 and page 17 line 24 (Doc ID: RDU_SPC6FT_D9-000000001).

¹²⁵ 2005 Impairment Provisioning Policy (Doc ID: 0.7.120.25083).

¹²⁶ 31 October 2006 Credit Risk Department Terms of Reference (Doc ID: 0.7.120.13615).

¹²⁷ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 21 to 24 (Doc ID: RDU_SPC6FT_D9-000000001).

¹²⁸ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 25 line 29 (Doc ID: RDU_SPC6FT_D9-000000001).

staff recruitment at that time, but that it could be hard to get the people that were needed.¹²⁹

10.106 Mr Purcell acknowledged that he was the only member of senior management, apart from the Managing Director, who was on the Board. It was put to him that in those circumstances it was incumbent on him to make sure that the Board either had what it was supposed to have under the policy, or to alter or amend the policy. Mr Purcell stated *"if there was a change to one of those policies, it would have come from the lending area"* and *"I wasn't going to initiate a policy change for departments that didn't report to me. We were looking at a thing in the sense of priority and delay. You know, people were aware of it. It wasn't the intention that these things would be delayed long. It was -- it shouldn't have been, but it wasn't the intention"*.¹³⁰

10.107 Mr Purcell was asked whether, due to the importance of the Quarterly Reports and the Board's continued non-compliance with the policy, he ever thought of minuting the issue or formally putting it on the agenda for the Board meetings and recording it. He stated:

"I was more or less looking at it from a practical point of view. I mean, as I said earlier, it was an important report. It should have been done. It was part of the credit risk management, you know, as is set out on the impairment policy, and at that time there was a lot of other -- the Board were very firmly locked in to dealing with the loan book. It wasn't as if, you know, that loans were not getting attention, that the credit crunch and the factors that were happening around then, people were focusing on things. Like, in 2008, you'll note, if one looks at the agendas in the Board minutes, that liquidity and funding was the overwhelming issue, and my time and the time of my managers, especially in - - the treasury manager and the financial controller, we were absolutely consumed with dealing with that area".¹³¹

10.108 It is noted that from the beginning of January 2008, the Board were not the decision-makers in relation to lending, it was the Credit Committee who were then the decision-makers, following the adoption of the revised Credit Committee Terms of Reference, at a Board meeting held on 17 December 2007. At the same Board meeting, a decision

¹²⁹ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 82 (Doc ID: RDU_SPC6FT_D9-000000001).

¹³⁰ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 84 to 85 (Doc ID: RDU_SPC6FT_D9-000000001).

¹³¹ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 86 line 4 (Doc ID: RDU_SPC6FT_D9-000000001).

was made to cease commercial lending.¹³² Although this decision to cease lending had been made, considerable lending was still going on for various reasons including continuing financial support for existing projects. In addition, the Board was still responsible for setting strategy and risk appetite and Quarterly Reports were an important element in that process.

INQUIRY FINDING – SPC 6.2

Finding in relation to INBS

- 10.109 The provision of Quarterly Reports to the Board was listed in the 2005, 2006 and 2007 Impairment Provisioning Policies as one of the regular reports provided to the management and the Board in the course of INBS's monitoring and managing of credit risk. Unlike the exceptions reports outlined above, the Quarterly Reports were provided for in policy in the 31 October 2006 Credit Risk Department Terms of Reference. Section (iii) of those terms of reference assigned to the credit risk department the following duty: "*the preparation of quarterly Commercial Lending Reviews for submission to the Board of the Society*"¹³³
- 10.110 It is alleged that the Board did not receive the required quarterly commercial lending reports for June 2007, December 2007, March 2008, June 2008 and September 2008.
- 10.111 The Inquiry is satisfied based on the documentary evidence from the Board meeting minutes and packs and the witness evidence cited above at paragraphs 10.65 to 10.94 that these reports were not provided to the Board for the periods outlined above.
- 10.112 The Inquiry notes the content of the Quarterly Reports that were provided to the Board as outlined in paragraph 10.64 above. It believes that the information contained in these reports would have assisted the Board in the setting of strategy and risk appetite, and in approving commercial loans. With respect to approving loans, the only missing Quarterly Report that was relevant to this Board function was the report of June 2007. The Board ceased its role in approving commercial lending from December 2007.

¹³² Minutes of Board meeting, dated 17 December 2007 (Doc ID: 0.7.120.38856).

¹³³ 31 October 2006 Credit Risk Department Terms of Reference, page 9 (Doc ID: 0.7.120.13615).

- 10.113 The Inquiry was persuaded by evidence provided by former directors that this information would have been available to them other than through formal Quarterly Reports.
- 10.114 The Inquiry is mindful of the two decisions made by the Board of INBS in December 2007. The first was to transfer all loan approvals to the Credit Committee and the other was to cease all new commercial lending. Three of the five Quarterly Reports that had not been produced would have been presented to the Board after that date.
- 10.115 The Inquiry accepts that due to familiarity with the Project Harmony Report, work done by PwC and Goldman Sachs, and enhanced focus on liquidity and the loan book in the 2008 market turmoil, the directors would have been familiar with the details of and issues in the loan portfolio.
- 10.116 The Inquiry is also mindful of the turmoil in the finance market in 2007/2008 and accepts that policy failures such as identified in this instance and the seriousness of such failures must be looked at in the context of this turmoil.
- 10.117 The Inquiry finds that INBS was in breach of policy in failing to ensure that the Board received the required Quarterly Reports for the following five quarters: June 2007, December 2007, March 2008, June 2008 and September 2008.
- 10.118 However, given the circumstances as outlined above and in the light of the information that the Board was receiving at that time, the Inquiry finds that this breach of policy did not amount to a breach of the relevant legislative provisions and condition on INBS's authorisation identified at paragraph 10.2 above and, accordingly, that there was no commission by INBS of SPCs 6(a), 6(b) and 6(c).

Finding in relation to Mr Purcell's participation

- 10.119 In light of the above finding in relation to INBS, the allegation of participation against Mr Purcell accordingly falls away.

SPC 6.3

10.120 SPC 6.3 alleged that the Board did not receive a report on the results of annual credit risk stress tests.

Relevant INBS policy document

10.121 The policy relating to the provision of reports on the results of credit risk stress tests annually to the Board was contained in section 3.7 of the 27 June 2007 Credit Risk Management Policy. This policy stated:

*“The Credit Risk department reports to the Board on the results of credit risk stress tests performed annually. The Credit Risk department plans to expand future tests to include a wider set of variables and range of data, in order to improve the quality of the overall results generated and enable the Society to more accurately assess its risk in this area...”*¹³⁴

Contemporaneous Reports

Contemporaneous Reports post June 2007 policy provision

10.122 INBS’s failure to carry out a credit risk stress test after the implementation of the relevant policy provision in June 2007 was raised in the following contemporaneous report, issued during the Review Period:

2007 KPMG Management Letter

10.123 This report, which issued on 8 July 2008, recommended that *“the loan portfolio be stress tested regularly using a number of assumptions which are workable, realistic and timely and that the results of this analysis be reported to the board”*. INBS’s Management Response was: *“A stress test was not completed in 2007 due to an increase in workloads from due diligence queries. It was postponed until April 2008 and will be performed on the December 2007 year end”*.¹³⁵

10.124 While the Management Response stated that a stress test would be performed in April 2008, it had still not been completed at the time of the Board meeting on 26 May 2008. A draft of the 2007 KPMG Management Letter (which did not contain the INBS management response) was discussed at the Board meeting on 26 May 2008, however the minutes of that meeting did not include any explicit reference to INBS’s

¹³⁴ 27 June 2007 Credit Risk Management Policy, page 32 (Doc ID: 0.7.120.431329).

¹³⁵ 2007 KPMG Management Letter, page 15 (Doc ID: 0.7.120.55769).

failure to perform annual stress tests.¹³⁶ The minutes of the Board meeting held on 24 July 2008¹³⁷ made reference more generally to follow up in relation to Management Letter recommendations from 2005 to 2007, which should have included the issue of the stress tests. As noted above, ultimately a completed stress test dated November 2008 was provided to the Board in December 2008.¹³⁸

Contemporaneous Reports prior to June 2007 policy provision

10.125 Prior to the implementation of the June 2007 policy provision requiring the provision to the Board of results of an annual stress test, the issue of stress tests and the fact that INBS had not been carrying out regular stress tests was highlighted in the 2004, 2005, and 2006 KPMG Management Letters. This indicated an ongoing awareness of concern regarding the issue by the Board.

2004, 2005 and 2006 KPMG Management Letters

10.126 The 2004 KPMG Management Letter recommended that “*the loan portfolio be stress tested regularly*” and INBS management responded that: “*Going forward the commercial book will be stress tested half yearly*”.¹³⁹ The final draft of the 2004 KPMG Management Letter was discussed at the Board meeting held on 21 June 2005.¹⁴⁰

10.127 The 2005 KPMG Management Letter noted that “*the loan book is not currently stress tested in line with our recommendation noted in 2004*” and stated their recommendation “*for a statistical review of the loan book based on defined stresses within key variables on the portfolio will complement the Society’s efforts with regard to Basel compliance*”.¹⁴¹

10.128 INBS management responded to the recommendation by stating that a “*stress test was carried out in April 2006 and a report produced*” and that “*The report will be sent to the Board*”.¹⁴² The 2005 KPMG Management Letter was reviewed and discussed at the Board meeting held on 24 August 2006.¹⁴³ A stress test report based on data as at 31 December 2005¹⁴⁴ was provided to the Board on 25 October 2006.¹⁴⁵

¹³⁶ Minutes of Board meeting, dated 26 May 2008 (Doc ID: 0.7.120.33555).

¹³⁷ Minutes of Board meeting, dated 24 July 2008, page 5 (Doc ID: 0.7.120.8409).

¹³⁸ INBS Stress Test Report, dated November 2008 (Doc ID: 0.7.120.305928-000001); Minutes of Board meeting, dated 12 December 2008, page 2 (Doc ID: 0.7.120.21207).

¹³⁹ 2004 KPMG Management Letter, page 3 (Doc ID: 0.7.120.55765).

¹⁴⁰ Minutes of Board meeting, dated 21 June 2005, page 8 (Doc ID: 0.7.120.37131).

¹⁴¹ 2005 KPMG Management Letter, page 14 (Doc ID: 0.7.120.55767).

¹⁴² 2005 KPMG Management Letter, page 14 (Doc ID: 0.7.120.55767).

¹⁴³ Minutes of Board meeting, dated 24 August 2006, page 21 (Doc ID: 0.7.120.21569).

¹⁴⁴ Stress Test of Commercial Loan Book as at 31 December 2005 (Doc ID: 0.7.120.34976).

¹⁴⁵ Minutes of Board meeting, dated 25 October 2006 (Doc ID: 0.7.120.35325).

10.129 The 2006 KPMG Management Letter repeated the issue regarding stress tests and noted the INBS Management Response that “A stress test of the mortgage book was carried out in last quarter of 2006 and is due to go to the Board in February 2007” and further that “Stress testing of the 31 December 2006 loan book is due for completion by end of Q2 2007”.¹⁴⁶ The 2006 KPMG Management Letter was discussed at the Board meeting held on 24 May 2007.¹⁴⁷ The stress test report provided to the Board during the previous February 2007 was in respect of data as at 31 December 2005, and no further stress test report was carried out, nor results reported to the Board, during the remainder of the Review Period.

Corporate governance documentation – Board meeting packs and minutes

10.130 As noted above, there was a policy provision in place from June 2007 requiring the provision to the Board of results of an annual credit risk stress test.¹⁴⁸ The Inquiry considered the Board meeting minutes and packs from June 2007 to the end of the Review Period and found no indication during this period that such a test was carried out or was reported to the Board. Prior to the June 2007 policy being introduced, a stress test report was provided to the Board in February 2007¹⁴⁹ as well as in October 2006¹⁵⁰, both of which were based on data as at 31 December 2005. After the Review Period (and 17 months after the policy was introduced) a further stress test was carried out in respect of data as at 31 December 2007. This stress test, which was dated November 2008, was provided to the Board in December 2008.¹⁵¹

Financial Regulator Correspondence

10.131 Mr Purcell corresponded with the Financial Regulator on behalf of INBS between January 2007 and November 2008 in relation to the preparation and reporting of stress testing. The correspondence between INBS and the Financial Regulator which pre-dates the implementation of the June 2007 policy requirement demonstrated awareness of stress testing as an issue for the Financial Regulator and for the Board of INBS.

10.132 In its correspondence, the Financial Regulator *inter alia* sought copies of stress test reports prepared and to be prepared, as well as confirmations regarding the frequency

¹⁴⁶ 2006 KPMG Management Letter, page 14 (Doc ID: 0.7.120.278218-000001).

¹⁴⁷ Minutes of Board meeting, dated 24 May 2007, page 11 (Doc ID: 0.7.120.35711).

¹⁴⁸ 27 June 2007 Credit Risk Management Policy, section 3.7, page 32 (Doc ID: 0.7.120.431329).

¹⁴⁹ Minutes of Board meeting, dated 28 February 2007, page 13 (Doc ID: 0.7.120.41408).

¹⁵⁰ Minutes of Board meeting, dated 25 October 2006, page 12 (Doc ID: 0.7.120.35325).

¹⁵¹ Minutes of Board meeting, dated 12 December 2008, page 3 (Doc ID: 0.7.120.21207).

and timing of stress testing. It also identified further requirements for future stress testing to be carried out.¹⁵²

10.133 INBS, in responding to the queries raised by the Financial Regulator, made varying commitments regarding the preparation of stress test reports. Of note, INBS committed to the preparation of stress testing on a bi-annual basis in certain correspondence and on an annual basis in other correspondence.¹⁵³ It also committed to certain timescales for the completion and provision of further stress tests. In particular, INBS committed to carrying out stress testing on 31 December 2006 data to be completed by quarter 3 2007. This was not completed. It then committed to carrying out stress testing on data as at 30 June 2007 to be completed by quarter 4 2007. This further commitment was not met. INBS indicated to the Financial Regulator that, due to an increase in workloads from due diligence queries and the KPMG interim audit, the stress testing was postponed until April 2008 and that it would be performed on the December 2007 data. Again, this commitment was not met and INBS subsequently committed to completing the stress test by the end of July 2008. It then extended this commitment to approximately 21 August 2008 and ultimately to the end of November 2008.¹⁵⁴

10.134 As noted above, the only stress test provided to the Board in 2007 related to data for 31 December 2005 (and this was provided to the Board in February 2007 prior to the implementation of the June 2007 policy provision). Contrary to the various commitments made in correspondence to the Financial Regulator, no other stress test was identified during 2007 in relation to 2006 data or data as at 30 June 2007. The stress test report dated November 2008, which was based on data as at the end of

¹⁵² Letter from Yvonne Madden to Stan Purcell, dated 8 January 2007 (Doc ID: 0.7.120.132456); Letter from Yvonne Madden to Stan Purcell, dated 26 June 2007 (Doc ID: 0.7.120.138232); Letter from Yvonne Madden to Stan Purcell, dated 2 October 2007 (Doc ID: 0.7.120.131462); Letter from Yvonne Madden to Stan Purcell, dated 8 November 2007 (Doc ID: 0.7.120.138052); Letter from Yvonne Madden to Stan Purcell, dated 29 January 2008 (Doc ID: AD-0.7.120.1123294); Email from Yvonne Madden to Stan Purcell, dated 11 July 2008 at 12:21 (Doc ID: 0.7.120.294041); Email from Yvonne Madden to Stan Purcell, dated 11 July 2008 at 16:59 (Doc ID: 0.7.120.294027); Email from Yvonne Madden to Stan Purcell, dated 25 September 2008 (Doc ID: 0.7.120.298060); Letter from Yvonne Madden to Stan Purcell, dated 14 November 2008 (Doc ID: 0.7.120.133629).

¹⁵³ Letter from Stan Purcell to Yvonne Madden, dated 7 February 2007 (Doc ID: 0.7.120.136192); Letter from Stan Purcell to Yvonne Madden, dated 17 May 2007 (Doc ID: 0.7.120.137445).

¹⁵⁴ Letter from Stan Purcell to Yvonne Madden, dated 19 January 2007 (Doc ID: 0.7.120.138147); Letter from Michael Fingleton to Yvonne Madden, dated 31 January 2007 (Doc ID: 0.7.120.443254); Letter from Stan Purcell to Yvonne Madden, dated 7 February 2007 (Doc ID: 0.7.120.136192); Letter from Stan Purcell to Yvonne Madden, dated 17 May 2007 (Doc ID: 0.7.120.137445); Letter from Stan Purcell to Yvonne Madden, dated 18 July 2007 (Doc ID: 0.7.120.140168); Letter from Stan Purcell to Yvonne Madden, dated 19 October 2007 (Doc ID: 0.7.120.22049); Letter from Stan Purcell to Yvonne Madden, dated 22 January 2008 (Doc ID: 0.7.120.135317); Letter from Stan Purcell to Yvonne Madden, dated 14 March 2008 (Doc ID: AD-0.7.120.129503); Letter from Stan Purcell to Yvonne Madden dated 21 April 2008 (Doc ID: 0.7.120.132576); Email from Stan Purcell to Yvonne Madden, dated 11 July 2008 (Doc ID: 0.7.120.294027); Letter from Stan Purcell to Yvonne Madden, dated 21 July 2008 (Doc ID: 0.7.120.130126); Letter from Stan Purcell to Yvonne Madden, dated 5 November 2008 (Doc ID: 0.7.120.134814); Letter from Stan Purcell to Yvonne Madden, dated 14 November 2008 (Doc ID: 0.7.120.139070); Email from Stan Purcell to Yvonne Madden enclosing stress test, dated 28 November 2008 (Doc ID: 0.7.120.305928; 0.7.120.305928-000001).

December 2007 (and was provided to the Board in December 2008), was produced 17 months after the implementation of the June 2007 policy provision and, as such, did not meet the relevant requirement for the provision to the Board of an annual stress test.

Witness evidence

Yvonne Madden

10.135 Ms Madden, of the Financial Regulator's office, gave evidence during the SPC 6 module hearing on 3 April 2019 and 5 April 2019. She was referred to correspondence with INBS. This correspondence identified the serious concern in the Financial Regulator's office that stress testing was not being done on the INBS commercial loan book. In the course of this testimony, certain aspects of the correspondence were noted.

10.136 A letter from Ms Madden to Mr Purcell dated 31 August 2006 referred to the 2005 KPMG Management Letter and identified at Appendix 1 certain issues that needed to be addressed. It was noted, in particular, that KPMG recommended in the 2004 KPMG Management Letter that INBS stress test the commercial loan book on a bi-annual basis and it noted that INBS did not fully implement this recommendation.¹⁵⁵

10.137 INBS responded, in a letter signed by Mr Purcell, on 10 November 2006. This letter indicated that: the stress test summary report (a copy of which was enclosed) was sent to the Board on 24 October 2006; a second stress test was to be completed by the end of 2006 and a summary report submitted to the Board; and that INBS would stress test its mortgage book on an annual basis.¹⁵⁶ Ms Madden was brought to the stress test report enclosed with that letter and to the second sentence of the report which stated "*As agreed, the Society conducted a stress test on the Top 50 Commercial Exposures as at 31 December 2005*"¹⁵⁷ and she was asked whether that had been agreed with the Financial Regulator. Ms Madden indicated that she "*wouldn't have seen it that way...I think the stress testing kind of came in the context of the management letter and in line with its own policy*".¹⁵⁸

¹⁵⁵ Letter from Yvonne Madden to Stan Purcell, dated 31 August 2006 (Doc ID: 0.7.120.449197).

¹⁵⁶ Letter from Stan Purcell to Yvonne Madden enclosing *inter alia* stress test report (Doc ID: 0.7.120.13615).

¹⁵⁷ Letter from Stan Purcell to Yvonne Madden enclosing *inter alia* stress test report, page 10 (Doc ID: 0.7.120.13615).

¹⁵⁸ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 31 line 10 (Doc ID: RDU_SPC6FT_D2-00000004).

10.138 Ms Madden's response to Mr Purcell's letter was dated 8 January 2007. She requested (on page 3 of that letter) a copy of the stress test report that was to have been completed before the end of 2006. She also sought confirmations as to whether results of the annual stress test on the mortgage book was presented to the Board and whether INBS would stress test the commercial loan book on a bi-annual basis.¹⁵⁹

10.139 The INBS response, signed by Mr Purcell, was dated 19 January 2007. It included the following update: "A stress test was carried out in 2006 and a summary report was sent to the Board on 24 October 2006 and to the Financial Regulator on 10 November 2006. A stress test of the mortgage book was carried out in last quarter of 2006 and is due to go to the Board in February 2007". It was noted that the stress test was not provided to the Financial Regulator at that time in February 2007.¹⁶⁰

10.140 A further letter, dated 18 July 2007, from INBS to Ms Madden provided an update. It stated that the credit risk department submitted a stress test on the entire mortgage book to the Board in February 2007 based on the 31 December 2005 data (enclosing a copy), and that this exercise would be repeated on the 31 December 2006 data and was due for completion by the end of quarter 3 2007.¹⁶¹

10.141 INBS wrote to Ms Madden on 19 October 2007¹⁶², responding to certain issues raised in Ms Madden's previous correspondence dated 2 October 2007.¹⁶³ This letter, signed by Mr Purcell, made the following points:

- (a) Regarding the clarification sought by Ms Madden on the frequency of stress testing, the response was that "*Stress tests will be performed at a minimum on an annual basis*".¹⁶⁴

Ms Madden was asked whether she had any comment on this response and she noted that at the time there were differences coming back and forward in the correspondence regarding the annual or bi-annual nature of the stress testing.¹⁶⁵

- (b) Regarding the request that INBS advise whether it had considered using more recent loan book data, in light of the growth in the loan book and the current

¹⁵⁹ Letter from Yvonne Madden to Stan Purcell, dated 8 January 2007 (Doc ID: 0.7.120.132456).

¹⁶⁰ Letter from Stan Purcell to Yvonne Madden, dated 19 January 2007 (Doc ID: 0.7.120.138147).

¹⁶¹ Letter from Stan Purcell to Yvonne Madden, dated 18 July 2007, page 6 (Doc ID: 0.7.120.42268).

¹⁶² Letter from Stan Purcell to Yvonne Madden, dated 19 October 2007 (Doc ID: AD-0.7.120.129947).

¹⁶³ Letter from Yvonne Madden to Stan Purcell, dated 2 October 2007 (Doc ID: 0.7.120.22049).

¹⁶⁴ Letter from Stan Purcell to Yvonne Madden, dated 19 October 2007, page 12 of 18 (Doc ID: AD-0.7.120.129947).

¹⁶⁵ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 4 (Doc ID: RDU_SPC6FT_D2-00000004).

market volatility, the response was that "*The next report will be prepared based on the loan book as at 30 June 2007*".¹⁶⁶

- (c) Regarding the query as to when the next report would be submitted to the Board and copied to the Financial Regulator, the response was that "*The next stress test report will be submitted to the Board in Q4, 2007 and a copy sent to the Financial Regulator*".¹⁶⁷

10.142 Ms Madden's response to Mr Purcell's letter of 8 November 2007 noted that: the stress test would be prepared on the loan book as at 30 June 2007; it would be submitted to the Board in quarter 4 2007; and a copy sent to the Financial Regulator thereafter. It further noted that the stress test report would incorporate the Financial Regulator's recommendations.¹⁶⁸

10.143 INBS's response of 22 January 2008, included an update that "*Stress tests will continue to be performed and results of same submitted to the Board*".¹⁶⁹ It was noted by the LPT that this appeared to be the entirety of the response in relation to Ms Madden's query.¹⁷⁰

10.144 Ms Madden wrote to Mr Purcell on 29 January 2008, seeking a further update:

"I had understood from your previous letter dated 19 October 2007 that the next stress test would be prepared based on the loan book as at 30 June 2007. would incorporate our recommendations, would be submitted to the Board in Q4 2007, with a copy sent to the Financial Regulator thereafter. INBS has not confirmed if the stress test has been completed and the resulting report presented to the board. Furthermore, we have not received the stress test report. Please provide an update".¹⁷¹

10.145 The INBS response dated 14 March 2008 stated:

"The stress test was due for completion in quarter 4, 2007 however due to an increase in workloads from due diligence queries and the KPMG interim audit it was postponed until April 2008 and will be performed on the December 2007

¹⁶⁶ Letter from Stan Purcell to Yvonne Madden, dated 19 October 2007, page 12 of 18 (Doc ID: AD-0.7.120.129947).

¹⁶⁷ Letter from Stan Purcell to Yvonne Madden, dated 2 October 2007, page 4 (Doc ID: 0.7.120.22049).

¹⁶⁸ Letter from Yvonne Madden to Stan Purcell, dated 8 November 2007 (Doc ID: 0.7.120.138052).

¹⁶⁹ Letter from Stan Purcell to Yvonne Madden, dated 22 January 2008 (Doc ID: 0.7.120.135317).

¹⁷⁰ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 42 line 5 to 27 (Doc ID: RDU_SPC6FT_D2-00000004).

¹⁷¹ Letter from Yvonne Madden to Stan Purcell, dated 29 January 2008, page 2 (Doc ID: 0.7.120.287779-000001).

*year end. When completed and presented to the Board it will be forwarded to the Financial Regulator".*¹⁷²

10.146 Ms Madden was asked what her reaction was to this response. She indicated that March 2008 was a critical time for the Financial Regulator in terms of the direction of travel it was taking for INBS. Around that time she prepared a paper for the prudential director of the Financial Regulator setting out supervisory measures she felt needed to be taken in relation to INBS. She noted that this response was just one other example of assurances that were being given that were not necessarily materialising.¹⁷³

10.147 In the draft 2007 KPMG Management Letter, KPMG identified prior year matters that had yet to be resolved including the issue of stress testing.¹⁷⁴

10.148 There was an email exchange between Ms Madden and Mr Purcell dated 11 July 2008 in which Mr Purcell responded to her request for an update:

*"We are currently completing the stress test of both the Commercial and Residential loan books as at 31 December 2007. This stress test will provide an analysis of the impact of various negative economic scenarios... The report will be completed by the end of July 2008 and will be submitted to the Board. We will forward the report to you in early August 2008".*¹⁷⁵

10.149 An email exchange between Ms Madden and Mr Purcell dated 25 September 2008 referred to previous correspondence and noted that the stress test which was to be completed and submitted to the Financial Regulator by 19 September had not been received.¹⁷⁶

10.150 A letter from Mr Purcell to Ms Madden dated 5 November 2008 provided an update as at 21 October 2008 that:

*"The Stress Test is currently being expanded to include additional requirements set out by the Regulator on 11th July 2008. These requirements will be incorporated into the stress test which is based on 31/12/2007 data. This will complete during November 2008".*¹⁷⁷

¹⁷² Letter from Stan Purcell to Yvonne Madden, dated 14 March 2008, page 2 (Doc ID: AD-0.7.120.129503).

¹⁷³ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 42 to 43 (Doc ID: RDU_SPC6FT_D2-00000004).

¹⁷⁴ Draft 2007 KPMG Management Letter, page 15 (Doc ID: AD-ENF_PROD_CAT 2_5-00000029).

¹⁷⁵ Email from Stan Purcell to Yvonne Madden, dated 11 July 2008 (Doc ID: 0.7.120.294027).

¹⁷⁶ Email from Yvonne Madden to Stan Purcell, dated 25 September 2008 (Doc ID: 0.7.120.298060).

¹⁷⁷ Letter from Stan Purcell to Yvonne Madden, dated 5 November 2008 (Doc ID: 0.7.120.134814).

Vincent Reilly

10.151 Mr Vincent Reilly was the partner in KPMG responsible for the audit of INBS during the Review Period. He gave evidence during the SPC 6 module hearing on 4 April 2019. He was asked during the course of his evidence whether he was aware who was responsible for implementing KPMG's recommendations in INBS. He stated:

"No. But what typically would happen with any of our recommendations, and even our management letter, is that Mr. Purcell would be the point of contact and he would organise internally within Nationwide, he would be responsible for implementing particular recommendations, assuming that the Board decided to accept [the recommendations]".¹⁷⁸

10.152 Mr Reilly was referred to the 2004 KPMG Management Letter¹⁷⁹ which was based on the year end 31 December 2004 and was dated 3 June 2005 (seven months after delivery of the 2004 KPMG Commercial Credit Review). In particular, Mr Reilly was referred to the first issue addressed in the Management Letter, which was stress testing.

10.153 The Management Letter stated under the heading "*Issue and Effect*":

"Stress testing is performed by the Society on both individual and residential loans and portfolio basis when requested by the regulator. No formal policy is currently in place for the ongoing monitoring of the effects of adverse changes in economic conditions on the commercial portfolio.

Over the last number of years the Society has become increasingly exposed to concentration risk in respect of its commercial portfolio. This arises due to increases in the absolute value of loans and the value of the top 30 exposures.

Stressed markets are often characterised by a material loss of liquidity. Without stress testing the portfolio, management may be unaware of the potential effects that unexpected adverse market conditions may have on the Society's portfolio and the resultant strain this may have on the Society's funding base".¹⁸⁰

¹⁷⁸ Transcript SPC 6 Inquiry Hearing, dated 4 April 2019, page 16 line 13 to 24 (Doc ID: RDU_SPC6FT_D3-000000001).

¹⁷⁹ 2004 KPMG Management Letter (Doc ID: 0.7.120.55765).

¹⁸⁰ 2004 KPMG Management Letter, page 3 (Doc ID: 0.7.120.55765).

10.154 The KPMG "Recommendation" stated:

"We recommend the loan portfolio be stress tested regularly using a number of assumptions which are workable, realistic and timely and that the results of this analysis be reported to the board. The stress testing may be performed in two ways to predict;

- *the loss if a particular scenario occurs;*
- *what event(s) could occur that would cause a reduction in equity of specified amounts*

Examples of the type of factors to be applied may include the following:

- *extension of all moratoria accounts by specified periods*
- *reduction in customer/deposit base by specified amounts*
- *increase in arrears on non-moratoria loans*
- *reducing security value to a fire sale price"*

10.155 The "Management Response" was:

"In all new applications, all relevant macro economic factors are considered as part of the normal credit assessment of proposed facilities.

Consideration is given to up to date professional commentary, supplied by Central Bank economic forecast, ESRI and from the top property research publications.

There is always a level of comfort in the projected profits. Marginal cases are declined as a possible downturn in the market could result in potential loss for the Society.

Extensions on terms and moratoria are only allowed when the Society is satisfied as to the ongoing safety of the facility

Going forward the commercial book will be stress tested half yearly along the lines suggested".¹⁸¹

¹⁸¹ 2004 KPMG Management Letter, page 3 (Doc ID: 0.7.120.55765).

10.156 Mr Reilly was then referred to the 2005 KPMG Management Letter that included an updated recommendation:

“We acknowledge that management have greatly enhanced its reporting on commercial loans to the board and are considering relevant macro economic factors when assessing individual commercial loans, however we note that the loan book is not currently stress tested in line with our recommendations noted in 2004.

*As part of the Basel II Accord all institutions will use the internal rating-based (IRB) approach in assessing credit risk within their portfolios, as such our recommendation for a statistical review of the loan book based on defined stresses within key variables on the portfolio will complement the Society's efforts with regard to Basel compliance”.*¹⁸²

10.157 Mr Reilly agreed that this indicated that KPMG's 2004 recommendation had not been implemented at that stage.¹⁸³ There was an updated Management Response indicating that a stress test was carried out in April 2006 and a report produced that would be sent to the Board. Under *“Responsibility and due date.”* it was noted that *“This recommendation has been implemented”*.¹⁸⁴

10.158 Mr Reilly confirmed, when put to him, that the 2004 KPMG Management Letter recommendation was that stress testing should be done regularly. The Management Response in 2004 was that it would be done twice yearly, and a stress test was done on one occasion in April 2006. Mr Reilly was brought to this two page stress test¹⁸⁵ and he indicated that the analysis in this document was not in sufficient depth and rigour and aggregated enough to meet the requirements of KPMG's 2004 recommendation.¹⁸⁶

10.159 Mr Reilly was then referred to a separate stress test report¹⁸⁷ that was provided to the Board on 28 February 2007 and that appeared to be based on the same analysis and time period, but which ran to some 29 pages. Regarding this stress test, Mr Reilly acknowledged that it had been a long time since he would have seen the document,

¹⁸² 2005 KPMG Management Letter, page 14 (Doc ID: 0.7.120.55767).

¹⁸³ Transcript SPC 6 Inquiry Hearing, dated 4 April 2019, page 25 line 16 (Doc ID: RDU_SPC6FT_D3-00000001).

¹⁸⁴ 2005 KPMG Management Letter, page 14 (Doc ID: 0.7.120.55767).

¹⁸⁵ Board Report on Stress Testing of Commercial Loan Book as at 31 December 2005, page 10 to 11 (Doc ID: 0.7.120.13615).

¹⁸⁶ Transcript SPC 6 Inquiry Hearing, dated 4 April 2019, page 25 to 29 (Doc ID: RDU_SPC6FT_D3-00000001).

¹⁸⁷ Stress Test Report as at 31 December 2005 (Doc ID: 0.7.120.30824).

but he indicated that he still held the view that stress testing had not been implemented and that the level of detail required “*with the scenario analysis set out in detail showing the knock-on impact*”, was not included.¹⁸⁸

10.160 Mr Reilly was asked whether he ever saw a stress test carried out by INBS of the type envisaged by KPMG, and Mr Reilly indicated that up to 2008 and the Banking Guarantee, he had not.¹⁸⁹

10.161 Mr Reilly was then referred to the 2006 KPMG Management Letter dated 25 May 2007. It included the following “*Management response 2007*”:

*“Credit Risk Department submitted a stress test of the entire mortgage book to the Board in February 2007 based on the 31st December 2005 data for the mortgage book. This exercise will be repeated on the 31st December 2006 data and is due for completion by end of Q2, 2007”.*¹⁹⁰

10.162 Mr Reilly’s view above regarding the adequacy of that stress test, i.e. that the documents were unsatisfactory¹⁹¹, was noted by the Inquiry.

10.163 Mr Reilly was asked about the 2007 KPMG Management Letter which included the following “*Management response 2008*”:

*“A stress test was not completed in 2007 due to an increase in workloads from due diligence queries. It was postponed until April 2008 and will be performed on the December 2007 year end. When completed and presented to the Board it will be forwarded to the Financial Regulator”.*¹⁹²

10.164 At this point there was a formal policy in place (since June 2007) requiring stress testing to be done on an annual basis, and it was alleged that INBS was now effectively in breach of that policy. Mr Reilly was questioned on his awareness of this policy and its relevance in terms of the Management Letter. He made the point that the purpose of any stress test as at 31 December 2007 and going forward (when INBS had ceased commercial lending) would be very different from the stress testing KPMG recommended in 2004, 2005 and 2006. He noted that the stress testing recommendation in 2004 to 2006 was to inform management and the Board as to what

¹⁸⁸ Transcript SPC 6 Inquiry Hearing, dated 4 April 2019, page 31 (Doc ID: RDU_SPC6FT_D3-000000001).

¹⁸⁹ Transcript SPC 6 Inquiry Hearing, dated 4 April 2019, page 31 line 19 (Doc ID: RDU_SPC6FT_D3-000000001).

¹⁹⁰ 2006 KPMG Management Letter, page 14 (Doc ID: 0.7.120.278218-0000001).

¹⁹¹ Transcript SPC 6 Inquiry Hearing, dated 4 April 2019, page 33 line 15 (Doc ID: RDU_SPC6FT_D3-000000001).

¹⁹² 2007 KPMG Management Letter, page 15 (Doc ID: 0.7.120.9904).

might happen (particularly to liquidity) if things in the market deteriorated. However, in 2007 liquidity issues had “kicked in” and INBS had taken the decision to stop lending. The stress testing, therefore, was for a different purpose, as opposed to the previous purpose of informing the Board on what risks they had taken in respect of the lending they had taken on.¹⁹³

10.165 Mr Reilly further indicated that at the time of KPMG’s audit, the focus was on the viability of INBS for the next twelve months as a going concern. There were concerns as to how INBS was going to get funding in the absence of liquidity in the market, the possibility of securitising some of their assets and the level of deposits. Stress testing had been moved to the side and “*it was almost too late to talk about stress testing at this stage*”.¹⁹⁴

10.166 Mr Reilly was asked about the stress test that was ultimately completed in November 2008.¹⁹⁵ He indicated that he could not recall the document and noted that at that point the Government Guarantee was in place and what was important then for KPMG and the Board was around INBS’s business plan, which Goldman Sachs was involved with. He noted that a further big issue at the time was the fact that INBS had not made sufficient credit provisions for the 2008 financial statements, and that KPMG’s focus was very much around the financial statements.¹⁹⁶

Darragh Daly

10.167 Mr Daly was asked in his witness statement to provide information on why a credit risk stress test was not provided sooner to the Board or to the Financial Regulator. He stated:

“I believe we struggled to produce the stress test based on an absolute lack of portfolio level data or an appropriate IT platform upon which a stress test might be performed. The only system in place was Summit which was the mortgage accounting platform – this was effectively dealing with the charging and collection of interest. The stress test that had previously been carried out were [sic] of a significantly lesser scale and scope. The lack of available data upon which a stress test could be carried out, combined with the priorities assigned

¹⁹³ Transcript SPC 6 Inquiry Hearing, dated 4 April 2019, page 39 to 40, (Doc ID: RDU_SPC6FT_D3-000000001).

¹⁹⁴ Transcript SPC 6 Inquiry Hearing, dated 4 April 2019, page 42 (Doc ID: RDU_SPC6FT_D3-000000001).

¹⁹⁵ INBS Stress Test Report, dated November 2008 (Doc ID: 0.7.120.305928-000001).

¹⁹⁶ Transcript SPC 6 Inquiry Hearing, dated 4 April 2019, page 43 to 44 (Doc ID: RDU_SPC6FT_D3-000000001).

to other matters contributed to significant delays in undertaking a stress test and producing a report".¹⁹⁷

10.168 In the course of his oral testimony on the seventh day of the SPC 6 module hearing, on 10 April 2019, Mr Daly was referred to the 2004 KPMG Management Letter¹⁹⁸, which included the initial recommendation regarding the preparation of a stress test. Mr Daly confirmed that he was familiar with this document after he became the credit risk manager.¹⁹⁹

10.169 Mr Daly was referred to the 2006 KPMG Management Letter. It was noted by the LPT that the stress test recommendation was carried forward from the 2004 KPMG Management Letter and the responsibility was changed to "*Credit Risk Manager*".²⁰⁰ It was put to Mr Daly that at that time, in May 2007, there had been two stress tests; one prepared by Mr Tom McMenamin and one by Ms Lynne Halley who reported to Mr Daly in the credit risk department, both of which were based on the December 2005 data. The Management Response included in the KPMG Management Letter indicated that there would be a repeat of the stress test for the period ending December 2006. This was due for completion by the end of quarter 2 2007, which was essentially within a month's time. Mr Daly confirmed that no stress test was completed for that period, however "*steps were undertaken to complete a stress test*" and "*work was commenced, but it certainly wasn't completed*", as the required information was not available.²⁰¹

10.170 Mr Daly was referred to an email which he wrote to his team in the credit risk department dated 28 February 2007 in which he complimented Ms Halley and the team on preparing the stress test report for 2005 and committed to now carrying out twice-yearly stress tests.²⁰² Mr Daly confirmed that these twice-yearly stress tests did not occur and indicated that "*the specific measurables that would have been required to produce a stress test...were not available*". Mr Daly indicated that there were priorities elsewhere, in particular work to be undertaken for Project Harmony and ICAAP, and "*the scale of the exercise to be undertaken in relation to putting us in a position where*

¹⁹⁷ Witness Statement of Darragh Daly, undated, page 3 (Doc ID: RDU_REL87-000000019).

¹⁹⁸ 2004 KPMG Management Letter (Doc ID: 0.7.120.55765).

¹⁹⁹ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 44 (Doc ID: RDU_SPC6FT_D7-000000001).

²⁰⁰ 2006 KPMG Management Letter, page 4 (Doc ID: 0.7.120.278218-0000001).

²⁰¹ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 47, line 5 to 25 (Doc ID: RDU_SPC6FT_D7-000000001).

²⁰² Email from Darragh Daly to colleagues, dated 28 February 2007 (Doc ID: 0.7.120.171638).

*we could carry out all these activities” was “massively underestimated...because there had been no focus on it whatsoever”.*²⁰³

10.171 Under further questioning on this matter, Mr Daly clarified that he did not believe he “specifically received an instruction to stop doing” the stress test, but noted that “it’s the same impact...if I have sufficient resources to do this and you asked me to do that, well then this suffers”.²⁰⁴

10.172 In response to a question from the Inquiry Members, Mr Daly indicated that between the stress test carried out by Ms Halley and any subsequent stress test, he had to get to work on the data and bring it up to date. He was asked whether that suggested that “the requirement for the stress test had become more complex and that there was a more complex set of variables being required to be applied”. Mr Daly confirmed that it did, “in parallel with other requests for different activities coming in”, and that he “would imagine that we were asked to produce more depth and different scenarios, and so on”.²⁰⁵

David Brophy

10.173 Mr Brophy, gave evidence on the eighth day of the SPC 6 module hearing on 11 April 2019. He was referred to the 27 June 2007 Credit Risk Management Policy, in particular to page 5 of the document which stated that:

*“It is the Board's overall responsibility to approve the Society’s Credit Risk Management Policy and other significant policies relating to credit risk and its management. The Board must ensure that the overall credit risk exposure is maintained at prudent levels consistent with available capital. The Board must also ensure that the Society implements practices and procedures for the identification, measurement, monitoring and control of credit risk”.*²⁰⁶

10.174 Mr Brophy agreed with the proposition that one of the things the Board had to do was to adopt policies in relation to credit risk, and it was required to ensure that INBS implemented those policies. He was asked how the Board ensured that the policies were being complied with “let’s say in respect of reports to the Board”. He responded

²⁰³ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 49 to 51 (Doc ID: RDU_SPC6FT_D7-000000001).

²⁰⁴ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 55 line 7 to 13 (Doc ID: RDU_SPC6FT_D7-000000001).

²⁰⁵ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 70 (Doc ID: RDU_SPC6FT_D7-000000001).

²⁰⁶ 27 June 2007 Credit Risk Management Policy, paragraph 1.1. (Doc ID: 0.7.120.431329).

that: “you would expect to get those reports and you’d expect them to be... as comprehensive as possible and... satisfying each of these requirements”.²⁰⁷

10.175 It was noted by the LPT that when the Quarterly Reports stopped coming to the Board, there did not appear to be anything in the minutes of the Board meetings indicating a query by the Board or any objection or request for the Quarterly Reports to recommence. Mr Brophy was asked why that was. He replied:

“It wasn’t a conscious thing: Guys, we don’t need them for the next six months or nine months. I think the – – you know, why the Board mightn’t have, you know – – I suppose notice was partly the time, I think you’re talking about the end of ’07 period, when priorities had shifted.

...

I think it can’t be belittled [2007], it was in the context in which the Board was operating on a monthly basis”.²⁰⁸

10.176 He also noted that a hugely comprehensive exercise had been done by KPMG; that the Board was aware of any additional loans made during 2007 and had specifically approved them; that the Board did have other information on loans through the accounts information; and that there was not a huge information dearth.²⁰⁹

10.177 Mr Brophy was referred to page 32 of the 27 June 2007 Credit Risk Management Policy which stated that the credit risk department reported to the Board on the results of stress tests performed annually. It stated that the credit risk department planned to expand future tests to improve the quality of the overall results generated and enable INBS assess risk more accurately. It also stated that it would carry out the next detailed stress test during quarter 2 2007 on the mortgage book as at 31 December 2006.²¹⁰ It was put to Mr Brophy that the next stress test was not ultimately submitted until November 2008 and he stated that he had to “assume that’s correct”.²¹¹

10.178 Mr Brophy was referred to page 15 of the 2007 KPMG Management Letter that addressed stress testing:

²⁰⁷ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 33 (Doc ID: RDU_SPC6FT_D8-000000001).

²⁰⁸ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 34 (Doc ID: RDU_SPC6FT_D8-000000001).

²⁰⁹ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 34 to 35 (Doc ID: RDU_SPC6FT_D8-000000001).

²¹⁰ 27 June 2007 Credit Risk Management Policy, page 32 (Doc ID: 0.7.120.431329).

²¹¹ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 37 line 14 (Doc ID: RDU_SPC6FT_D8-000000001).

“No formal policy is in place for the ongoing monitoring of the effects of adverse changes in economic conditions”; and that

“Over the last number of years the Society has become increasingly exposed to concentration risk in respect of its commercial portfolio. This arises due to the increase in absolute value of loans and value of the top 30 exposures.

*Stressed markets are often characterised by material loss of liquidity. Without stress testing the portfolio, management may be unaware of the potential effects that unexpected adverse market conditions may have on the Society's portfolio and the resultant strain this may have on the Society's funding base”.*²¹²

10.179 Mr Brophy was then referred to the Management Response which stated:

“A stress test was carried out in 2006 and a summary report was sent to the Board on 24 October 2006 and to the Financial Regulator on 10 November 2006. A stress test of the mortgage book was carried out in the last quarter of 2006 and is due to go to the Board in February 2007.

The Society will stress test its mortgage book on an annual basis. The Credit Risk Manager is the person responsible for that”,

10.180 The status of this was noted as:

*“Stress testing of the 31 December 2006 loan book is due for completion by end of Q2 2007”.*²¹³

10.181 Both the 2007 Management Response 2007 which stated that: *“Credit Risk Department submitted a stress test of the entire mortgage book to the Board in February 2007 based on 31st December 2005”* and the 2008 Management Response 2008 which stated that: *“stress test was not completed in 2007 due to an increase in workloads from due diligence queries. It was postponed until April 2008 and will be performed on the December 2007 year end”*²¹⁴, were put to Mr Brophy.

10.182 He was asked whether he had any knowledge in relation to the issue of workload and why the stress test had not been done. He indicated that he did not, and that he had

²¹² 2007 KPMG Management Letter, page 15 (Doc ID: 0.7.120.55769).

²¹³ 2007 KPMG Management Letter, page 15 (Doc ID: 0.7.120.55769).

²¹⁴ 2007 KPMG Management Letter, page 15 (Doc ID: 0.7.120.55769). Note that this page contains both the 2007 Management Response and 2008 Management Response as referred to above.

no recollection of it being brought to the Board's specific attention that "*exercise A or exercise B can't be done because of resources*".²¹⁵

Michael Walsh

10.183 Dr Walsh gave evidence to the Inquiry during the SPC 6 module hearing on 9 April 2019. Dr Walsh was asked about the 27 June 2007 Credit Risk Management Policy which provided that "*The Credit Risk department reports to the Board on the results of credit risk stress tests performed annually*".²¹⁶ Dr Walsh did not recollect whether credit stress tests were performed annually up to that point.²¹⁷ It was noted that the same policy further provided that "*The Credit Risk Department plans to expand future tests, to include a wider set of variables and a range of data, in order to improve the quality of the overall results generated and enable the Society to more accurately assess its risk in this area*". Dr Walsh indicated that there was serious effort being made to improve the stress tests. It was noted that the policy also provided that the next detailed stress test would be carried out during quarter 2 2007, and this self-suggested deadline was within a few days of when the policy was published. Dr Walsh agreed that the fact that the next stress test was not reported to the Board until November 2008 was a significant failure to deliver on what was proposed in the policy. He further agreed that while it was the responsibility of senior management to ensure that the reports were prepared and submitted to the Board on a timely basis, this did not relieve the Board of a responsibility to request these reports where there was a failure to provide same. He stated: "*No, it doesn't relieve the Board of any responsibility*".²¹⁸

10.184 Dr Walsh was referred to the 2007 KPMG Management Letter, dated 8 July 2008, which included the Management Response indicating that the postponement of the stress test was due to "*an increase in workloads*"²¹⁹ and Dr Walsh confirmed that he never received any complaint from management that they were too stretched to carry out the stress tests.²²⁰ Dr Walsh was also referred to correspondence between INBS and the Financial Regulator and internally in INBS that identify further reasons for the delay in completing the stress test, in particular the illness of a staff member and their

²¹⁵ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 49 (Doc ID: RDU_SPC6FT_D8-000000001).

²¹⁶ 27 June 2007 Credit Risk Management Policy, page 32 (Doc ID: 0.7.120.431329).

²¹⁷ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 55 (Doc ID: RDU_SPC6FT_D6-000000001).

²¹⁸ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 55 to 58 (Doc ID: RDU_SPC6FT_D6-000000001).

²¹⁹ 2007 KPMG Management Letter, page 15 (Doc ID: 0.7.120.55769).

²²⁰ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 74 to 75 (Doc ID: RDU_SPC6FT_D6-000000001).

reliance on input from KPMG. Dr Walsh confirmed that nobody had brought these factors to his attention at the time.²²¹

10.185 Dr Walsh was asked who he thought bore responsibility for the failures to comply with the policies discussed above and he stated that *"it's the Board's responsibility, but, you know, the Board is dependent on the executive to provide those documents and to comply with policies"*.²²²

Alleged participation by Mr Purcell

10.186 This Findings Report has outlined Mr Purcell's roles and responsibilities in INBS during the Review Period at Chapter 2. Mr Purcell's role and responsibility in relation to SPC 6 is set out in general at paragraph 10.38 above.

10.187 In relation to the provision of reports on the results of credit risk stress tests, the Investigation Report asserted that Mr Purcell had a dual responsibility in this regard: (i) as a Board member, he was responsible for ensuring that he received the relevant credit risk reports as required by policy in order to fulfil his role as a Board member; and (ii) as a member of senior management, he had responsibility to ensure that the Board was provided with the relevant credit risk reports and that the policy requirements in this regard were implemented.²²³

10.188 In addition, the Investigation Report stated that Mr Purcell corresponded with the Financial Regulator regarding the preparation of credit risk reports and the submission of a report on the results of an annual stress test to the Board and therefore had knowledge of INBS's failure to do so.²²⁴

10.189 As a member of senior management and as an executive director who attended Audit Committee meetings, the Investigation Report asserted that Mr Purcell had responsibility for ensuring actions were undertaken to address audit findings in respect of the provision of reports to the Board in a timely manner. Mr Purcell also had a duty, as an executive director and as a member of senior management, to ensure that issues in respect of the provision of reports to the Board which were highlighted to the Board (for example, in Contemporaneous Reports or Financial Regulator Correspondence)

²²¹ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 76 line 13 (Doc ID: RDU_SPC6FT_D6-000000001).

²²² Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 85 line 4 (Doc ID: RDU_SPC6FT_D6-000000001).

²²³ Investigation Report, Chapter 11, paragraph 11.159 (Doc ID: RDU_REL-000000035).

²²⁴ Investigation Report, Chapter 11, paragraph 11.159 (Doc ID: RDU_REL-000000035).

were appropriately addressed by the business.²²⁵ These are among the issues considered by the Inquiry in coming to their findings in this SPC.

Mr Purcell's replies to Examination and Investigation Letters

10.190 In his voluntary responses to Examination and Investigation Letters, Mr Purcell denied participation in the commission of any SPCs, including SPC 6. In relation to the allegation that INBS did not receive annual stress test reports Mr Purcell said:

*"Insofar as it is stated that the board did not receive a report on the results of the annual credit risk stress tests, as far as I can recollect, any delay was as a result of the exceptional and varied nature of demands being made of credit review during that time".*²²⁶

Mr Purcell's submissions

10.191 In relation to the allegation that the Board did not receive the annual credit risk stress test on time, Mr Purcell referred to the relevant policy provision underpinning this requirement.²²⁷ He noted that the *"job specification of the credit risk manager, the terms of reference of Credit Risk Department and the Credit Risk Department plan all require the developing and carrying out of stress testing on the commercial and residential loan books"*.²²⁸ He then identified specific correspondence with the Financial Regulator between April 2008 and September 2008 which addressed the delay in completing the stress test due for completion in quarter 4 2007, owing to *inter alia* increased workloads and the illness of a key staff member. He identified the fact that the Financial Regulator had outlined additional requirements for the stress test as being a factor in the delay. He submitted that the *"Financial Regulator was kept informed of the delays in writing during 2008"*.²²⁹

10.192 In his closing submissions, dated 22 May 2020, Mr Purcell stated that a stress test was required under policy to be reported to the Board by the end of June 2008. He asserted that for a number of reasons this was not submitted to the Board until November 2008. However, he submitted that the Financial Regulator was kept informed of the delays

²²⁵ Investigation Report, Chapter 11, paragraph 11.160 (Doc ID: RDU_REL-000000035).

²²⁶ Response of Stan Purcell to SPCs set out in letter of Central Bank dated 12 December 2013, page 9 (Doc ID: 0.7.120.673241-000001).

²²⁷ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 112 line 26 (Doc ID: RDU_SPC6FT_D2-00000001).

²²⁸ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 112 line 27 (Doc ID: RDU_SPC6FT_D2-00000001).

²²⁹ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 113 to 114 (Doc ID: RDU_SPC6FT_D2-00000001).

in writing during 2008. Mr Purcell further submitted that the Board was informed of the delay in submitting the stress test and he noted that there was a practice of copying Financial Regulator correspondence to the Board. He further noted that an update on Management Letter recommendations, which included the preparation of the stress test, was brought to the attention of the Board during the Board meeting held on 24 July 2008.²³⁰²³¹

Mr Purcell's evidence

10.193 In his oral evidence to the Inquiry, and in response to a question from the LPT on the ninth day of the SPC 6 module hearing on 12 April 2019, Mr Purcell accepted that the stress test “*wasn't provided to the Board until November 2008*”.²³²

10.194 In relation to the allegation that there was a breach by INBS of the policy that stress tests should be provided from the date of the 2007 policy, Mr Purcell noted that the requirement in the 2007 policy to provide the test annually was “*interpreted as twelve months from the date of the policy, which is the end of June*”. He said that because of various factors and circumstances that had already been referred to in his witness statement, the stress test was not provided until November. Mr Purcell suggested that “*if the policy said it was provided in each calendar year*” it would have been complied with, but that “*it is what it is*”. He said that the credit risk department worked very hard to get the stress test done and they were probably trying to do it at a high level.²³³

10.195 Regarding the first part of the allegation, i.e. that the failure to provide the stress test to the Board within the year's period was a failure by INBS to manage its business in accordance with sound administrative and accounting principles, Mr Purcell stated that there were explanations as to why there had been difficulties carrying out the stress test. He said there was a suggestion that, in 2008 they “*were in a kind of a stress situation anyway*” and in that context maybe a stress test “*wouldn't have contributed to helping things then, because things had moved into a different phase*”.²³⁴

10.196 Reference was made to the correspondence with the Financial Regulator regarding the absence of a stress test (which Mr Purcell was involved with), and it was noted that the Financial Regulator was taking a serious view of the issue. Mr Purcell was asked

²³⁰ Written Submissions of John S Purcell, dated 22 May 2020 (Doc ID: RDU_REL467-000000002).

²³¹ Minutes of Board meeting, dated 24 July 2008 (Doc ID: 0.7.120.8409).

²³² Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 14 line 18 (Doc ID: RDU_SPC6FT_D9-000000001).

²³³ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 18 (Doc ID: RDU_SPC6FT_D9-000000001).

²³⁴ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 26 line 10 to 19 (Doc ID: RDU_SPC6FT_D9-000000001).

for his view on the significance of the absence of a stress test at that time and he indicated *"in the circumstances in 2008, that, you know, the stress test was important and maybe it would have been helpful and it should have been done earlier, but 2008 was a special -- we were actually in a stress situation"*. He further stated that *"I was expecting all along, you know, that it would be done within -- initially within the year and then, you know, shortly after it"* and *"I was asking where the thing was and -- I mean, I was trying to get it done. I mean, I was trying to get them to do it, because the Regulator was writing to me and I was writing back"*.²³⁵

10.197 Mr Purcell stated, in respect of his alleged participation in this element of SPC 6, *"As regards the stress testing, I mean, that was a responsibility of Credit Risk. They were working on it, and, you know, they were all of the time -- I wasn't participating, I was reporting. I would have been trying to get him to do it, to finish it, to come to a conclusion. I didn't participate. There is an outline of what happened. In fact, what happened was that it wasn't that they didn't do it, there was a delay, and there was reasons"*.²³⁶

INQUIRY FINDING – SPC 6.3

Finding in relation to INBS

10.198 **The requirement to report the result of credit risk stress tests annually to the Board did not become INBS policy until the 27 June 2007 Credit Risk Management Policy. Before this policy, the requirement for stress testing had been the subject of findings and recommendations in the 2004, 2005 and 2006 KPMG Management Letters. The Management Response in each of these years was that going forward the commercial book would be stress tested half yearly. This assurance was given to KPMG and to the Financial Regulator, as outlined above.**

10.199 **Based on the minutes and packs of the Board meetings throughout the Review Period, and based on the evidence cited above, the Inquiry finds that credit risk stress reports were not provided to the Board from the date of the enactment of the policy requirement until November 2008.**

²³⁵ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 51 to 54 (Doc ID: RDU_SPC6FT_D9-000000001).

²³⁶ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 96 line 3 to 11 (Doc ID: RDU_SPC6FT_D9-000000001).

10.200 Stress tests are an integral and vital part of risk management in any financial institution. During the Review Period a stress test report was provided to the Board on 28 February 2007. Mr Reilly of KPMG gave evidence that this had not provided the level of detail that was required and that a proper analysis had not occurred.²³⁷

10.201 INBS gave repeated undertakings and commitments to its auditor, KPMG, and to the Financial Regulator that these stress tests would be done and would be reported, as outlined in the narrative above.

10.202 The Inquiry were struck by the evidence of Mr Daly (see paragraph 10.167 et seq. above) that the credit risk department struggled to produce the stress tests based on *“an absolute lack of portfolio level data or an appropriate IT platform upon which stress test might be performed... The lack of available data upon which a stress test would be carried out, combined with the priorities assigned to other matters contributed to significant delays in undertaking stress test and producing a report”*. This represents a failure of management in INBS.

10.203 The Inquiry finds that in failing to provide the result of credit risk stress tests to the Board within a year of adopting the 27 June 2007 Credit Risk Management Policy, INBS was in breach of internal policy.

10.204 Having regard to the above finding made by the Inquiry in relation to SPC 6.3, the Inquiry makes the following findings in respect of the legislative provisions and condition on INBS’s authorisation underpinning SPC 6(a), 6(b) and 6(c):

(a) Regulation 16(1) of the 1992 Regulations

The Inquiry finds that that in failing to ensure that stress tests were provided to the Board, in accordance with INBSs internal policies, INBS failed to manage its business in accordance with sound administrative and accounting principles and to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed. Accordingly, the Inquiry finds that a contravention of Regulation 16(1) of the 1992 Regulations occurred.

(b) Section 76(1) of the 1989 Act

²³⁷ See paragraph 10.159.

The Inquiry finds that in failing to ensure that stress tests were provided to the Board, in accordance with INBS's internal policies, INBS failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon. Accordingly, the Inquiry finds that a contravention of section 76(1) of the 1989 Act occurred.

(c) Part 1 of the 2005 Regulatory Document

The Inquiry finds that in failing to ensure that stress tests were provided to the Board, in accordance with INBS's internal policies, INBS failed to comply with the condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. Accordingly, the Inquiry finds that a contravention of Part 1 of the 2005 Regulatory Document occurred.

Finding in relation to Mr Purcell's participation

10.205 Mr Purcell, on behalf of the Board, corresponded with the Financial Regulator before and after the implementation of the 27 June 2007 Credit Risk Management Policy. Paragraph 10.133 above outlines the litany of broken commitments contained in this correspondence. Ms Madden's evidence (at paragraph 10.135 et seq.) is striking in this regard as is the evidence of Mr Reilly of KPMG (at paragraph 10.151 et seq.).

10.206 Mr Purcell has submitted that the policy requirement to provide reports on stress tests did not arise until one year after the enactment of the June 2007 policy, which accordingly would have been June 2008. The first stress test report was in fact produced in November 2008. Whilst that delay might not appear significant in the overall context of what was happening in financial markets at the time, the Inquiry is of the view that given the importance of stress testing in the commercial lending conducted by INBS and given the importance attached to this matter by the Financial Regulator, KPMG and Deloitte, any delay in the provision of these reports on the part of INBS was unacceptable and a breach of policy.

10.207 The Inquiry believes that the Board of INBS had a responsibility to ensure that stress tests were completed and presented to the Board as part of its overall credit risk management responsibility.

10.208 **The Inquiry finds that as a member of the Board, Mr Purcell did participate in the failure to ensure that the Board received a report on the results of annual credit risk stress tests that were to have been completed annually.**

10.209 **Accordingly, for the reasons set out above, the Inquiry finds that the allegation of participation by Mr Purcell in SPC 6.3, and in the commission by INBS of SPCs 6(a), 6(b) and 6(c), is proven.**

SPC 6.4

10.210 SPC 6.4 alleged that the Board did not receive reports on compliance with geographic concentration risk limits.

10.211 It is alleged that INBS did not monitor its adherence to its geographic concentration risk limits in that information on the limits was not prepared and circulated to the Board. As the Board was responsible for setting INBS policy for lending strategy, for setting risk and for the overall management of the organisation, it is alleged that the Board was responsible for monitoring INBS's adherence to its geographic concentration risk limits.

Relevant INBS policy documents

10.212 The policy provisions relating to the provision of reports on compliance with geographic concentration risk limits were:

- (i) section 3 and section 6 of the 27 June 2007 Concentration Risk Policy²³⁸; and
- (ii) the 27 June 2007 Credit Risk Management Policy.²³⁹

10.213 Section 3.2.1 of the 27 June 2007 Concentration Risk Policy and section 4.3.2 of the 27 June 2007 Credit Risk Management Policy established lending ratio limits in relation to geographic concentration and stated:

“The Society also measures other concentration risk by defining the relevant sectors and geographical areas it is exposed to.

The Society classifies its’ geographical locations into five broad categories as follows:

²³⁸ 27 June 2007 Concentration Risk Policy (Doc ID: 0.7.120.432154).

²³⁹ 27 June 2007 Credit Risk Management Policy (Doc ID: 0.7.120.431329).

- *Dublin City and County*
- *Rest of Republic of Ireland*
- *London*
- *Rest of UK*
- *Other*

From 1 July 2007, the Credit Risk department will commence the preparation of Concentration Risk – Geographical Analysis Report, to include in its reporting analysis to the Board on a quarterly basis. This report will detail the Society’s exposure in each of the above geographical categories as a percentage of Own Funds.

*The Credit Risk department will monitor the geographical concentrations and alert the Board to any breach of geographic limits”.*²⁴⁰

10.214 Under the heading “*Managing other concentration risk*”, the policies stated at section 3.3 and section 4.3.3 respectively that INBS imposes an internal limit in relation to its geographical locations as follows:

“...

- *Risk Assets concentrated in one geographical category cannot exceed 800% of Total Own Funds”.*²⁴¹

10.215 Section 6 of the 27 June 2007 Concentration Risk Policy and section 4 of the 27 June 2007 Credit Risk Management Policy both set out the role of the Board in relation to the review of concentration risk generally. They stated:

“The Society’s concentration risk policy is approved by the Board and is subject to regular review to take account of any changes in risk appetite and business environment. The Board ensures that the Society’s policy is enforced by

²⁴⁰ 27 June 2007 Concentration Risk Policy, section 3.2.1 (Doc ID: 0.7.120.432154); 27 June 2007 Credit Risk Management Policy, section 4.3.2 (Doc ID: 0.7.120.431329).

²⁴¹ 27 June 2007 Concentration Risk Policy, section 3.3 (Doc ID: 0.7.120.432154); 27 June 2007 Credit Risk Management Policy, section 4.3.3 (Doc ID: 0.7.120.431329).

*receiving regular reports on concentration risk and any breaches of respective limits”.*²⁴²

Corporate governance documentation - Board meeting packs and minutes

10.216 The Inquiry considered the Board meeting minutes and packs (in particular the management account packs) for the period after the implementation of the relevant policy provisions in June 2007 and the remainder of the Review Period. The Inquiry found that these documents did not contain any reference to INBS’s compliance with its geographic concentration risk limits.

10.217 During this period (between June 2007 and the end of the Review Period) the Board did receive one Quarterly Report which included details of the respective value of lending by geographic region as at 30 September 2007.²⁴³ However, these geographic segments were not expressed as a percentage of total “*Own Funds*”, as required, and accordingly the Board would not have been in a position to assess whether INBS was in compliance with the required geographic concentration risk limit.

Witness evidence

Vincent Reilly

10.218 In his evidence to the Inquiry during the third day of the SPC 6 module hearing on 4 April 2019, Mr Reilly was referred to Chapter 11 of the Investigation Report, and in particular to paragraphs 11.23 and 11.24 which identified what it considered to be the relevant requirements of the 27 June 2007 Concentration Risk Policy in respect of geographic concentration.²⁴⁴ He was asked for his view on the importance or relevance of reports on that topic being provided to the Board. Mr Reilly indicated that it was difficult to comment as, in December 2007, “*the topic of reporting in a sense is kind of not that important any more when you are struggling for survival*” but also noted “*I do know the Board were well aware are of roughly where they were concentrated on*”.²⁴⁵

²⁴² 27 June 2007 Concentration Risk Policy, section 6 (Doc ID: 0.7.120.432154); 27 June 2007 Credit Risk Management Policy, section 4.6 (Doc ID: 0.7.120.431329).

²⁴³ Board Report on Credit Risk for Q 3 2007 (Doc ID: 0.7.120.5211).

²⁴⁴ Investigation Report Chapter 11, paragraph 11.23 to 11.24 (Doc ID: RDU_REL-000000035).

²⁴⁵ Transcript SPC 6 Inquiry Hearing, dated 4 April 2019, page 58 line 21 to 29 (Doc ID: RDU_SPC6FT_D3-000000001).

Darragh Daly

10.219 In his evidence to the Inquiry during the seventh day of the SPC 6 module hearing on 10 April 2019, Mr Daly was referred to the 27 June 2007 Concentration Risk Policy²⁴⁶ and it was noted that this policy suggests that, as part of the quarterly reporting to the Board, there would be the preparation of a document called "*Concentration Risk Geographical Analysis Report*".²⁴⁷ Mr Daly was asked whether that document was prepared for the Board from June 2007 onwards. He stated that they commenced ICAAP reporting at the end of June 2007 and in that context were preparing reports in conjunction with finance which included "*calculating percentage of own funds in terms of exposure to specific customers, specific geographies, specific sectoral codes*". He could not recall whether these reports, which were being prepared on behalf of INBS, were being submitted to the Board. It was put to Mr Daly that Dr Walsh's evidence was that the Board did not receive that information in relation to the geographic concentration risk, and Mr Daly appeared to accept this.²⁴⁸

David Brophy

10.220 Mr Brophy gave evidence to the Inquiry on the eighth day of the SPC 6 module hearing on 11 April 2019. He was asked how information was received at Board level in relation to concentration, in particular geographic concentration.²⁴⁹ It was noted by the LPT that the point had been made in previous evidence that there were very few separate reports on geographical concentration, but that some of the quarterly commercial reports had information on geographic concentration. Mr Brophy responded that he could not recall specific items "*but I do recall getting, you know, I have an overall sense and memory of getting regular information and analysis*".²⁵⁰

10.221 The 27 June 2007 Concentration Risk Policy was opened to Mr Brophy. He was asked whether he had any memory of this policy being approved or a discussion around it, or why it was introduced or anything of that nature. Mr Brophy indicated "*No, not*

²⁴⁶ 27 June 2007 Concentration Risk Policy (Doc ID: 0.7.120.432154).

²⁴⁷ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 41 et seq. (Doc ID: RDU_SPC6FT_D7-000000001).

²⁴⁸ Transcript SPC 6 Inquiry Hearing, dated 10 April 2019, page 43 line 3 (Doc ID: RDU_SPC6FT_D7-000000001).

²⁴⁹ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 18 et seq. (Doc ID: RDU_SPC6FT_D8-000000001).

²⁵⁰ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 20 line 6 to 9 (Doc ID: RDU_SPC6FT_D8-000000001).

*specifically, but it would be consistent with...a general approach where we were trying to improve reporting and analysis...as the Society moved forward”.*²⁵¹

10.222 Mr Brophy was referred to page 4 of the policy which provided that:

*“From 1 July 2007, the Credit Risk department will commence the preparation of Concentration Risk – Geographical Analysis Report, to include in its reporting analysis to the Board on a quarterly basis. This report will detail the Society’s exposure in each of the above geographical categories as a percentage of Own Funds”.*²⁵²

10.223 It was put to him that the intention was that from mid-2007 there was a specification of exactly what the Board was to get. Mr Brophy accepted that proposition.²⁵³

10.224 Mr Brophy was then referred to the provision regarding the role of the Board and concentration risk, on page 6 of the policy, which stated that:

*“The Society’s concentration risk policy is approved by the Board and is subject to regular review to take account of any changes in risk appetite and business environment. The Board ensures that the Society’s policy is enforced by receiving regular reports on concentration risk and any breaches of respective limits”.*²⁵⁴

10.225 It was put to Mr Brophy that this policy reflected the fact that the Board considered that these reports were important. Mr Brophy also accepted that proposition.²⁵⁵

10.226 The policy required that if there was a breach of limits, the Board was to receive a report on that, and Mr Brophy was asked whether he recalled ever getting such a report. He responded: *“I think there might have been...one instance where either it might have been close to or was breached, I’m not quite sure”.*²⁵⁶

²⁵¹ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 23 (Doc ID: RDU_SPC6FT_D8-000000001).

²⁵² 27 June 2007 Concentration Risk Policy, section 3.2.1 (Doc ID: 0.7.120.432154).

²⁵³ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 24 line 16 to 20 (Doc ID: RDU_SPC6FT_D8-000000001).

²⁵⁴ 27 June 2007 Concentration Risk Policy, section 6 (Doc ID: 0.7.120.432154).

²⁵⁵ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 27 line 27 (Doc ID: RDU_SPC6FT_D8-000000001).

²⁵⁶ Transcript SPC 6 Inquiry Hearing, dated 11 April 2019, page 28 line 3 (Doc ID: RDU_SPC6FT_D8-000000001).

Michael Walsh

10.227 Dr Walsh provided a witness statement to the Inquiry dated 27 March 2018. He stated:

*“As a director, I was satisfied that the Board had sufficient information in relation to the business to carry out its responsibilities. The Board considered all reports presented to it in the Board packs. The Board adopted policies that required the provision of reports to it. The provision of these reports was the responsibility of the executive. As would be evident from a review of the Board packs, the Board received very comprehensive information. If it ever came to the Board’s attention that reports that should have been provided were not so provided, the Board instructed the executive to remedy that situation”.*²⁵⁷

10.228 Dr Walsh was asked, in his witness issues paper, whether exceptions to commercial lending policies, the quarterly commercial lending reports, annual credit risk stress tests and geographic concentration risk limits formed part of the considerations of the Board in setting the strategy and risk appetite of the society. He responded:

“As noted above, the Board had a clear strategy pre and post December 2007. The risk appetite pre December 2007 was largely defined by the capital available to the Society. The capital of the Society was constrained relative to the Banks as the Society did not have access to the capital markets to raise equity. Accordingly, the Society focused on short term lending where capital could be used more efficiently. From December 2007, recognising the changed environment, the Board sought to reduce risk and to build liquidity.

*The Board’s strategy was informed by the information that was presented to it and by the directors’ understanding of the external environment in which the Society operated”.*²⁵⁸

10.229 Dr Walsh was also asked whether the four items in SPC 6 formed part of the considerations of the Board in approving commercial loans. He stated:

“Each individual loan was considered on its own merits and in the context of the strategy and risk appetite of the Society. Each loan came to the Board

²⁵⁷ Witness Statement of Michael Walsh, dated 27 March 2018, page 5 (Doc ID: RDU_REL72-000000004).

²⁵⁸ Witness Statement of Michael Walsh, dated 27 March 2018, page 9 answer 8(a) (Doc ID: RDU_REL72-000000004).

having been recommended by the Credit Committee and was then submitted to the Board and discussed by the Board with the Managing Director”.²⁵⁹

10.230 In the course of Dr Walsh’s evidence to the Inquiry on the sixth day of the SPC 6 module hearing, it was noted by the LPT that the 2005 Impairment Provisioning Policy provided for regular reports to the management and the Board on concentration of the loan book by sector and geographically, and it was put to Dr Walsh that it did not appear from the Board minutes during the relevant period that there was consideration of the geographical and sectoral concentration. Dr Walsh indicated that while *“it surprised me that there wasn’t ... the Board would have had a pretty good appreciation of what concentrations actually were within the book”*.²⁶⁰

10.231 In relation to geographic concentration risk limits, he was asked whether he or any other Board member or other senior employee of INBS had raised this issue with the Board, he was also asked what his understanding was of the purpose of geographic concentration limits in commercial lending. He stated:

“Even a hindsight review of the Society in terms of geographic spread will demonstrate that in geographic terms it was the most prudent of all the Irish institutions. The geographic spread was described in detail in the June 2007 KPMG Vendor Due Diligence. The Society from the early 90’s had diversified into London. Subsequently, its development in Ireland and the UK was focused on the safest areas. In the UK the concentration was on London and the southeast and in Ireland, on Dublin including the commuter belt, and Cork. It was perceived that the focus of these main centres represented the safest locations for lending. The geographic spread was set out in the annual reports.

In addition, geographic concentration was one of the issues covered as part of the ICAAP and would have consequently formed part of the capital assessment needs of the Society. However, given the credit crunch, diversification either geographically or across sectors did little to protect Irish institutions”.²⁶¹

10.232 In the course of his oral evidence to the Inquiry, it was suggested to Dr Walsh that things changed materially at the end of 2007. Dr Walsh was referred to a specific occasion (which appears to be the only occasion) where information on sectoral and

²⁵⁹ Witness Statement of Michael Walsh, dated 27 March 2018, page 10 answer 11 (Doc ID: RDU_REL72-000000004).

²⁶⁰ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 17 to 18 (Doc ID: RDU_SPC6FT_D6-000000001).

²⁶¹ Witness Statement of Michael Walsh, dated 27 March 2018, page 14 answer 25(a) (Doc ID: RDU_REL72-000000004).

geographical concentration was obtained for the Board²⁶², and it was put to Dr Walsh that this information, and a range of other information was being sought by the Board at that time as the Board felt it important or useful at least to have that in report form for the purposes of its deliberations at that time. Dr Walsh indicated that he had no recollection of this but presumed that the Board “*had actually, you know, requested it in some fashion or required it*”.²⁶³

10.233 Dr Walsh was referred to the minutes of a Board meeting on 27 June 2007²⁶⁴ which recorded that minutes of the ICAAP committee meetings (including minutes dated 25 June 2007) were reviewed by the Board. Dr Walsh was also referred to the minutes of the ICAPP committee meeting, which included a recommendation that there be a Quarterly Report in relation to geographical and sectoral concentrations, and that the credit risk department alert the Board to a potential breach of geographical limits when required.²⁶⁵ Dr Walsh did not recollect ever being informed of such a breach and stated it was highly unlikely that a breach would have occurred.²⁶⁶

10.234 Dr Walsh was referred by the LPT to the new policy requirements brought in by the 27 June 2007 Concentration Risk Policy (a policy which Dr Walsh noted was being adopted as part of the ICAAP process), which included a requirement that “*the Credit Risk department will commence the preparation of a Concentration Risk - Geographical Analysis Report, to include in its reporting analysis to the Board on a quarterly basis. This report will detail the Society's exposure in each of the above geographical categories as a percentage of Own funds*”.²⁶⁷ It was noted that it did not appear that this form of analysis was ever provided to the Board, thus indicating that there was a policy in place that was not being complied with. Dr Walsh indicated that he had no recollection of the Board raising as an issue that the report had not been forthcoming or of anybody explaining why it was not forthcoming. He did note, however, that the Board would have been pretty satisfied that there wasn't a breach and would have had a good understanding of where it was actually going in terms of geographic spread. Dr Walsh was not aware of whether the 27 June 2007 Concentration Risk Policy was shared with the Financial Regulator, but accepted the LPT's contention that it would be unfortunate if the Financial Regulator was led to

²⁶² Board meeting – December 2006 Information Required by 15 December 2006 (Doc ID: 0.7.120.167464-000001).

²⁶³ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 38 (Doc ID: RDU_SPC6FT_D6-000000001).

²⁶⁴ Minutes of Board meeting, dated 27 June 2007 (Doc ID: 0.7.120.6693).

²⁶⁵ Minutes of ICAAP Committee meeting, dated 25 June 2007 (Doc ID: 0.7.120.34894).

²⁶⁶ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 48 line 16 et seq. (Doc ID: RDU_SPC6FT_D6-000000001).

²⁶⁷ 27 June 2007 Concentration Risk Policy, section 3.2.1 (Doc ID: 0.7.120.432154).

believe that these Quarterly Reports on an important issue were being provided, if they were not.²⁶⁸

10.235 During his cross-examination, Mr Purcell asked Dr Walsh about geographic concentration reports coming before the Board. Dr Walsh said that there was a “*certain amount of sectoral analysis that came to the Board on a fairly continual basis*”.²⁶⁹

Mr Purcell’s witness statement

10.236 In his witness statement to the Inquiry dated 21 September 2018, Mr Purcell stated as follows in relation to the concentration limits imposed by the policies outlined above:

“Given the lending strategy and appetite for credit risk (ref. 1.2, page 5 (0.7.120.431329) of the Credit Risk Management Policy), it was highly unlikely that the geographic concentration limits could be breached whilst INBS maintained the required minimum solvency ratio of 10% (Total Own Funds/Risk Assets ratio)”.²⁷⁰

10.237 Mr Purcell provided a table of the INBS loan book as 30 September 2007 and stated:

“Unless the London loans increased to €8.7 billion from €3.33 billion, which was unlikely, the geographical concentration limits would not be breached”.²⁷¹

Mr Purcell’s submissions

10.238 In his opening oral submissions on the second day of the SPC 6 module hearing on 3 April 2019²⁷², Mr Purcell contended that the 27 June 2007 Concentration Risk Policy²⁷³ stated that the credit risk department was responsible for carrying out reporting to the Board in relation to geographic concentration risk and, therefore, the allegation made in the Investigation Report, that “*INBS’s policies did not assign responsibility for reporting to the Board in relation to geographic concentration risk limits*”²⁷⁴, was incorrect. Mr Purcell further submitted that the policy indicated that the geographic

²⁶⁸ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 54 line 17 (Doc ID: RDU_SPC6FT_D6-00000001).

²⁶⁹ Transcript SPC 6 Inquiry Hearing, dated 9 April 2019, page 91 (Doc ID: RDU_SPC6FT_D6-00000001).

²⁷⁰ Witness Statement of John S Purcell, dated 21 September 2018, page 7 (RDU_REL216-00000024).

²⁷¹ Witness Statement of John S Purcell, dated 21 September 2018, page 8 (RDU_REL216-00000024).

²⁷² Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 115 (Doc ID: RDU_SPC6FT_D2-00000001).

²⁷³ 27 June 2007 Concentration Risk Policy, section 3.2.1 (Doc ID: 0.7.120.432154).

²⁷⁴ Investigation Report, Chapter 11, paragraph 11.27 (Doc ID: RDU_REL-000000035).

analysis report was to be included in the quarterly commercial lending reviews submitted to the Board.²⁷⁵

10.239 Mr Purcell also submitted, by reference to the 27 June 2007 Credit Risk Management Policy²⁷⁶, that geographic concentration limits were not regarded as key ratio information for the Board and that, having regard to the 27 June 2007 Concentration Risk Policy, the Credit Risk Management Policy, and the illustrative calculations set out in his witness statement, it was “*unlikely that geographic concentration limits could be breached*”.²⁷⁷

Mr Purcell’s oral evidence

10.240 In advance of the commencement of Mr Purcell’s examination on the ninth day of the SPC 6 module hearing on 12 April 2019²⁷⁸, the LPT indicated to the Inquiry that further to ongoing communication with Mr Purcell regarding information available to the Board in relation to sectoral or geographical concentration (for the period December 2005 onwards), Mr Purcell had, in an email dated 11 April 2019²⁷⁹, identified the following instances of sectoral and geographic analysis:

- (a) Sectoral information was reported to the Board in the accounts pack for the Board meetings on 19 October 2004, 19 April 2005, 25 July 2005 and 24 July 2008. The LPT noted that three of these four dates are outside the relevant period (as the policy alleged to have been infringed was inception on 27 June 2007) however, for the purposes of background, it was helpful to see what information was provided up to that point.²⁸⁰
- (b) Geographic analysis was presented in the quarterly review in September 2005 for the Board meetings held on 21 December 2005 and 15 December 2006 and was presented to the Board in the credit risk review quarter 3 2007. The LPT noted that two of these instances predate the June 2007 inception of the relevant policy and indicated that, apart from the quarter 3 2007 credit risk

²⁷⁵ Transcript SPC 6 Inquiry Hearing, dated 3 April 2019, page 115 (Doc ID: RDU_SPC6FT_D2-00000001).

²⁷⁶ 27 June 2007 Credit Risk Management Policy, page 5 and 51 (Doc ID: 0.7.120.431329).

²⁷⁷ Witness Statement of John S Purcell, dated 21 September 2018, page 7 and 8 (RDU_REL216-000000024).

²⁷⁸ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019 (Doc ID: RDU_SPC6FT_D9-000000001).

²⁷⁹ Email from Stan Purcell to RDU, dated 11 April 2019 (Doc ID: RDU_REL321-000000005).

²⁸⁰ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 8 et seq. (Doc ID: RDU_SPC6FT_D9-000000001).

review document, there did not appear to be any geographic concentration information provided to the Board during the relevant policy period.²⁸¹

10.241 Mr Purcell accepted that *“there was no report provided that related to geographic concentration except for that in September ‘07”*.

10.242 Mr Purcell further indicated that the provision of a geographic report was meant to be part of the Quarterly Report and *“in the quarters other than quarter 3, 2007, it wasn’t a part of the quarterly report because the quarterly report itself wasn’t produced”*.²⁸²

10.243 Mr Purcell accepted that the underlying 27 June 2007 Concentration Risk Policy²⁸³ set out requirements for the measuring, managing and monitoring of the geographic concentration risk and that there was *“an obligation to report it”*. However, he had previously indicated that the failure to provide the geographic report should be looked at in the context of the very wide geographical limit in place, which meant that it was not a key ratio. He stated that *“it, was such a wide limit that it was, as I said, it was unlikely to be a key ratio, one that you would have to monitor closely, unless there was some, you know, massive shift in the business, which was not going to happen, especially towards the end of 2007, 2008”* and, regarding the failure to provide the report, *“they didn’t do it but it wasn’t a thing that was very important”*.²⁸⁴

10.244 It was put to Mr Purcell that in the 2009 Deloitte Review, Deloitte took a more serious view of the failure to provide Quarterly Reports and identified it as a critical issue.²⁸⁵ Mr Purcell indicated that there was *“no pushback”* from INBS at that stage and *“the Board wanted these things done”*.²⁸⁶

10.245 Mr Purcell indicated in respect of his alleged participation in this element of SPC 6: *“As regards the geographic and the quarterly, I mean, that was the response and work that should have been -- that was to be done by others, and I did outline there a number of times, I did try to get stuff done, that the June report would be done. And it was in the*

²⁸¹ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 9 et seq. (Doc ID: RDU_SPC6FT_D9-000000001).

²⁸² Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 16 to 19 (Doc ID: RDU_SPC6FT_D9-000000001).

²⁸³ 27 June 2007 Concentration Risk Policy, section 3.2.1 (Doc ID: 0.7.120.432154).

²⁸⁴ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 32 to 34 (Doc ID: RDU_SPC6FT_D9-000000001).

²⁸⁵ 2009 Deloitte Review (Doc ID: 0.7.120.508410).

²⁸⁶ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 37 (Doc ID: RDU_SPC6FT_D9-000000001).

context of a very, what you would call a turbulent period, which can be picked up from the Financial Regulator internal memos".²⁸⁷

INQUIRY FINDING – SPC 6.4

Finding in relation to INBS

10.246 **Based on the evidence of the Board meeting minutes and packs, and on the evidence of witnesses to the Inquiry, the Inquiry finds that reports on compliance with geographic concentration risk limits were not provided to the Board from the date of approval of the policy requirement in June 2007.**

10.247 **The policy requirement as set out at paragraph 10.213 above outlined the information that a geographic concentration report should contain. It is clear that no such report was produced to the Board at any time after June 2007.**

10.248 **The Inquiry is mindful of the decisions by the Board of INBS to cease commercial lending from December 2007, the decision to transfer loan approval to the Credit Committee, and the financial turmoil during that period. The Inquiry is also mindful of the role of the Board of INBS to set strategy and risk appetite.**

10.249 **The Inquiry finds that on balance, the failure to provide reports on compliance with geographic concentration risk limits after June 2007 was a breach of policy, however, the breach was not of sufficient materiality to constitute a breach of the relevant legislative provisions and condition on INBS's authorisation identified at paragraph 10.2 of this chapter.**

10.250 **Accordingly, the Inquiry finds that there was no commission by INBS of SPCs 6(a), 6(b) or 6(c).**

Finding in relation to Mr Purcell's participation

10.251 **In light of the above finding in relation to INBS, the allegation of participation against Mr Purcell accordingly falls away.**

²⁸⁷ Transcript SPC 6 Inquiry Hearing, dated 12 April 2019, page 96 line 13 (Doc ID: RDU_SPC6FT_D9-000000001).

CHAPTER 11

SPC 7

INTRODUCTION

- 11.1 SPC 7 concerns the suspected failure by INBS to ensure that the establishment of Profit Share Agreements was the subject of any formal credit risk policy.
- 11.2 The three individual SPCs are as follows:

SPC 7(a)

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that the establishment of Profit Share Agreements was the subject of any formal credit risk policy and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting agreements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain persons concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 7(b)

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that the establishment of Profit Share Agreements was the subject of any formal credit risk policy and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by section 76(1) of the 1989 Act. It is also suspected that certain persons concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 7(c)

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that the establishment of Profit Share Agreements was the subject of any formal credit risk policy, and thereby failed to comply with the condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain persons concerned in the management of INBS during the Review Period participated in the commission of this SPC.

BACKGROUND

Prevalence of profit share lending in INBS

- 11.3 Profit Share Agreements (also referred to as ‘supplementary arrangement fees’, ‘supplemental loan agreements’ or, ‘fee agreements’) typically took the form of an agreement between INBS and a commercial borrower, ancillary to the CMO. It provided that on the sale of the asset being financed, the profits arising from the sale, after costs, would be shared between the borrower and INBS (e.g. on a 70% borrower : 30% INBS basis).
- 11.4 A letter signed by Mr Purcell, dated 26 September 2008¹, responding to a query from the Financial Regulator described supplemental arrangement fees in INBS. It stated:

“An important area of the Society’s commercial lending business [sic] which is not represented in certain specific loan book characteristics (like LTV for example) are Supplemental Arrangement Fees.

A substantial portion (€6,052,141,809 or 65%) of the Society’s Commercial book provides financing for projects in which the Society has a contractual right to receive a defined percentage of each project’s profit. In the Society’s terminology such projects are called Supplemental Arrangement Fee projects and the loans that finance those projects are referred to as Supplemental Arrangement Fees loans. The Society is entitled to share in future profits and has no obligation to share in future losses should any occur.

The Society’s profit share percentage is typically in the 25 – 50% range. As of 30/06/2008 the Society has forecast its share of the potential future cashflows generated by Supplemental Arrangement Fee projects at €920m. This is the nominal gross Euro forecast of amounts receivable over the next 4 – 5 years. Many future cashflows depend on build out and sale of the developments and will be impacted by market and macro-economic conditions. In addition the Society’s customers may decide on alternative strategies such as the sale of development sites once enhanced value has been achieved. In such cases the return will be lower but the payback faster. The Supplemental Arrangement Fee

¹ Letter from Stan Purcell, INBS, to Con Horan, Financial Regulator, dated 26 September 2008 (Doc ID: 0.7.120.443275).

*forecast is affected by many factors and subject to ongoing revision, however it should be a significant source of profit and value in the future”.*²

11.5 At the time of writing the above letter, in September 2008, profit share lending accounted for 65% of INBS's commercial loan book by value. This figure had grown during the Review Period as can be seen from the following Contemporaneous Reports at the time:

- (a) The 2004 KPMG Commercial Credit Review stated that 39.5% of the commercial loan book (by value) was subject to a Profit Share Agreement. The total value of the commercial loan portfolio at the end of 2003 was €2.6 billion. The estimated future profit in respect of Profit Share Agreements for 2004 onwards stood at €286.6 million.³
- (b) In the intervening period, the Project Harmony Report⁴ included the following details (based on information as at 31 December 2006):
 - (i) 59% of the commercial loan book (by value), i.e. €4.8 billion, was subject to a Profit Share Agreement. The total value of the commercial loan portfolio at the end of 2006 was €8.1 billion.
 - (ii) The estimated potential fees in respect of Profit Share Agreements was put at €750 million.

11.6 As outlined at paragraph 3.7 of Chapter 3 in this Findings Report, the Inquiry received a Loan Sample of 98 loans representing just over 20% of the commercial loan book in terms of value, as of February 2010. This sample was analysed by the Inquiry to establish the extent of Profit Share Loans in the sample and the extent to which the loans so identified shared characteristics of profit share lending as identified in the contemporaneous documents and witness evidence set out below.

11.7 78 loans out of the total Loan Sample size of 98 loans were Profit Share Loans, with a total facility value of £1.063 billion and €0.527 billion. The facility value of the total Loan Sample of 98 loans was £1.223 billion and €0.656 billion (i.e. approximately 20% of the loan book).

² Letter from Stan Purcell to Con Horan of the Financial Regulator dated 26 September 2008 (Doc ID: 0.7.120.443275). See also Investigation Report, Chapter 12, page 1715 (Doc ID: RDU_REL-000000036).

³ 2004 KPMG Commercial Credit Review (Doc IDs 0.7.120.735064, 0.7.120.735059, 0.7.120.735075, 0.7.120.735070). See also Investigation Report, Chapter 12, page 1716 (Doc ID: RDU_REL-000000036).

⁴ This was the vendor due diligence report prepared by KPMG, dated 20 June 2007 (Doc ID: 0.7.120.55785). See also Investigation Report, Chapter 12, page 1717 (Doc ID: RDU_REL-000000036).

11.8 The Inquiry analysed these 78 loans and this analysis showed:

- (a) eight were in personal names;
- (b) one was in the name of the primary customer;
- (c) seven were in the name of a joint venture company;
- (d) sixty-two were SPVs i.e., companies set up for a particular transaction; and
- (e) sixty-one of the loans had no personal guarantee (see the SPC 3.2 Allegation in Chapter 7 for further detail on this aspect).

11.9 SPC 7 concerns the absence of a policy governing INBS's decision process and criteria for entering into, or "establishing" Profit Share Agreements. In that regard, it is alleged in the Investigation Report, as follows:

"It is alleged that a formal policy in relation to the establishment of profit share agreements was required in light of the significance of this activity in terms of both scale and anticipated profit and also having regard to the following features of profit share agreements:

- *The risk that the reward structure for the lender attaching to such an agreement could influence the terms on which the lender is willing to lend. For example, where a loan is the subject of a profit share agreement, different and/or additional considerations come to bear in that a lender has an added interest in the current and anticipated valuation of the underlying property over and above that which is sufficient to repay capital and interest. As a result, there is a risk that this additional incentive may influence the lender's decision making in respect of a number of aspects of assessing and granting such a loan including its willingness to approve the loan on riskier terms (for example, higher Loan to Value ("LTV"), less or no additional security, assisting the Borrower's cash flow by providing an interest, or capital and interest, moratorium). As set out in the evidence section below, the correlation between the existence of profit share arrangements and higher LTV loans is referred to by KPMG in a report for INBS in 2004 (the KPMG INBS Commercial Credit Review 28 October 2004,) ... and by former INBS Internal Auditor, Killian McMahon, in interview with the Central Bank... In this context, where a lender was advancing loans*

subject to profit share agreements and, in particular, where there was a prevalence of such lending, there was a need for clear policy guidance for management as to the circumstances in which profit share agreements were considered appropriate, the lending criteria which are appropriate to such loans and approval authorities for the granting of such loans.

- *Profit share agreements were established by INBS as separate agreements with borrowers, ancillary to the CMO... A formal policy was necessary in order to govern the establishment of such agreements, given the extent of INBS's commercial loan book that was subject to a profit share agreement".⁵*

11.10 It is further alleged in the Investigation Report that:

"The absence of a formal policy in relation to the establishment of profit share agreements meant that INBS was entering into profit share agreements in the absence of an important internal control".⁶

Regulatory requirements and internal policy provisions relevant to SPC 7

11.11 It is further alleged in the Investigation Report that SPC 7 is not just focused on a breach of INBS's internal policy provisions. It states:

"It alleges that there was a breach of the requirements of Regulation 16(1) and of Section 76(1) of the 1989 Act from 1 August 2004 and of Part 1 of the 2005 Regulatory Document from 10 July 2006 on the basis that in failing to put in place a formal policy relating to profit share agreements, it failed to put in place, establish or maintain an important internal control in relation to a significant aspect of its business. Furthermore, it is alleged that this represented a failure to ensure that there were appropriate processes, systems and reporting lines in place and that the sophistication of the risk management processes was appropriate in light of the credit institutions risk profile and business plan".⁷

⁵ Investigation Report Chapter 12, paragraph 12.10 (Doc ID: RDU_REL-000000036).

⁶ Investigation Report Chapter 12, paragraph 12.11 (Doc ID: RDU_REL-000000036).

⁷ Investigation Report Chapter 12, paragraph 12.12 (Doc ID: RDU_REL-000000036).

11.12 The 27 June 2007 Credit Risk Management Policy⁸ set out the “*Role of the Board and Credit Risk*” as follows:

“It is the Board’s overall responsibility to approve the Society’s Credit Risk Management Policy and other significant policies relating to credit risk and its management. The Board must also ensure that the Society’s overall credit risk exposure is maintained at prudent levels consistent with available capital. The Board must also ensure that the Society implements practices and procedures for the identification, measurement, monitoring and control of credit risk. The first task of the Board, in approving the Credit Risk Management Policy, is to determine the risk appetite of the Society”.

11.13 This policy also set out the “*Role of Senior Management and Credit Risk*” as follows:

“The Society’s Senior Management have responsibility for developing and establishing credit risk policies and credit administration procedures as part of the Society’s overall system of credit risk management. They must prepare policies on the following areas and ensure that they are approved by the Board:

- *Credit origination, administration and loan documentation procedures;*
- *Credit approval authority, hierarchy and limits;*
- *Risk identification, measurement, monitoring and control;*
- *Management of problem credits.*

It is the responsibility of Senior Management to ensure effective implementation of these policies. Senior management must also ensure that any deviations/exceptions to policy are communicated to the Board, who recommends corrective actions to be taken”.

11.14 The applicable procedures and policy provisions relevant to the SPC 7 are set out in the table at Appendix 17.

RELEVANT INFORMATION AND SOURCES OF EVIDENCE

11.15 In addressing SPC 7, the following information and sources of evidence were considered by the Inquiry:

⁸ 27 June 2007 Credit Risk Management Policy (Doc ID: 0.7.120.431329).

- (a) Relevant INBS policy documents.
- (b) Contemporaneous Reports (including corporate governance documentation and Financial Regulator correspondence).
- (c) Interview evidence⁹ and responses to Section 41A Notices (from individuals interviewed by Enforcement in the course of its Investigation), which were opened to witnesses.
- (d) Witness evidence.
- (e) Mr Purcell's replies to Examination Letter.
- (f) Mr Purcell's submissions.¹⁰
- (g) Mr Purcell's evidence to the Inquiry.

Relevant INBS policy documents

11.16 The Investigation Report set out a list of policies in Chapter 12 (Figure 12.4). With respect to these policies the Investigation Report stated:

"The policies relate to a wide range of matters including some that were relevant to commercial lending and credit risk management. The list in Figure 12.4 comprises all of the documents identified during the course of the Investigation which could have been considered to have been INBS policies or other control documentation, not all of which appear to have been operational. As set out in Paragraph 3.5 of Chapter 3, Commercial Lending and Credit Risk Management in INBS, reference to "policies" or "internal policies" in the Investigation Report includes equivalent control documentation such as committee terms of reference".¹¹

11.17 The Inquiry has reviewed the policies listed at Figure 12.4 and has found no evidence of any stand-alone policy in relation to the establishment of Profit Share Agreements.

⁹ Interviews were conducted by Authorised Officers of the Central Bank during the period February 2013 to January 2014 to assist with the Investigation. Transcripts of these interviews were provided to the Inquiry.

¹⁰ As outlined in Chapter 2, paragraph 2.5, Mr Purcell represented himself during the Inquiry and accordingly made written and oral submissions to the Inquiry, in addition to and distinct from the evidence he provided under oath and in his witness statements.

¹¹ Investigation Report Chapter 12, paragraph 12.19 (Doc ID: RDU_REL-000000036).

Contemporaneous Reports

11.18 There were three contemporaneous documents that raised the issue of formalising profit share lending. There were a further three reports that raised the issue of profit share lending though not the issue of formalising this lending. These six reports are outlined below.

2003 KPMG Management Letter¹²

11.19 The 2003 KPMG Management Letter made the following observation:

“The Society is entering into a growing number of commercial property loans where a significant portion of the overall return on the lending is earned by way of a fixed arrangement fee calculated as a fixed percentage of the final profit made on completed developments.

*We understand that the Society has informal arrangements in place for the ongoing monitoring of the underlying developments”.*¹³

KPMG stated that the implication of this was:

“As this source of income continues to increase and becomes more substantial greater formalisation of the process and related controls are required”.

KPMG’s recommendation in respect of this observation and implication was:

“We recommend that the Society should formalise its processes pertaining to the granting and ongoing monitoring of commercial property loans and in particular those loans where arrangement fees are earned on completion. These procedures may include:

- 1. Progress reports on all underlying commercial property developments*
- 2. Reports on the credit status of the borrower*
- 3. Information pertaining to relevant macro and market developments*
- 4. confirmation from legal advisers whenever a change of title occurs,*

¹² 2003 KPMG Management letter (Doc ID: 0.7.120.55764).

¹³ 2003 KPMG Management letter, page 1 (Doc ID: 0.7.120.55764).

5. *submission and review of quarterly status report to the Board on all major developments*".

The INBS Management Response was:

"The process of granting commercial loans is very formalised and well documented. The commercial managers, who are in frequent contact with the customers, monitor commercial loans. They are formally monitored through the credit review process and through the arrears non-performing loans management.

1,2& 5 - The Society as part of ongoing work to improve commercial lending administration, will produce and submit to the Board on a quarterly basis a report on all major commercial property development on the lines suggested in the recommendation.

3 - We continually review the market trends.

4. Not relevant. This does not occur. The Society or its legal personnel hold title and mortgage documents prior to drawdown so we are aware of any pending changes".

11.20 Apart from the general statement that "*The process of granting commercial loans is very formalised and well documented*", the Management Response did not engage with the absence of a formal process in relation to the granting of commercial property loans with Profit Share Agreements, which was the subject of the finding in this report.

11.21 This 2003 KPMG Management Letter, which was issued prior to the start of the Review Period on 8 July 2004, was noted by the Board at the 14 July 2004 meeting. Contrary to what is stated in the Investigation Report, the minutes for the meeting held on 14 July 2004 indicate that Mr Purcell did not attend the meeting and his apologies were noted.¹⁴

11.22 A draft of the 2003 KPMG Management Letter was also discussed at the Audit Committee meeting on 24 June 2004. The minutes for that meeting show that Mr Purcell was in attendance in his capacity as secretary.¹⁵ Mr Purcell would have received the draft 2003 KPMG Management Letter as part of the pack for that meeting. Mr Purcell was also aware of a letter from the Financial Regulator to INBS dated 9

¹⁴ Minutes of Board meeting, dated 14 July 2004 (Doc ID: 0.7.120.16747).

¹⁵ Minutes of Board meeting, dated 24 June 2004 (Doc ID: AD-0.7.120.17113).

December 2004. This letter arose following the 2004 KPMG Commercial Credit Review and is dealt with at paragraph 11.33 and 11.34 below.

- 11.23 The recommendation that a formal profit share policy should be introduced into INBS was not followed up by KPMG in the 2004 and 2005 KPMG Management Letters, although the issue of “*ongoing monitoring*” of commercial loans with arrangement fees was raised.

2004 KPMG Commercial Credit Review¹⁶

- 11.24 The 2004 KPMG Commercial Credit Review, included a section on “*Arrangement fees*”.
- 11.25 The executive summary headlines of this report described the key characteristics of Profit Share Loans. It stated:

“Key characteristics of these commercial loans with performance related fee arrangements can include some or all of the following:

- *Full (no interest or principal repayments) or partial moratorium period*
- *100% funded*
- *Potentially high loan to value ratios*
- *Shortened lead time for approval of loan*
- *Significant absolute values*
- *Repeat business with successful customers with proven track records*

*Some of these distinguishing characteristics could give rise to additional risk in terms of probability of default and the uncertainty of the repayment profile. According to management, 100% of the project may be funded where management believe there is sufficient value at the outset to justify such a funding level”.*¹⁷

- 11.26 This report did not make specific findings regarding the absence of a formal policy dealing with Profit Share Agreements, but it did make reference to Profit Share

¹⁶ 2004 KPMG Commercial Credit Review, page 4 (Doc ID: 0.7.120.735064).

¹⁷ 2004 KPMG Commercial Credit Review, page 4 (Doc ID: 0.7.120.735064).

Agreements which is of relevance to SPC 7.¹⁸ Fee share arrangement fees were summarised as follows¹⁹:

“A fee share arrangement fee

- *If the Society perceives the deal to have value at the outset and a good risk profile, INBS may fund 100% of the development but may charge a fee based on a percentage share of the profit on the development*
- *The percentage will vary depending on the risk and value of the loan.*
- *Fees are earned and recognised upon completion of the underlying development.*
- *There was a significant growth in fee share arrangement fees over the 3 year period”.*

11.27 The “Overview of Arrangements” section of this report listed the following under the heading “Policies and procedures in place”:

“Overall procedures

- *An initial meeting is held with the customer where level and type of arrangement facility are negotiated by the Commercial Loan Officer, and approved by the Credit Committee as appropriate.*
- *A Commercial Loan Application (CLA) form is subsequently completed by the Commercial Loan Officer which includes the significant details of the arrangement. The CLA is presented to the credit committee and then to the Board for approval.*
- *Loans are monitored on an ongoing basis by the Commercial Loan Officer. The Commercial Loan Officer will have details of initial cash-flow projections, which would have been submitted with the loan application. The Loan Officer will monitor all funds advanced to the customer (which are only released upon receipt of an Architect’s*

¹⁸ Other reports such as the 2008 Belfast Internal Audit Report and the 2009 Internal Audit Report also made reference to profit share arrangements but these were not relevant to SPC7.

¹⁹ 2004 KPMG Commercial Credit Review, page 81 (Doc ID: 0.7.120.735059).

Certificate), and compare the level of funds advanced to the level of sales proceeds.

- *When reviewing the customer's profit calculation, the Society can challenge any of the costs documented and verified certain amounts to their own records.*
- *When a facility is being repaid (upon completion of the development) the funds advanced will be compared to the sales proceeds and the profit on the development calculated.*
- *Security will not be released on a property until the level of profits is agreed between the Society and the customer and the Society has received its' portion of the profits.*

Monitoring

- *Fee sharing facilities are only in place on commercial facilities where the Society is funding both the purchase of the site and the development of the site.*
- *All fee share facilities are approved by the Board of Directors.*
- *The Board of Directors will be given updates on the status of these developments if the customer seeks an additional advance or a new facility (This will be included on the CLA for the new facility which is presented to the Board).*
- *Holding of the security of the development land by the Society is in itself a control application. The Society will not release its security until the final fee share has been agreed between the customer and the Society.*
- *According to management monitoring of these loans is similar to other loans in that it is done on an ongoing basis by members of management through meetings, phone calls and face-to-face contact, but is not formally documented.*

The section does not purport to relate only to fee share arrangements but, based on the text, it appears to be focused on such loans.²⁰

11.28 The 2004 KPMG Commercial Credit Review then described the procedure followed in this kind of lending:

“...An example of these procedures are as follows

- A developer purchases site to build 100 houses, which the Society agrees to finance.*
- The Society will release all funds upon receipt of Architects certificates, which document in detail all costs of the development.*
- Each time a house is completed and sold the Society will not release the security on the land until the loan has been settled in full.*

...

- Stan Purcell is responsible for obtaining all information from the Commercial Loan Officers regarding the total costs of the project and the sales proceeds, and uses this information to calculate the final profits due to the Society and for ensuring that the cash is received by the Society. Gary McCollum holds a similar role for UK facilities.*
- An approximation of the fee share arrangement is considered upon receipt of an architect certificate and included with the CLA for credit committee and board review”.²¹*

11.29 The report stated in a boxed section:

“Management should ensure that a more detailed approximation of the fee share arrangement is documented and maintained on loan file and should be updated on a regular basis (eg quarterly) following discussions with the borrower”.²²

11.30 Whilst this 2004 KPMG Commercial Credit Review set out information relating to INBS’s approach to Profit Share Agreements, it did not make any reference to the

²⁰ 2004 KPMG Commercial Credit Review, page 82 (Doc ID: 0.7.120.735059).

²¹ 2004 KPMG Commercial Credit Review, page 83 (Doc ID: 0.7.120.735059).

²² 2004 KPMG Commercial Credit Review, page 83 (Doc ID: 0.7.120.735059).

existence of formal policies or procedures governing the establishment of such agreements nor did it substantively detail INBS's criteria for the establishment of such agreements.

11.31 The Inquiry considers the following observation at page 86 of the report²³ to be significant:

"...Arrangement fees are defined by the Society as fees charged to the client through negotiation and as a result of the customer's willingness to pay fees to obtain a loan.

- *Fee share arrangement [sic] are not based on any formulaic approach according to the Society. They are based on negotiation by clients during the loan application process".*

11.32 Furthermore, based on the review of INBS policies, it was noted that the "Overall procedures" set out in the 2004 KPMG Commercial Credit Review regarding Profit Share Agreements did not appear to have been detailed in any policy or procedure applicable during the Review Period.

11.33 The Financial Regulator wrote to INBS on 9 December 2004 and summarised a number of issues considered to be of serious concern arising from the 2004 KPMG Commercial Credit Review.²⁴ The items were identified as being "High-level concerns", these were: (i) corporate governance, (ii) internal audit function, and (iii) commercial lending. With respect to commercial lending the letter stated:

"The FSR has reviewed the contents of the KPMG report based on a review of INBS's commercial lending business. This report raises many issues which are of concern to the FSR. From an initial review of the report, the FSR's high-level concerns as set out in the Schedule attached to this letter.

The FSR's overall concern at this time is the significant shift in the risk profile of INBS's overall loan portfolio in a relatively short period of time. While it is a matter for a credit institutions' board and management to decide upon the business activities it engages in, it is essential that there are appropriate policies, procedures, resources, internal controls and reporting structures in

²³ 2004 KPMG Commercial Credit Review, page 86 (Doc ID: 0.7.120.735059).

²⁴ Letter from Liam O'Reilly, Financial Regulator, to Michael Walsh, INBS, dated 9 December 2004 (Doc ID: 0.7.120.450640).

place commensurate with the risk arising from these activities which are sufficient to effectively manage, monitor and control that risk.

What is of particular concern to the FSR is that while the level and nature of the Society's activities have changed significantly, the control mitigants referred to above have not kept pace with this change. Furthermore, the KPMG 2003 management letter raised a significant number of issues of concern in relation to controls, documentation and management of commercial lending activities. It is also noted that KPMG has highlighted the risks to INBS of a significant deterioration in the commercial property market. In particular, it highlighted a lack of experience in dealing with a 'workout' of major facilities and the associated risk which any delays in cash flows may have on the liquidity position of INBS".

11.34 The schedule to the letter listed specific concerns arising from the 2004 KPMG Commercial Credit Review including the following in relation to Profit Share Agreements:

"Arising from an initial review of the KPMG report, the high-level concerns arising are as follows:

- There has been a significant increase in the level of commercial lending in recent years. This in turn has had a very material impact on the overall business and risk profile of INBS. The commercial loan book has increased by over 60% between 2001 and 2003 and commercial lending as a proportion of overall lending has increased from 47% to 58% during the same period.*
- There has been a very significant increase in UK-based commercial property lending which has increased by 76% during the period.*
- There are significant concentrations in the commercial loan book, both by counterparty and on a geographic basis. At end- 2003, it is noted that the top 30 exposures accounted for 63% of the commercial loan book (the top 5 accounted for 20%).*
- There has been a significant increase in the overall size of facilities with 84% of the commercial loan book represented by loans in excess of €2 million.*

- *A brief analysis would indicate that there is a high number of significant risk components within the commercial loan book:*

- ***Moratorium facilities:***

- *€422 million (16% of commercial loan book) at end - 2003*
- *Difficult to monitor from a credit perspective*
- *KPMG's management letter for year-ended 2003 made recommendations in regard to INBS's monitoring of facilities*

...

- ***Facilities based on performance -related fees:***

- *€1 billion (38% of commercial loan book) at end-2003*
- *€0.7 billion is UK lending (almost 60% of UK loan book)*
- *KPMG note such facilities can have the following characteristics - large-size; high LTV (up to 100%); full or partial moratorium*
- *KPMG noted that the agreements should be documented and kept updated".*

11.35 A draft response from INBS to the Financial Regulator dated 27 January 2005 was circulated by Mr Purcell in an email to the non-executive directors on 19 January 2005.²⁵

11.36 The minutes of the 27 January 2005 Board meeting, subsequently recorded the following discussion in respect of the letter from the Financial Regulator:

"The Board discussed in detail and agreed amendments to a draft response to the FSR's letter dated 9 December 2004. The Board noted that the Secretary would give a copy of the amended draft response to the FSR on 28 January

²⁵ Email from Stan Purcell to Con Power, Terrence Cooney and Michael Walsh, dated 19 January 2005 (Doc ID: 0.7.120.259930).

2005. The draft response would be marked “Subject to final Board review and approval”.²⁶

11.37 The INBS response to the Financial Regulator went out on 1 February 2005.²⁷ Whilst this final version of the response was not considered at a Board meeting, it was circulated by Mr Purcell to the non-executive directors on 31 January 2005. The accompanying email stated: “I attach the latest draft which incorporates Con Power’s and Terry Cooney’s suggestions plus a sheet for discussion tomorrow on possible inclusions arising from Dermot Finneran’s comments on friday last and an [sic] emails today one from Con Power and one from Michael Walsh”.²⁸ Mr Purcell had given a draft copy of the letter to the Financial Regulator on 25 January 2005. This indicated that the Board took some considerable trouble in crafting their response to the Financial Regulator.

11.38 The letter of 1 February 2005 is dealt with in some detail in Chapter 12 of this Findings Report, concerning relevant Financial Regulator Correspondence. The letter was 20 pages long and set out the business plan and strategy for commercial lending that had been adopted by INBS. The letter did not directly respond to the issue of Profit Share Agreements. It stated under a section headed, “Systems to effectively monitor, manage and control lending risk”:

“The Society’s lending risk is controlled in the first instance by careful underwriting of new lending in line with its lending strategy. All non home loan applications are dealt with by the Credit Committee... Loans over €635 K are either declined by the committee or recommended to the Board for final approval. Once the loan has been advanced it is monitored through regular contact between the commercial lenders and the borrower as well as an ongoing process of credit review of large and material exposures.

In October 2004 the Society set up a dedicated Commercial Lending Administration Section to enhance the formal control of lending by regular compiling of information and reporting on large exposures including fee sharing arrangements.

²⁶ Minutes of Board meeting, dated 27 January 2005 (Doc ID: 0.7.120.16653).

²⁷ Letter from Michael Walsh, INBS, to Liam O’Reilly, Financial Regulator, dated 1 February 2005 (Doc ID: 0.7.120.131433).

²⁸ Email from Stan Purcell to Michael Walsh, Con Power and Terry Cooney, dated 31 January 2005 (Doc ID: 0.7.120.256329).

...

The Society plans to enhance commercial lending administration in the light of KPMG's recommendations and the FSR's requirements to review and assess the risk of the entire commercial loan book.

The enhancement of commercial lending administration will involve

- ...

- *Supplying the Board with quarterly reports that will monitor and assess the risks of large exposures, profit sharing arrangements, joint venture development arrangements and restructuring and moratorium arrangements.*

- ...”.

2004 Belfast Internal Audit Report²⁹

11.39 The broader issue regarding the absence of a formal profit share process or procedure was brought to the attention of the Board and Audit Committee again in the 2004 Belfast Internal Audit Report.

11.40 This report made the following recommendation and finding in relation to Profit Share Agreements:

“(6) A formal fee agreement procedure is needed. The Belfast branch has many fee agreements in place, giving the Society a share of any profits in developments, which it has financed. There is no formal credit risk policy governing such fee agreements and procedures are needed to ensure the Society’s guidelines are followed in every fee agreement entered into.

Finding Rating: 2.³⁰ *Staff members responsible for this are senior management. This recommendation should be implemented immediately”.*

11.41 The executive summary of the report listed eight items as being the responsibility of the UK branch manager. It listed three items as being a “Board Level” recommendation and the recommendation in relation to a formal fee agreement procedure was one of

²⁹ 2004 Belfast Internal Audit Report (Doc ID: 0.7.120.432168).

³⁰ A value of “2” is attributed a rating of “Moderate” and is explained as “Moderate control weaknesses with some possibility of resulting in significant financial loss, misstatement or financial results, compliance implications or reputational impact if left unaddressed”. 2004 Belfast Internal Audit Report, page 10 (Doc ID: 0.7.120.432168).

these three items. The report stated: “(6) *A formal fee agreement procedure is needed*”.

11.42 This report was discussed at the Audit Committee meeting on 31 May 2005³¹, which was attended by Mr Purcell. The minutes recorded that the 2004 Belfast Internal Audit Report was discussed at this meeting and issues raised by the internal auditor were noted, such as the need for more administrative support in the Belfast Branch and loan cheques being advanced prior to a signed CMO. However, the recommendation in relation to the absence of a formal fee agreement procedure does not appear, on the evidence of the minutes, to have been discussed.

11.43 The 31 May 2005 Audit Committee meeting minutes were noted by the Board in a meeting on 25 July 2005, also attended by Mr Purcell. Apart from noting the Audit Committee meeting minutes, the 2004 Belfast Internal Audit Report was not discussed by the Board and the minutes contained no further reference to, or action arising from, the issues identified by internal audit or referred to in the minutes of the Audit Committee.³²

2006 Belfast Internal Audit Report³³

11.44 The 2006 Belfast Internal Audit Report repeated the recommendation from the 2004 Belfast Internal Audit Report. It stated:

“(2) A formal profit share agreement procedure is needed. The Belfast branch has many fee agreements in place, giving the Society a share of any profits in developments, which it has financed. There is no formal credit risk policy governing such fee agreements and procedures are needed to ensure the Society’s guidelines are followed in every fee agreement entered into”.³⁴

11.45 This report added the sentence: “*This should include a formal vetting of profits earned in profit share agreements*”.

³¹ Minutes of Audit Committee meeting, dated 31 May 2005 (Doc ID: 0.7.120.56788).

³² Minutes of Board meeting, dated 25 July 2005 (Doc ID: 0.7.120.25821).

³³ 2006 Belfast Internal Audit Report (Doc ID: 0.7.120.56457).

³⁴ 2006 Belfast Internal Audit Report, page 13 (Doc ID: 0.7.120.56457).

11.46 The finding was given a rating of 3³⁵ and the staff member assigned responsibility for this was senior management. The report went on to say that the recommendation should be implemented immediately.

11.47 As in the 2004 Belfast Internal Audit Report, the executive summary of the report listed this item as a “Board Level” recommendation stating: “(2) A formal profit share agreement procedure is needed”.

11.48 The 14 June 2006 Audit Committee meeting minutes³⁶ stated:

“...The committee asked the Internal Auditor to review how fee arrangements and final fees were arrived at and checked”.³⁷

11.49 The 14 June 2006 Audit Committee meeting minutes were reviewed by the Board in a meeting on 24 August 2006. Both meetings were attended by Mr Purcell.

11.50 The Inquiry was provided with a document by Mr Purcell dated February 2007, which appeared as an appendix to the 28 February 2007 Commercial Mortgage Lending Policy, entitled: “Fair Value of Supplementary Arrangement Fees (SAF)”.³⁸ The Inquiry had been provided with a final draft of that 2007 policy and the supplementary arrangement fees section was not included in it. The version identified by Mr Purcell was the version signed off by the Board on 28 February 2007 and it gave details on how arrangement fees would be calculated. It did not address how and in what circumstances arrangement fees should be entered in to.

11.51 The agenda for the Audit Committee’s next meeting on 25 October 2006³⁹ listed “Review of matters arising at the 14 June 2006 meeting” as item number 2. This referred to an enclosed “Paper No. 2”.

11.52 Item number 3 was listed as “Follow up of Internal Audit Recommendations” and was referable to the enclosed “Paper No. 3”.

11.53 “Paper No .2”⁴⁰ stated:

³⁵ A value of “3” is attributed a rating of “Significant” and is explained as “Significant control weakness with the real possibility of significant financial loss, misstatement financial results, compliance implications or reputational impacts, if left unaddressed”. 2006 Belfast Internal Audit Report, page 13 (Doc ID: 0.7.120.56457).

³⁶ Minutes of Audit Committee meeting, dated 14 June 2006 (Doc ID: 0.7.120.56364).

³⁷ Minutes of Audit Committee meeting, dated 14 June 2006, page 2 (Doc ID: 0.7.120.56364).

³⁸ 28 February 2007 Commercial Mortgage Lending Policy (Doc ID: 0.7.120.518837).

³⁹ Agenda for meeting of Audit Committee to be held on 15 October 2006 (Doc ID: 0.7.120.432071).

⁴⁰ Paper No. 2 Review of matters arising at the 14 June 2006 Audit Committee Meeting (Doc ID: 0.7.120.430957).

“Issue

(3) The fee agreement procedure and final fees received for profit shares must be reviewed and checked.

Progress

This will be performed as part of the Commercial Lending and Belfast audits.

Completion date / Planned completion date

January 2007”.

11.54 “Paper No. 3” stated:

“Recommendation

(8) A formal profit share agreement procedure is needed

Implemented

No

Staff responsible

*Senior Management”.*⁴¹

11.55 The minutes⁴² of this meeting record under item 3 “*FOLLOW UP OF INTERNAL AUDIT RECOMMENDATIONS (PAPER NO.3)*”:

“In relation to other recommendations the committee agreed that:

...

4. Belfast Branch – The outstanding items on this audit would be followed up again in January 2007”.

11.56 However, the item relating to the need for a formal Profit Share Agreement procedure was omitted from the “*Audit of Belfast Branch*” section of the “*Follow up of Internal Audit Recommendations*” paper⁴³ contained in the pack for the next Audit Committee meeting on 19 December 2006. In contrast, the other eight items previously reported

⁴¹ Paper No. 3 Audit of Commercial Admin Dept., page 12 (Doc ID: 0.7.120.431690).

⁴² Minutes of Audit Committee meeting, dated 25 October 2006 (Doc ID: 0.7.120.56874).

⁴³ Paper No. 3 Audit of Commercial Lending Dept. (Doc ID: 0.7.120.432323).

were referred to and stated to have been "*Implemented*". This item was similarly absent from the equivalent paper in the pack for the subsequent Audit Committee meeting on 13 March 2007.⁴⁴ The issue of the establishment of a formal policy for Profit Share Agreements was not mentioned in the minutes of either of these Audit Committee meetings.⁴⁵

11.57 As outlined at paragraph 11.53 above, internal audit "*Paper No. 2*" stated that the "*commercial lending and Belfast audits*" would review and check fee agreement procedures and final fees received for profit shares.

2007 Commercial Lending Internal Audit Report⁴⁶

11.58 This report contained a further finding under the heading "*Arrangement Fees*" that: "*There are no formal procedures in place at present to monitor arrangement fees and account for those arrangement fees, which have not yet been received by the Society*". It described a proposal from the accounts department in relation to the accounting aspect of this issue. The 2007 Commercial Lending Internal Audit Report contained separate findings under the heading "*Completed Profit Shares*" in relation to shortcomings in documentary support for the calculation of final sums received. The report contained the following recommendation⁴⁷:

"(4) Where the Society enters into a profit share arrangement with a customer, the following is the minimum level of documentation that should be provided to the Credit Risk team:

- *A copy of the actual signed profit share agreement setting out the exact details for the payment of minimum fees and the splitting of profits*
- *A copy of the Commercial Loan Application in relation to each of the loan accounts connected to the profit share agreement*
- *A detailed review of the proposal underpinning the loan account to which the profit share is connected*
- *A detailed document setting out the milestones on the project and when the cash is likely to be received along with detailed reasoning behind*

⁴⁴ Paper No. 3 Audit of Commercial Lending Dept. (Doc ID: 0.7.120.431422).

⁴⁵ Minutes of Audit Committee meeting, dated 19 December 2006 (Doc ID: 0.7.120.57335) and Minutes of Audit Committee meeting, dated 13 March 2007 (Doc ID: 0.7.120.56372).

⁴⁶ 2007 Commercial Lending Internal Audit Report (Doc ID 0.7.120.31185).

⁴⁷ 2007 Commercial Lending Internal Audit Report, page 3 (Doc ID 0.7.120.31185).

the expectations and also including supporting financial documents/accounts”.

2007 Belfast Internal Audit Report⁴⁸

- 11.59 This audit report tested the separate issue of whether fees and profit shares charged were reasonable (the report stated favourably that all such fees and profit shares were found to be “*reasonable*”) but did not otherwise address fee share arrangements or profit shares.
- 11.60 A review of Audit Committee meeting minutes for the remainder of the Review Period did not identify any further queries regarding the absence of a comprehensive formal fee arrangement procedure being raised. Where Profit Share Agreements did arise in subsequent reports, it was in the context of the calculation of the final fees as opposed to the lack of an overarching policy.

Project Harmony Report

- 11.61 The Project Harmony Report⁴⁹ was a due diligence report produced following a review undertaken by KPMG for INBS, which was commissioned for the purpose of facilitating the sale of INBS. The report looked specifically at supplemental arrangement fees as at 31 December 2006.
- 11.62 At page 20 of the report under the heading “*Executive summary Key findings*”, the report stated in relation to supplemental arrangement fees:

“Management estimate that potentially €750 million could be generated in cash from supplemental arrangement fees going forward based on the information as at 31 December 2006”.

- 11.63 The report then set out summary observations and points for further consideration. It stated as follows:

“...At 31 December 2006 management has estimated that there is a potential to realise €750 million in cash from supplemental arrangement fees going forward on current development projects based on information available at the year end.

⁴⁸ 2007 Belfast Internal Audit Report (Doc ID: 0.7.120.57251).

⁴⁹ The vendor due diligence report prepared by KPMG, dated 20 June 2007 (Doc ID: 0.7.120.55785).

- *However management has indicated that as a significant number of these projects are at an early stage of development and cannot definitely foresee if the potential profit will be achieved, it has adopted a cautious strategy in its fair value estimation”.*

11.64 The narrative appearing underneath the information outlined above stated:

“...Only €47 million or 6% of the potential profit that could be generated has been recognised by the Group and included within its balance sheet at the year end, despite budgeting €83 million to be received in cash from these arrangements in FY07 and historically receiving €66 million and €63 million in FY06 and FY05 respectively

- *We understand from management that the Group depends primarily on the borrower for information in respect of the development project. A percentage of profit and an estimated profit figure are set out prior to the loan being advanced in respect of supplemental arrangement fees. The Group places trust in the customer in respect of the information being provided. Once the profit handed to the Society in respect of such fees is similar to the original amount stated at the outset, management do not dispute actual profit generated on the development. This is to ensure that the Group does not breach its relationship of trust with the customer and increase the likelihood of repeat business going forward. Between FY04 and FY06 we understand that no disputes have arisen with customers in respect of these arrangement fees*
- *Based on historic information it appears that management were cautious with this calculation of the fair value on these arrangements at 31 December 2005 particularly in respect of the UK commercial loan book. In FY06 €57 million or 86% of cash received was in respect of these arrangements on developments within the UK, however the Group fair value to the UK arrangements in place at 31 December 2005 at €1 million. Although, it should be noted that as FY05 was the*

first year that supplemental arrangement fees were fair valued we do have the information to perform comparability analysis on historical periods

- *Loan agreements with these extra fees attached are weighted towards the UK commercial loan book. Of the total commercial loan book at 31 December 2006 of €8.1 billion, 59% or €4.8 billion is subject to profit share arrangements. 77% of loans subject to profit share arrangements are UK based. Realisation of many of the UK fees is dependent upon developers obtaining planning permission for sites*
- *For a prospective purchaser there is potentially significant profits not recognised that may be achievable going forward. On a loan by loan basis, loans with these attached additional fees are the most profitable arrangements in place with the Group. Overall the Group's capacity to generate non-interest income on commercial loans affords the Group greater flexibility and reduces the impact of any exposure to margin erosion on its residential mortgage and savings products".⁵⁰*

11.65 In respect of these observations by KPMG, the Inquiry notes that the Project Harmony Report identified that fee agreements arose from a negotiation instigated by INBS and if the amount delivered by the customer from the development accorded or broadly accorded with what was predicted at the time of the loan, there was no effort made to verify whether or not the amount that had been made was accurate. The reason stated by the Project Harmony Report for that was to be able to continue a relationship of trust with the same counterparty.⁵¹

Of the 78 Profit Share Loans in the Loan Sample, 66 lacked a personal guarantee.

Credit Committee role in respect of Belfast loans and other major preferred borrowers

11.66 Chapter 2 of this Findings Report sets out the governance structure of INBS. The Credit Committee was responsible for approving loans up to a specified limit. Thereafter, the Credit Committee was required to recommend loans that it believed

⁵⁰ Project Harmony Report, page 20 (Doc ID: 0.7.120.55785).

⁵¹ Project Harmony Report, page 59 (Doc ID: 0.7.120.55785).

should be approved to the Board. The Board approved all major commercial loans. As outlined in evidence below, the Board, whilst independent in its decision-making, relied upon the fact that loans coming before it had been reviewed and recommended by the Credit Committee.

11.67 Evidence presented during the course of the Inquiry⁵² demonstrated that the Credit Committee did not conduct its business in a manner that might have been expected by the Board. It was clear that Belfast loans were subjected to limited, if any, scrutiny when put through the Credit Committee as recommendations to the Board. Similarly, loan proposals to major existing customers were not the subject of active scrutiny or challenge.

11.68 Witness evidence was received, as set out below, on how the Credit Committee conducted its business.

John Roche

11.69 Mr John Roche was a member of the Credit Committee from 2001 until January 2007. In his interview by Authorised Officers of the Central Bank he was asked whether the Credit Committee discussed loans originating from the Belfast Branch. He stated: *"They were brought in but they were never discussed... but what I think happened with those is that they were brought into the Credit Committee without any input from the Credit Committee and they were put directly forward to the Board for approval"*.⁵³

11.70 Mr Roche confirmed this interview evidence when he attended the oral hearing of the Inquiry. He gave evidence to the Inquiry during the SPC 5 module hearing on 21 March 2018. In relation to considering loans emanating from the Belfast Branch, he stated:

"But the Dublin members of the Credit Committee were not involved in discussing the Belfast loans or had any kind of input because, as I said to you at the start, we didn't have the knowledge of the London market and there was no point in us debating it or discussing it when we didn't have the knowledge".⁵⁴

⁵² Principally in the course of the SPC 5 module.

⁵³ Transcript of Interview with Mr John Roche, dated 25 March 2013, page 76 (Doc ID: 0.7.120.683756).

⁵⁴ Transcript SPC 5 Inquiry Hearing, dated 21 March 2018, page 105 line 15 (Doc ID: RDU_FT_D21-000000001).

11.71 When asked on what basis he signed off minutes which included loans from Belfast that had not been discussed by the Credit Committee, he said “*On the basis that these were carrying Gary McCollum's recommendation to the Board*”.⁵⁵

Alan Deering

11.72 Mr Alan Deering attended Credit Committee meetings from 2005 and became a member of the Credit Committee in late 2007.⁵⁶ During the course of his evidence to the Inquiry in the SPC 5 module hearing, he was asked about statements he had made in his interview with Authorised Officers of the Central Bank in which he dealt with the consideration of Belfast or UK loans by the Credit Committee. During his interview, he had stated:

“...we would have no involvement with the UK applications. Generally the Irish unit in Dublin was in charge of Irish loans and the UK was in charge of the, it was London and Belfast office, they looked after those applications. So we'd have no involvement or we'd have no idea of that market... It was originally my understanding that they actually had their own Credit Committee but subsequently I learned that they were going through our Credit Committee procedure”.⁵⁷

Mr Deering had also stated that prior to late 2007, he did not recall any UK applications coming through the Credit Committee process.⁵⁸

11.73 Mr Deering was questioned by the Inquiry Members on this interview evidence during the SPC 5 Inquiry hearing. He confirmed to the Inquiry that he had believed that there was a separate Credit Committee for the UK and that Dublin did not deal with Belfast loans until late 2007.⁵⁹

11.74 Minutes of a Credit Committee meeting that took place on 17 January 2007⁶⁰ were opened to Mr Deering by the Inquiry Members. At that meeting almost a quarter of a billion pounds of Belfast or UK loans were recommended for approval by the Board in respect of nine projects. Although Mr Deering was recorded as having attended that

⁵⁵ Transcript SPC 5 Inquiry Hearing, dated 21 March 2018, page 106 line 12 (Doc ID: RDU_FT_D21-00000001).

⁵⁶ Transcript SPC 5 Inquiry Hearing, dated 12 April 2018, page 9 (Doc ID: RDU_FT_D26-00000003).

⁵⁷ Transcript of Interview with Mr Alan Deering, dated 28 February 2013, page 23 line 4 et seq. (Doc ID: 0.7.120.683765).

⁵⁸ Transcript of Interview with Mr Alan Deering, dated 28 February 2013, page 24 line 4 and 5 (Doc ID: 0.7.120.683765).

⁵⁹ Transcript SPC 5 Inquiry Hearing, dated 12 April 2018, page 120 line 10 et seq. (Doc ID: RDU_FT_D26-00000003).

⁶⁰ Minutes of Credit Committee meeting, dated 17 January 2007 (Doc ID: 0.7.120.14704).

Credit Committee meeting, he had no recollection of discussing Belfast loans. He said he believed Belfast and UK loans were discussed separately and included in the minutes, but they were not discussed at the actual meetings.⁶¹

Brian Fitzgibbon

11.75 In his witness statement to the Inquiry in respect of SPCs 1 to 4, Mr Brian Fitzgibbon, who was on the Credit Committee from July 2006 to November 2007, said:

"For preferred borrowers I cannot recall any meaningful discussion and/or analysis of the loan facility seeking approval. All applications that had the backing of Mr Fingleton were approved without recourse to LTV's or counterparty risk.

Loan applications from outside the favoured were debated and credit risk issues were discussed".⁶²

Martin Noonan

11.76 Mr Martin Noonan was a member of the Credit Committee from 2006 through to the end of the Review Period. In his response to a Section 41A Notice, he stated:

"I believe that, in the main, there was adherence to credit policies and consideration of risk in relation to loans approved by CC. The Society's main loan business was property finance and in some situations there was an over-reliance on the value of the security rather than the ability [sic] to be able to repay from cash flows and/or either MPF's [Michael Fingleton] view of the credit or on the customers strong past track record".⁶³

Michael Walsh

11.77 In the course of his examination by the LPT during the SPC 5 module hearing on 21 May 2018, Dr Michael Walsh, who was chairman of the Board of INBS from May 2001 until after the Review Period, was asked about the relationship between the Credit Committee and the Board. He said:

"Well, I mean obviously, you know, the Board were independent in the sense that they were kind of free to decide whatever they wanted, but, you know,

⁶¹ Transcript SPC 5 Inquiry Hearing, dated 12 April 2018, page 120 line 18 et seq. (Doc ID: RDU_FT_D26-00000003).

⁶² Witness Statement of Brian Fitzgibbon, dated 14 December 2020 (Doc ID: RDU_REL541-000000001).

⁶³ Section 41A response from Martin Noonan, dated 1 March 2012 (Doc ID: RDU_REL12-00000260).

clearly, you know, we were only going to consider loans that had been recommended by them. Equally well with every single loan that came to the Board, we went through it with the managing director and, you know, the managing director would actually describe the loan, describe the intent, recommend the loan, and, you know, everybody on the Board got an opportunity to question and then, you know, the decision was taken".⁶⁴

Witness Evidence

Tom McMenamin

11.78 Mr Tom McMenamin provided a witness statement to the Inquiry, dated 22 November 2018, prior to attending to give oral evidence.⁶⁵ In that statement he confirmed that INBS did involve itself in offering loans which had a profit share element. He said that he was not aware whether INBS had a formal risk policy in place for such loans and he could not recall ever receiving communications in connection with that. He said he had no recollection of being involved in a credit decision for cases above the Credit Committee threshold and that: *"No directive or policy was ever made known to me in relation to cases of this size and therefore no such term was ever agreed to my recollection for these cases".⁶⁶*

11.79 In his witness statement, Mr McMenamin responded to a question posed by the Inquiry as to whether the lack of the specific policy for the establishment of Profit Share Agreements was a weakness in the internal control of INBS, as follows:

"As in the case of all businesses with a substantial income flow from a particular source, it would behove the Board and the management as directed to ensure an appropriate policy is in place for recording monitoring and control purposes. If this was not the case in INBS then this, in my view, was certainly a weakness in the internal controls of INBS, particularly with an increasing number of profit share agreements in evidence in later years. I must add that I had always assumed such matters had been in place and agreed by the Board and the Regulator".⁶⁷

⁶⁴ Transcript SPC 5 Inquiry Hearing, dated 21 May 2018, page 14 (Doc ID: RDU_FT_D40-00000001).

⁶⁵ Witness Statement of Tom McMenamin, dated 22 November 2018 (Doc ID: RDU_REL368-000000037).

⁶⁶ Witness Statement of Tom McMenamin, dated 22 November 2018, page 2 (Doc ID: RDU_REL368-000000037).

⁶⁷ Witness Statement of Tom McMenamin, dated 22 November 2018, page 3 (Doc ID: RDU_REL368-000000037).

11.80 Mr McMEnamin gave evidence to the Inquiry during the SPC 7 Inquiry hearing on 10 July 2019. He was asked whether, in addition to a policy that covered monitoring and control, there should also have been a policy for the establishment of the Profit Share Loan. He stated: *“In hindsight, I think there should have been clear policy”*.⁶⁸ He said: *“My understanding – – my clear understanding is that there wasn’t a policy in place”*.⁶⁹ And further into his testimony, he reiterated:

“I should have known about it [a profit share policy], I didn’t know about it if there was one, but I strongly – – I have a strong view that there wasn’t a specific policy in place in relation to the profit share arrangements”.⁷⁰

11.81 Mr McMEnamin was asked about the elements of a Profit Share Loan that did not apply to other commercial lending. These included high LTVs, no personal guarantees, the borrower being an SPV etc., and he was asked how these elements were negotiated and incorporated into the CLA. He said that that was the responsibility of someone else. He testified that he had nothing to do with negotiating the elements of the loan in a profit share lending scenario.

11.82 Mr McMEnamin said that he had been employed in National Irish Bank (**NIB**) prior to joining INBS. It was one of the four major banks operating in Ireland at the time. He was asked whether NIB had provided profit sharing loans and he said that it had not and that he had never heard of them until joining INBS.

11.83 Mr McMEnamin was asked about the 2004 KPMG Commercial Credit Review. That report stated that the total fee share arrangements portfolio had grown by 101% during the three-year period from 2001 to 2003. It also stated that this increase followed strong growth in both the Irish and the UK markets with increases of 25% and 172.4% respectively. Mr McMEnamin was asked what knowledge he had of the UK operation and he stated:

“Well, basically, there was an official based in Belfast who looked after Northern Ireland loans and the UK loans, mainly the UK , and the modus operandi was he would discuss a proposal with the boss man, and then it would be followed up by a brief interoffice memo or e-mail outlining briefly what the request entailed and I would – – that would be passed on to me with written instructions

⁶⁸ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 14 line 9 (Doc ID: RDU_SPC7FT_D2-000000001).

⁶⁹ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 15 line 24 (Doc ID: RDU_SPC7FT_D2-000000001).

⁷⁰ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 18 line 4 (Doc ID: RDU_SPC7FT_D2-000000001).

to proceed as outlined, and I prepared, or I got it prepared the application as was outlined in that e-mail, and that was my involvement in it".⁷¹

11.84 Mr McMenamain was clear in his evidence that he had no active role in the negotiation of profit share fee agreements. He said that a member of senior management would attend his meeting with the customer and would inform the customer that a profit share fee agreement would be entered into. He confirmed that the proposal to enter into a Profit Share Agreement came from INBS and not from the customer. He said that although he would have prepared CLAs he would not have been party to the terms of any Profit Share Agreement and he would not have been involved with the payment over of the profit share at the closing out of the loan.⁷² He said that once the loans went out they were dealt with at a higher level.⁷³

11.85 In his witness statement, Mr McMenamain addressed the question of whether he was aware of the extent of the growth in profit share commercial lending in INBS. He stated:

"Without doubt, profit sharing assumed an increasingly important part of the lending function over the years in particular from 2004 and it was assumed by commercial lending managers, including myself at that time that it had the imprimatur of the responsible decision makers in INBS and the Regulator and that credit risks had been considered by the legal advisers and conveyed to the appropriate parties".⁷⁴

11.86 The characteristics of profit share lending as set out in the 2004 KPMG Commercial Credit Review were put to Mr McMenamain during his oral evidence to the Inquiry. He confirmed that full or partial moratoria; 100% funding with high LTV ratios; shortened lead-in time for approval; significant absolute values; and repeat business with successful customers with proven track records, were all characteristics he recognised as being part of profit share lending. Mr McMenamain, although commercial lending manager for the Republic of Ireland during the Review Period, said that he had no knowledge of how profit share lending operated within INBS and that it was all directed by Mr Michael Fingleton himself.

⁷¹ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 28 line 13 (Doc ID: RDU_SPC7FT_D2-000000001).

⁷² Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 40 line 27 (Doc ID: RDU_SPC7FT_D2-000000001).

⁷³ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 43 line 27 (Doc ID: RDU_SPC7FT_D2-000000001).

⁷⁴ Witness Statement of Tom McMenamain, dated 22 November 2018, page 4 (Doc ID: RDU_REL368-000000037).

Yvonne Madden

11.87 Ms Yvonne Madden of the Financial Regulator gave evidence to the Inquiry during the SPC 7 module hearing on 10 July 2019. She was asked whether the Financial Regulator had any policies in respect of Profit Share Agreements for lending institutions. She stated: "*No, not specifically for profit share agreements*", and the following exchange took place:

"Q. And were they addressed in any way implicitly in any of their policies or any documentation issued by the Central Bank?"

A. So I think there would have been a number of regulatory requirements and standards in place in relation to having appropriate governance and risk management arrangements, so in relation to the identification, management, measurement, monitoring of risk, there would have been requirements at the European and domestic level in relation to ensuring appropriate policies, strategies and arrangements [were] in place. So, you would expect that as part of that, if you had a significant risk to manage, that there would be a policy in place for that. But it wasn't prescribed. It was up to the Board of the institution to determine whether or not a policy should be put in place for them to effectively discharge their duties and manage the risk in their books.

Q. Okay, and were there are any policies at a European level that you know of that specifically mentioned profit shares?"

A. No".⁷⁵

11.88 Ms Madden joined the Central Bank in 2003 and from 2006 had responsibility for several regulated institutions including INBS. She was asked about the prevalence of profit share lending in the other institutions regulated by the Central Bank, and in particular whether she thought it was common that there were profit share arrangements in the lending institutions where commercial lending was involved. She responded as follows:

"I don't, no. I mean I don't think it was as prevalent. I think certainly from the Irish Nationwide perspective, the level and extent of it that was identified maybe in September 2008 was kind of came as something we weren't aware of or

⁷⁵ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 103 line 3 (Doc ID: RDU_SPC7FT_D2-000000001).

expecting, but I can't really speak, I can't recall and I wouldn't have had that visibility across all of the banks".⁷⁶

11.89 Ms Madden was asked about the letter from Mr Purcell to the Financial Regulator dated 26 September 2008, as referred to above at paragraph 11.4. She was asked about Mr Purcell's statement that INBS was entitled to share in future profits but had no obligation to share in future losses. She said that where 100% of the value of the asset had been advanced, the performance of the loan and the successful nature of the profit would obviously determine whether or not the borrower could pay back the loan:

"So if the project wasn't successful, it would call into question whether or not the borrower could repay the loan which potentially could create an impairment for Irish Nationwide, or a loss.

...

There is an indirect loss I suppose in that sense".⁷⁷

11.90 Ms Madden said that the focus of the Financial Regulator was not on profit share lending as such, but more around the recommendations of KPMG and Deloitte that concentrated on adequate documentation being in place. She said that in the "Principles-based" approach adopted by the Financial Regulator at that time, the Financial Regulator did not review the appropriateness of policies in place: "That was the board's responsibility and that was really what principles based regulation was more about".⁷⁸

11.91 Ms Madden said:

"I guess when you look at a lot of the findings and they talk about, you know, kind of enhancing documentation to support arrangement fees and you see the word "Arrangement fees" you'd expect there to be a policy somewhere that says what an arrangement fee is. You'd expect that policy to document also, you know, the role of the Board in approving it and then for the Board to

⁷⁶ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 106 line 4 (Doc ID: RDU_SPC7FT_D2-000000001).

⁷⁷ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 111 line 21 (Doc ID: RDU_SPC7FT_D2-000000001).

⁷⁸ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 126 line 19 (Doc ID: RDU_SPC7FT_D2-000000001).

*periodically review that policy as well. But it just wasn't something that we were overly focused in on at the time, so it wasn't something we asked for".*⁷⁹

11.92 Ms Madden was asked about the 2003 KPMG Management Letter that recommended a greater formalisation of the process of entering into Profit Share Loans. The response from management was that the process of granting commercial loans was very formalised and well documented. She said:

*"Yeah, it's just that the management response is in relation to that particular recommendation. It doesn't take into account the totality of the arrangements in place in relation to credit risk management, and one of those was the role of the Board in relation to the approval of all commercial loans or commercial loans above 1 million".*⁸⁰

11.93 Ms Madden said that at the time, in 2006, a lot of the correspondence was requesting INBS to enhance corporate governance and risk management, and that the Financial Regulator would have accepted the assurances from the Board that it was committed to doing that.⁸¹

11.94 Ms Madden was asked about the Financial Regulator's approach to the establishment and necessity of policies generally, and how a credit institution was to know whether or not a policy should be in place. She stated:

*"...So, one of the key roles of the board is to kind of understand and determine the level of risk within the credit institution due to the nature and the scale of their activities. The role of the board then is to establish kind of frameworks and arrangements that need to be put in place, and they can include policies, strategies, processes, what not, and the purpose of those would be to kind of identify, measure, manage, monitor and report on the risks that an institution has in its business or that it's exposed to through the macro environment..."*⁸²

⁷⁹ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 125 line 11 (Doc ID: RDU_SPC7FT_D2-000000001).

⁸⁰ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 128 line 14 (Doc ID: RDU_SPC7FT_D2-000000001).

⁸¹ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 136 line 26 (Doc ID: RDU_SPC7FT_D2-000000001).

⁸² Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 149 line 27 (Doc ID: RDU_SPC7FT_D2-000000001).

11.95 Ms Madden was asked whether it would have made any difference to the Financial Regulator's monitoring function had there been a distinct policy in place in relation to profit share arrangements. She stated:

"It may have come up for example if there was a policy by the inspection team when they were out at the end of the 2007 for example. So, we may have looked at it in that way. I think I mentioned earlier on, I think the Honohan report is very critical of the Financial Regulator at the time. We didn't look at the appropriateness of an institution's policies. We looked at whether or not an institution was complying with their policies. So I think if there was a policy in place and we were doing an inspection of credit, we might have looked at how the institution complied with that policy".

11.96 In conclusion, Ms Madden was asked how the existence of such a policy might have affected the grant of Profit Share Loans. She stated:

"I mean, when I think about it, if I was writing a policy on profit share arrangements, it would do things like define what is a profit share arrangement, define what are the parameters within which you would grant a loan, how it would link in with the interest rate you might charge or the percentage profit you may want, what you'd expect from a lender in terms of how they'd assess the loans, you know, the performance of the borrower, the performance of the underlying project, how you'd assess the status of market conditions, the macroeconomic environment, that type of thing. So that's the type of thing you would expect to see. Maybe the board might set its tolerance for that type of lending, X percent of book might be acceptable to us in terms of our risk bearing capacity to lend for profit sharing. So all of that type of thing".⁸³

Colm O'Donnell

11.97 Mr Colm O'Donnell was one of the authors of the two Deloitte reports produced during the Review Period.⁸⁴ He gave evidence to the Inquiry during the SPC 7 module hearing on 11 July 2019. The terms of engagement for the 2006 Deloitte Audit Report were set out in a letter dated 30 September 2005. It stated that Deloitte was to undertake "a review of controls within INBS's Commercial Lending function, which focused on the following areas...". One of the areas identified was commercial lending. In this respect,

⁸³ Transcript SPC 7 Inquiry Hearing, Day 2, dated 10 July 2019, page 155 line 22 (Doc ID: RDU_SPC7FT_D2-000000001).

⁸⁴ 2006 Deloitte Audit Report (Doc ID: 0.7.120.431732) and May 2008 Deloitte Review (Doc ID: 0.7.120.431665).

the report identified its objective as being: “*To ensure that the policies and procedures relating to the Commercial Lending function are in operation and support the identified regulatory requirements*”. Mr O’Donnell said that notwithstanding the wording of the report objectives, it really only focused on whether there was adherence to the processes and procedures that were in place.⁸⁵

11.98 The 2006 Deloitte Audit Report considered Profit Share Loans by reference to the way in which they operated. Mr O’Donnell said that the risk and the quality of those loans was outside of its scope.⁸⁶

Darragh Daly

11.99 Mr Darragh Daly joined INBS in 2002 as residential home loans manager and in July 2006 he was appointed as the credit risk manager. He gave evidence to the Inquiry during the SPC 7 module hearing on 11 July 2019. The terms of reference for the credit risk manager⁸⁷ stated *inter alia* that one of his responsibilities was:

“Implementing the recommendations set out in the Society’s Auditors (KPMG) annual management letters as regards commercial lending as well as the recommendations of other lending reviews including the Financial Regulator’s requirements”.

11.100 Mr Daly said that after he was appointed, responsibility for the collation of profit shares transferred from the finance department to the credit risk department. He said that the Profit Share Agreements would not have been very specific, “*but basically, in terms of my understanding of them, I came to understand that they were put in place because the Society seemed to be engaged in higher risk lending and felt that it was appropriate that it would take a higher reward in those circumstances*”.⁸⁸ Mr Daly said that in early 2007 through 2008 his department built a profit share database. It was developed in conjunction with the finance department and KPMG to ensure that appropriate recording of future expectation of fees was developed.⁸⁹ He said that the credit risk department did not have any role regarding the circumstances in which a Profit Share Agreement was given in the first place.⁹⁰ He said that as credit risk manager his role

⁸⁵ Transcript SPC 7 Inquiry Hearing, dated 11 July 2019, page 11 et seq. (Doc ID: RDU_SPC7FT_D3-000000001).

⁸⁶ Transcript SPC 7 Inquiry Hearing, dated 11 July 2019, page 28 (Doc ID: RDU_SPC7FT_D3-000000001).

⁸⁷ Letter from Tom McMenamin, INBS, to Yvonne Madden, Financial Regulator, dated 10 November 2006, page 9 (Doc ID:0.7.120.13615).

⁸⁸ Transcript SPC 7 Inquiry Hearing, dated 11 July 2019, page 42 (Doc ID: RDU_SPC7FT_D3-000000001).

⁸⁹ Transcript SPC 7 Inquiry Hearing, dated 11 July 2019, 43, line 11 (Doc ID: RDU_SPC7FT_D3-000000001).

⁹⁰ Transcript SPC 7 Inquiry Hearing, dated 11 July 2019, page 45 line 11 (Doc ID: RDU_SPC7FT_D3-000000001).

was “specifically not to do with new lending, it was to do with the administration, it was to do with ensuring that loans were recorded accurately on Summit, it was to do with the monitoring, the reporting, it was liaising with auditors... it was to do with making sure the profit share arrangements were properly recorded and that loans that had profit share arrangements were flagged as such...”.⁹¹ Mr Daly was asked if he could explain why credit risk had not developed a policy that addressed the establishment of Profit Share Agreements. He said:

*“The risk was associated with the lending. I didn’t see any additional risk associated with the profit shares. The risk was associated with the lending. As I said earlier, my understanding was that the Society looked to engage in this type of profit share arrangement because they were higher risk lending... But the credit risk in and of itself was associated with the lending rather than the profit share”.*⁹²

11.101 Mr Daly said that he did not recall any policy that addressed the circumstances in which Profit Share Loans could be created, nor could he ever recall it being considered or discussed that thought should be given to the creation of such a policy.⁹³

11.102 Mr Daly was asked about the 2006 Belfast Internal Audit Report. This audit was conducted following his appointment as credit risk manager. The report made a recommendation that a profit share policy be put in place. Mr Daly said that this recommendation was not brought to his attention but he said that a number of shortcomings had been raised in Management Letters and audit reports, and it was a question of addressing whatever the most current or recent problem was.⁹⁴ He said he was very confident that the specific issue of a policy regarding the establishment of Profit Share Agreements did not arise at that time.⁹⁵

11.103 Mr Daly was asked about the proposition put forward by Mr Purcell in his witness statement that the 2004 KPMG Commercial Credit Review constituted a policy in relation to the establishment of Profit Share Agreements. Mr Daly said that he did not know about the policy and had no awareness at any time of that being policy.⁹⁶

⁹¹ Transcript SPC 7 Inquiry Hearing, dated 11 July 2019, page 47 line 16 (Doc ID: RDU_SPC7FT_D3-000000001).

⁹² Transcript SPC 7 Inquiry Hearing, dated 11 July 2019, page 49 line 1 (Doc ID: RDU_SPC7FT_D3-000000001).

⁹³ Transcript SPC 7 Inquiry Hearing, dated 11 July 2019, page 55 line 1 (Doc ID: RDU_SPC7FT_D3-000000001).

⁹⁴ Transcript SPC 7 Inquiry Hearing, dated 11 July 2019, page 68 line 1 (Doc ID: RDU_SPC7FT_D3-000000001).

⁹⁵ Transcript SPC 7 Inquiry Hearing, dated 11 July 2019, page 69 line 28 (Doc ID: RDU_SPC7FT_D3-000000001).

⁹⁶ Transcript SPC 7 Inquiry Hearing, dated 11 July 2019, page 73 line 20 (Doc ID: RDU_SPC7FT_D3-000000001).

Karl O'Brien

11.104 Mr Karl O'Brien worked in the credit risk department of INBS from July 2006. He gave evidence to the Inquiry during the SPC 7 module hearing on 16 July 2019. He was referred to his interview by Authorised Officers of the Central Bank in 2012, where he said, in relation to profit share lending:

"there was a culture of acceptance of what INBS would make at the end of a project at face value and in some cases there was no science backing the figures up".⁹⁷

11.105 Mr O'Brien in his oral evidence to the Inquiry was asked what he meant by the statement that there was no science backing up the figures. He said that what he meant by that was that if a project had been completed and a profit was due to be calculated, INBS was happy to accept the numbers that the borrower presented. He said that the figures were not challenged. When asked what he meant by stating that there was no science behind the figures, he stated:

"...if for example we were getting all the quantity surveyor reports on a particular development, if they were being discussed on a regular basis, if they were – – if that type of ongoing monitoring reporting was being fed into Credit Committee... — if there was an infrastructure for both collecting, consolidating and reporting, if you like, the actual performance of borrowers, then I would say – – that's my understanding of, like, the science. That didn't happen".⁹⁸

11.106 Mr O'Brien was asked if he was aware that it had been recommended to INBS, both internally by internal audit and by KPMG as part of their audit, that a policy be put in place for profit share lending. He stated:

"No, I don't recall it being something I was ever discussed or tasked with or ever asked to do any work on".⁹⁹

11.107 Mr O'Brien said that you could argue that there was a formal process in place, in that the loans that came from the Belfast Branch followed a particular pattern. He stated that they had a particular set of documents that were obtained, they went through the same underwriting process, and a decision was made, and any follow up would have

⁹⁷ Transcript SPC 7 Inquiry Hearing, dated 16 July 2019, page 33 line 9 (Doc ID: RDU_SPC7FT_D4-000000001).

⁹⁸ Transcript SPC 7 Inquiry Hearing, dated 16 July 2019, page 34 line 5 (Doc ID: RDU_SPC7FT_D4-000000001).

⁹⁹ Transcript SPC 7 Inquiry Hearing, dated 16 July 2019, page 40 line 22 (Doc ID: RDU_SPC7FT_D4-000000001).

occurred in Belfast. He said the credit risk department did not have a prescriptive role in terms of setting out a particular set of procedures that the lending teams had to follow.¹⁰⁰

11.108 In his witness statement¹⁰¹ to the Inquiry, Mr O'Brien addressed the question of whether he considered the lack of a policy in relation to Profit Share Loans a control weakness. He stated:

"Internal control weakness: I did not think at the time that the lack of a policy was a control weakness. The profit shares reflected the risk appetite of the Society and involved 100% plus lending to non-recourse Special Purpose Vehicles in return for a percentage of the financed asset's value appreciation. A policy that sets limits on the nature or quantity of such commercial lending might not have matched the risk appetite or accorded with the management culture".

11.109 Mr O'Brien was asked whether this was still his view and he said:

"Well I think if there was a risk policy in place, there would have had to have... been limits on the amount of high risk lending that the Society did and would have reduce the eventual loss when the crash came".

The following exchange then took place:

"Q. ...can you just address what you meant by the management culture there?"

A. Well, the Society was run by Mr. Fingleton. He made the decisions. And I think... there was no, if you like, counterbalancing power centre that could have kind of checked what he wanted to do.

Q. Could I ask you, when you refer to management there, would you include Mr. Purcell in that?"

A. Well Mr. Purcell was obviously key to the operation of the Society. But -- and he would have supported the Society in many aspects. But the lending was -- I would not, in terms of the lending of the Society, I would not see Mr Purcell as having been part of that process. He would have supported Mr. Fingleton

¹⁰⁰ Transcript SPC 7 Inquiry Hearing, dated 16 July 2019, page 45 line 8 (Doc ID: RDU_SPC7FT_D4-000000001).

¹⁰¹ Witness Statement of Karl O'Brien, dated 14 October 2018 (Doc ID: RDU_REL234-000000014).

and would have supported the operation of the Society, but the choice – – the decisions on, you know, the loans that were granted, were Mr. Fingleton's".¹⁰²

Declan Buckley

11.110 Mr Declan Buckley was appointed as head of commercial lending in November 2009. Prior to joining INBS, Mr Buckley had been employed in Ulster Bank where he was director of credit for commercial lending with a book of about €12 billion. Mr Buckley gave evidence to the Inquiry during the SPC 7 module hearing on 16 July 2019. Mr Buckley said that he had very little experience of profit share lending before joining INBS.

11.111 Mr Buckley gave an interview to Authorised Officers of the Central Bank in 2012 in which he was recorded as stating:

"Mr. Buckley said that he was shocked to find that one and a half managers (Gary McCollum and Michael Fingleton Jnr) supported by three administrative staff were dealing with the loan book of €5.5 billion. They had no experience in commercial lending as Michael Fingleton Jnr was only 26/27 and Gary McCollum had come from a Building Society".¹⁰³

In the course of his oral evidence to the Inquiry, Mr Buckley was referred to his interview evidence and was asked to outline his concern. He stated:

"The complexity of the loans were such that they were all development loans, and development loans of these size and complexity needs clear management and monitoring. That was not being done. All they were doing was writing the book and hoping with a prayer that was going to come back. For me, it wasn't lending as I would have known it. To me, it was equity financing in its raw sense without any due consideration as to the progress of the loan or annual review of the loan. No two people or five people could possibly undertake that size of a book and manage to the knowledge and depth that I would expect a book of that size to be managed. It just couldn't happen".¹⁰⁴

11.112 He said that depending on experience, he would expect somewhere between 30 and 40 people to be managing a portfolio of that size. He said that Mr Gary McCollum was

¹⁰² Typed notes of Preliminary meeting with Mr Declan Buckley, dated 23 July 2012 (Doc ID: AD-0.7.120.56932).

¹⁰³ Transcript SPC 7 Inquiry Hearing, dated 16 July 2019, page 57 et seq. (Doc ID: RDU_SPC7FT_D4-000000001).

¹⁰⁴ Transcript SPC 7 Inquiry Hearing, dated 16 July 2019, page 58 et seq. (Doc ID: RDU_SPC7FT_D4-000000001).

based in Belfast and Mr Michael Fingleton (Jnr) was based in London, but the level of reporting on a frequency basis was absent unless the customers were looking for further advances. He stated they could find no other reporting on files other than that.

11.113 He was asked about his view that it was akin to equity financing and he stated:

*"I would have said so, because in essence if profit sharing was the factor and you lend a hundred percent finance to it, you were putting up the cash, you were betting on an upside but you took all the downside risk, and to me that's equity investment not lending as I would know it".*¹⁰⁵

11.114 Mr Buckley gave an example of one loan that he had looked at involving an SPV that was part of a wider group. He said that the wider group would have done all the associated management in relation to the development and they charged a fee with no cap and no necessity that they should document how those fees were determined.¹⁰⁶

11.115 Mr Buckley said there was no evidence of any challenge by the Board with regard to loans. He said that he assumed that the Board had the applications in advance but that it was not clear if they were read. There was never a situation where a lending manager was called before the Credit Committee to answer questions with regard to a loan. There was no evidence of any discussions at Credit Committee.

11.116 Mr Buckley was asked whether there were particular factors or risks that INBS took particular care of or gave attention to in relation to profit share lending. He stated:

"A. There was no evidence that any due diligence was given to the progress of the loan, especially after we stopped lending. Then it was outside the ability of the Society to bring developments to conclusion and therefore establish their profit.

Q. Why do you say that there was a change after the Society had stopped lending? Because essentially they weren't going to provide further finance to the borrower?

A. They couldn't do that. So, what happened in a couple of cases was that the lender would come in and take a first charge of the asset. The Society then

¹⁰⁵ Transcript SPC 7 Inquiry Hearing, dated 16 July 2019, page 59 line 14 (Doc ID: RDU_SPC7FT_D4-000000001).

¹⁰⁶ Transcript SPC 7 Inquiry Hearing, dated 16 July 2019, page 60 line 21 (Doc ID: RDU_SPC7FT_D4-000000001).

*would sit back and take a second charge. That again was weak, or the documentation that we discovered or investigated there was no cap on the amount of the first charge. So the first charge could actually be for X – any amount – and the Society then was dependent on an ultimate profit after the primary lender took their cash out”.*¹⁰⁷

11.117 Mr Buckley explained that his understanding was that INBS would have constructed a profit share arrangement with one of its larger UK customers initially, using a formula which gave INBS a significant profit if things worked out well. When that had worked out, INBS moved profit share lending across to some less experienced developers. He said that he understood that the model was initially suggested by a UK customer of INBS to INBS.¹⁰⁸

11.118 Mr Buckley said that valuations were received in respect of these loans. He added: “*All valuations were received. The question you’d have to ask is, how many of them had a hope value attaching to them which may or may not have been realistic*”. The following exchange then took place:

“Q. And what was your experience of the valuations, did they contain a hope value?”

A. In some cases, yes. Unreasonable ones.

...

Q. And were the valuations updated?”

*A. No. We updated them ourselves when we took over, my team and I would have updated them as we worked through the files because we needed that, moving into NAMA we needed to have concrete evidence of the current value”.*¹⁰⁹

11.119 Mr Buckley was asked about his perception of the lending model in the context of Profit Share Agreements when he came into INBS in 2009. He stated: “*Again, I think it was hard to see how you could base your structure around that type of a basis because it gave you – unless you actually monitored it and controlled it and you knew exactly how*

¹⁰⁷ Transcript SPC 7 Inquiry Hearing, dated 16 July 2019, page 61 (Doc ID: RDU_SPC7FT_D4-000000001).

¹⁰⁸ Transcript SPC 7 Inquiry Hearing, dated 16 July 2019, page 63 line 24 (Doc ID: RDU_SPC7FT_D4-000000001).

¹⁰⁹ Transcript SPC 7 Inquiry Hearing, dated 16 July 2019, page 67 line 23 (Doc ID: RDU_SPC7FT_D4-000000001).

much costs were allowable and how well they were documented. To leave it carte blanche to the client, to me, was detrimental”.

He was then asked to clarify that he was referring to the costs that the developer was going to incur, and he stated:

*“Yeah, I mean there would be no – – there was no way it was planned, there was no way that I could see evidence as to cash flows as to what the costs might be, what the intercompany management fees might be. There was nothing like that. There was nothing done prior to it or subsequent as the development proceeded. So, you only found that you got a dividend as was determined by the client with little or no input from the Society”.*¹¹⁰

11.120 Mr Buckley was asked whether the 2004 KPMG Commercial Credit Review, which set out KPMG’s understanding of the procedure that related to Profit Share Loans, could be considered to be a policy. He said that it might be seen as a practice but it would not be seen as a policy.¹¹¹

Michael Walsh

11.121 Dr Walsh was a non-executive director and chair of INBS throughout the Review Period. Dr Walsh gave evidence to the Inquiry at the SPC 7 module hearing on 18 July 2019. Dr Walsh said that the Board viewed all commercial loans as being the same irrespective of whether or not they had profit share components associated with them. He said in terms of the granting of commercial loans, including those with the profit share element, the policy was very clear. They initially went before the Credit Committee and then came to the Board via the Managing Director. He said the Managing Director would present the CLAs to the Board and it would have been clear from the CLA whether or not there was a profit participation or not.¹¹²

11.122 Dr Walsh said that he accepted that the majority of Profit Share Loans did not comply with policy in relation to LTV limits, personal guarantees and things like that. He stated:

“Sorry, absolutely, I accept that proposition because that’s precisely why, I mean the purpose of a policy is, ...to ensure that if something doesn’t actually

¹¹⁰ Transcript SPC 7 Inquiry Hearing, dated 16 July 2019, page 69 line 20 (Doc ID: RDU_SPC7FT_D4-000000001).

¹¹¹ Transcript SPC 7 Inquiry Hearing, dated 16 July 2019, page 72 line 14 (Doc ID: RDU_SPC7FT_D4-000000001).

¹¹² Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 16 (Doc ID: RDU_SPC7FT_D5-000000001).

*comply with that policy, then it's referred to an appropriate authority, and that's precisely why the Board wanted it referred to themselves".*¹¹³

11.123 Dr Walsh confirmed that policy as set out in the 9 November 2004 Commercial Lending Criteria¹¹⁴ was that LTV could not exceed 75% and, *"if... there were going to be loans approved by management, you know, they couldn't approve loans above 75%, so, above that level they have to go to a higher level which was the Board"*.¹¹⁵

11.124 On the question of receiving personal guarantees from the owners of corporate borrowers, Dr Walsh stated:

"A. ...Most of the lending, but obviously not all, most of the lending in Ireland was actually done in the names of individuals. So, you know, the Board would have been advised at the time that one had recourse against the individuals as well as against the underlying assets.

In the UK, you know, the market was such at the time that you know it was not possible be [sic] to get guarantees from individuals. But, you know, where the Society could get guarantees, obviously it did take them.

Q. Is that because of the competition for projects?

*A. ...absolutely. I mean that's where you know the market was within the UK market at that stage. I mean it's an issue that the Board would have obviously discussed at different points in time, and you know, the advice to the Board from the executive was, you know, that you could not actually get, in most cases, you know, guarantees on top of the security".*¹¹⁶

11.125 Dr Walsh was asked whether the policy and the approach of INBS that applied in Ireland, which was high net worth and proven track record and existing relationship, should have been reconsidered in respect of the UK in circumstances where the high net worth part effectively was not really available because it was not possible to get personal guarantees. Dr Walsh said that from 1994, expansion into the UK grew and senior executives obviously built up experience.¹¹⁷

¹¹³ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 18 line 2 (Doc ID: RDU_SPC7FT_D5-000000001).

¹¹⁴ As noted previously, the Inquiry determined that the 9 November 2004 Commercial Lending Criteria was not an internal INBS policy that applied to commercial lending during the Review Period.

¹¹⁵ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 19 line 16 (Doc ID: RDU_SPC7FT_D5-000000001).

¹¹⁶ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 22 (Doc ID: RDU_SPC7FT_D5-000000001).

¹¹⁷ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 24 (Doc ID: RDU_SPC7FT_D5-000000001).

11.126 The following exchange with Dr Walsh then took place:

“Q. So, one could have a situation for the developer where 100% of the purchase price is being provided, where it’s being – – the vehicle is an SPV, so there is no other assets, there is obviously no trading history, there is a moratorium on interest and capital, there is no personal guarantees, I mean it’s hard to see what, if you like, risk the developer is bearing there, isn’t it? Isn’t the Society bearing all the risk in that situation?”

A. Well, not really, because the – – sorry, I mean obviously the developer is putting in time, it’s actually look [sic] to go get the planning or the development, and, you know, that is actually time-consuming and, you know, expensive enough process in some cases.

Q. What’s a financial exposure to the developer in a situation like that?”

*A. Well, the financial exposure is only the exposure that he has in terms of actually trying to get the development capability”.*¹¹⁸

11.127 Dr Walsh was asked whether taking a profit share, particularly a substantial share of the profits, incentivised a credit institution to perhaps take on loans that they might not otherwise have taken on. He stated:

*“It certainly incentivises, you know, but I mean you have to look at it from a Board point of view. This is precisely why the Board was actually saying look, if we’re going into these, you know, we want these to come to the Board so the Board can actually make an assessment as to whether or not it makes sense or is in the interests of the Society”.*¹¹⁹

11.128 Dr Walsh was asked about the review by the Board of the CLA. He said that all the relevant information would have been contained in the CLA. He was asked whether all the Board members, particularly those who were not as familiar with lending as others, would have been clear that there were no assets backing the loan, or personal guarantees backing the loan, apart from simply the asset itself. He stated:

“It’s a very tricky question to answer because I think at the time, because there was never anyone who indicated they didn’t have a full understanding of what

¹¹⁸ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 27 line 4 (Doc ID: RDU_SPC7FT_D5-000000001).

¹¹⁹ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 35 line 3 (Doc ID: RDU_SPC7FT_D5-000000001).

was actually being done. You know, everybody got an opportunity to ask questions in relation to every single Commercial Loan Application, I would say, you know, everybody actually did ask questions... I am aware that one of the non-executives went out afterwards and said, well, I never really understood what I was doing, but you know to be absolutely clear, there was never any suggestion at the time. I think there was a bit of rewriting of history".¹²⁰

11.129 Dr Walsh was asked whether the Board questioned the systemic departure from policy that occurred in respect of so much commercial lending. He accepted that the commercial lending criteria of 2004¹²¹ and later on, 2007¹²², would have been adopted by the Board. However, he stated that the Board did not ask for statistics in relation to the extent to which policy was being departed from. It was put to Dr Walsh that whilst the Board may have individual control on a loan by loan basis, it did not appear to address the macro aspect of things.¹²³ Dr Walsh stated:

"...First of all, obviously there was quite a degree of concentration in the loan book and it was... 30 relationships accounted for, whatever, 65, 70% of the book. So from that point of view, you know, the Board was actually getting, you know, reviews in relation to all of those.

So, it would have been very clear really in terms of, you know, the departure from what you described as these standards here. So the Board would have had a good appreciation of the amount of it".¹²⁴

11.130 Dr Walsh was asked about the Quarterly Reports and the fact that these reports did not in fact contain Profit Share Loan specific information. Dr Walsh said that the Board kept pushing for additional information from the executive.

11.131 Dr Walsh said that in respect of monitoring the progress of loans, it was obviously a role for the executive but that it had been addressed by the Board and by the Audit Committee in that it had sought greater discipline. He said that the Board supported and encouraged calls for greater monitoring that came from KPMG.¹²⁵

¹²⁰ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 36 (Doc ID: RDU_SPC7FT_D5-000000001).

¹²¹ As noted previously, the Inquiry determined that the 9 November 2004 Commercial Lending Criteria was not an internal INBS policy that applied to commercial lending during the Review Period.

¹²² The commercial lending criteria of 2007 were contained in the 28 February 2007 Commercial Mortgage Lending Policy.

¹²³ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 41 (Doc ID: RDU_SPC7FT_D5-000000001).

¹²⁴ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 41 line 26 (Doc ID: RDU_SPC7FT_D5-000000001).

¹²⁵ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 46 (Doc ID: RDU_SPC7FT_D5-000000001).

11.132 In relation to the 2003 and 2004 KPMG Management Letters, which called for INBS to formalise its monitoring of commercial loans, Dr Walsh confirmed that in its response to these recommendations, the Board did not distinguish between commercial lending and commercial lending with a profit share element.¹²⁶

11.133 Dr Walsh was asked whether the quick turnaround time for loans, which was identified in the 2004 KPMG Commercial Credit Review as a distinguishing feature of Profit Share Loans, occurred at the cost of proper due diligence. Dr Walsh said that all loans, irrespective of the urgency factor came before the Board, stating “...*the loans would be tabled effectively by the managing director, and each individual loan would be gone through. ...beyond that... there was never any indication that the work wasn't actually being properly done*”.¹²⁷

11.134 The following exchange with Dr Walsh then took place:

“Q. Yes, but would it have been helpful for the Board to be able to evaluate individual loans against a -- and sorry they were evaluated against a policy -- but against a policy that was referable specifically to profit shares?”

A. To be honest, I'm not really sure that you would have had, you'd have had a very obvious policy because you know in reality most of these things were pretty bespoke, so, you know, you are actually evaluating each of them individually for that very reason.

Q. But we have seen this response before this they were bespoke, but they weren't really bespoke were they? Because after all we have just seen KPMG identifying the characteristics of the loans and you have agreed with that. So what was bespoke, if you like, so much so that a policy couldn't be of any relevance?”

A. ...[It] is that my belief that the policy was actually very straightforward, that you know if the loan was above a certain level it had to come to the Board, and that included all the profit participating loans because they would have been by definition above that level.

¹²⁶ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 53 (Doc ID: RDU_SPC7FT_D5-000000001).

¹²⁷ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 54 (Doc ID: RDU_SPC7FT_D5-000000001).

Q ...*The Board got into the detail of the loans that they were being presented with. But was there a – – would there have been an advantage to them being able to measure the individual loans against general policy?*

A. *I mean, I don't really think so, because I'm just not sure what that sort of policy would have actually looked like*".¹²⁸

11.135 Dr Walsh was asked about the statement in the 2004 KPMG Commercial Credit Review to the effect that individuals did not request a fee share arrangement but rather they were as a result of negotiation, and INBS tried to get such an arrangement where it could. He was asked whether the question as to when INBS should look for a Profit Share Agreement and the types of loans it should go after was something that the Board ever considered should have been the subject of a policy, "*Because it appears to have been very much ad hoc if we can get it we will, if we can't we won't*".¹²⁹ Dr Walsh responded that the first thing considered when looking at a loan was whether it would get paid back, the second thing was whether INBS would get interest, and then the third matter to be considered was whether INBS would get a share in the ultimate profit. Dr Walsh was then asked whether his view was that the profit share was not very relevant to whether or not INBS would offer to lend, and he responded as follows:

"It was certainly kind of second order, and certainly from the Board point of view was very much second order".¹³⁰

11.136 Dr Walsh was asked about the projections in the 2004 KPMG Commercial Credit Review that, based on information received from management, estimated a profit of €286 million from 2004 onwards. He was asked whether the Board had at any point had a discussion about whether it needed to look again at the position in relation to profit shares, given that their profile was changing so significantly and the projection amounts were growing so fast. He indicated that he suspected that the actual figure recognised in the 2004 accounts was more likely around €30 million to €50 million.¹³¹

11.137 It was put to Dr Walsh that the 27 June 2007 Credit Risk Management Policy did not mention profit shares or profit share lending. The policy did set out the role of the Board in relation to credit risk. It stated:

¹²⁸ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 58 (Doc ID: RDU_SPC7FT_D5-000000001).

¹²⁹ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 63 (Doc ID: RDU_SPC7FT_D5-000000001).

¹³⁰ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 66 (Doc ID: RDU_SPC7FT_D5-000000001).

¹³¹ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 72 (Doc ID: RDU_SPC7FT_D5-000000001).

“It is the Board’s overall responsibility to approve the Society’s Credit Risk Management Policy and other significant policies. The Board must ensure that the Society’s overall credit risk exposure is maintained at prudent levels consistent with available capital.

The Board must also ensure that the Society implements practices and procedures for the identification, measurement, monitoring and control of credit risk.

*The first task that the Board in approving the Credit Risk Management Policy, is to determine the risk appetite of the Society”.*¹³²

Dr Walsh was asked what the top five priorities for the Board were and where would credit risk come in. He said that it would probably be the number one issue.¹³³

11.138 Dr Walsh was asked about the role of the Credit Committee in relation to the Belfast loans.¹³⁴ The evidence by and large from members of the Credit Committee in the context of SPC 5, was that they did not give independent consideration to the Belfast loans. This evidence is set out at paragraph 11.69 et seq. of this chapter. Dr Walsh responded that the policy was very clear and that these loans had to be considered properly by the Credit Committee before coming to the Board. He said that he would have been aware that Mr McCollum did not attend all Credit Committee meetings but he was not aware that he had attended none at all. He said that in terms of the Credit Committee’s capacity to judge UK lending, he would have considered Mr McMEnamin quite an experienced individual in that regard. The following exchange with Dr Walsh then took place:

“Q. ...the Board were placing a good deal of reliance upon the recommendation of the Credit Committee, is that fair to say?

A. Sorry, absolutely they were, and they were placing reliance on the managing director.

¹³² Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 80 (Doc ID: RDU_SPC7FT_D5-000000001).

¹³³ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 83 line 6 (Doc ID: RDU_SPC7FT_D5-000000001).

¹³⁴ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 95 et seq. (Doc ID: RDU_SPC7FT_D5-000000001).

Q. Yes. And I suppose from your answers just in the last few minutes, it doesn't seem to me... that the Board really took any active role in ensuring that the Credit Committee were in a position to evaluate the UK loans?

A. I mean, the reality is the Board had confidence in the executive it actually had and you know believe[d] they had the requisite skills. I mean clearly if we didn't believe it at the time, you know we would have taken a different approach.

...

I mean the executive team".¹³⁵

11.139 Dr Walsh was asked about the personnel in the Belfast Branch, which consisted of Mr McCollum, Mr Fingleton (Jnr) and a couple of administrative assistants. He said that because there was a low number of borrowers involved, it was adequate resourcing, notwithstanding the fact that the quantity of the loans was in the region of €6 billion.

11.140 Both the 2004 and 2006 Belfast Internal Audit Reports made a finding that there was no formal credit risk policy governing fee agreements. Dr Walsh said he believed that those recommendations referred to monitoring rather than to the establishment of fee agreements. He agreed that there was never a formal credit risk policy in relation to profit shares and that these loans were viewed as being governed by the normal commercial credit policy.

11.141 Dr Walsh was questioned about the specifics of SPC 7 and generally what the Board's obligation was to put policies in place, during the following exchange:

"A. I mean the Board puts in policies I suppose really to ensure the safe and secure management of the institution.

Q. And what are policies for? ...why are they there?

A. I mean policies are to govern, you know, in many ways, kind of how the executive actually behave.

...

¹³⁵ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 99 and 100 (Doc ID: RDU_SPC7FT_D5-000000001).

Well, the adoption of the policy sets I suppose really the tram lines in which the executive are supposed to operate, and then if they want to go outside those tram lines, then they have to come back to the Board.

...

Q. Can I ask you what were the tram lines in relation to fee agreements, or profit share agreements, for the executive here?

A. Sorry, I don't think there were particular tram lines because you know, each individual proposal was coming to the Board, so, you know, the tramlines were, cannot actually lend above a certain level without actually getting Board approval.

...

Q. ...was consideration ever given to, or would it have been useful to have a policy in relation to the value of fee arrangements loans as a percentage of total commercial loans?

A. I mean, I really don't think so to be honest. You know, I mean it was very clear that that was the route we were actually going down. You know, we were negotiating the best possible commercial deal. Clearly the main restriction from our point of view was to make sure that, you know, we had adequate capital, we believed we had adequate capital, believed in the solvency.

Q. So, is it fair to say that perhaps an implicit policy decision was that there was no limit to the number of commercial loans that should be fee arrangement loans?

A. I would say -- I mean probably not implicit or indeed explicit. It was just a matter that, you know, each individual commercial loan would be reviewed on its own merits. Whether it had a profit participation or not... I think if you go back through the papers, you'll see that the discussion really is the balance between what I described as a kind of plain vanilla mortgages and commercial lending as opposed to the mix of commercial lending".¹³⁶

¹³⁶ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 112 et seq. (Doc ID: RDU_SPC7FT_D5-000000001).

11.142 The LPT opened two documents to Dr Walsh. The first was a presentation dated 1 November 2004 on INBS commercial lending at a Financial Regulator meeting held on 24 November 2004.¹³⁷ This document, which was internal to the Financial Regulator, identified the concerns that had caused the Financial Regulator to commission KPMG to do a commercial lending review. The concerns included the fact that there had been a large shift towards commercial lending, there was an increase in the size of Large Exposures, and the senior executive who had overseen the function had departed. This presentation noted that performance related fees had accounted for 85% of total fees in INBS in 2003 and that total fee income had increased by 139% during the period. It noted that one of the features of this kind of lending was that there was no formal policy and that it was negotiated on a case by case basis.

11.143 The second document opened to Dr Walsh was a record of the meeting between the Financial Regulator and INBS that followed.¹³⁸ This meeting took place on 3 December 2004 and was attended by Dr Walsh, Mr Con Power, Mr Fingleton and Mr Purcell. This meeting set out serious concerns in relation to the recent 2004 KPMG Commercial Credit Review. The concerns identified included: the significant increase in the level of commercial lending particularly in the UK; the significant concentrations in the commercial loan book both by counterparty and on a geographic basis; the significant shift in the risk profile of INBS's overall loan portfolio with very significant levels of moratorium facilities, restructuring facilities and facilities based on fee share arrangements. The meeting also identified that it was a matter of particular concern that while the level and nature of INBS's activities had changed significantly, the control mitigants that would be necessary to manage, monitor and control these risks had not kept pace with this change.

11.144 The minutes of the meeting also recorded that KPMG had highlighted the risks to INBS of a significant deterioration in the commercial property market and an overreliance on the Managing Director.

11.145 All of these matters were communicated in writing to the Board in a letter from the Financial Regulator dated 9 December 2004¹³⁹ which has been looked at in detail at paragraph 11.33 and 11.34 above.

¹³⁷ Presentation on INBS Commercial lending at IFSRA meeting dated 24 November 2004 (Doc ID: AD-0.7.120.50113).

¹³⁸ Record of meeting between INBS and the Financial Regulator, dated 3 December 2004 (Doc ID: AD-0.7.120.1127973).

¹³⁹ Letter from the Financial Regulator to Michael Walsh, INBS, dated 9 December 2004 (Doc ID: 0.7.120.450640).

11.146 Dr Walsh said that he did vaguely recall the meeting and that the issues raised were treated very seriously.¹⁴⁰ The letter of 9 December 2004 from the Financial Regulator was opened to Dr Walsh and he was asked about the requirement that INBS set out a clearly articulated business plan and strategy. In particular, his attention was drawn to a specific requirement that INBS put in place resources to review and assess the risk of the entire commercial loan book on a formalised basis that would specifically include the monitoring of Profit Share Agreements.¹⁴¹

11.147 INBS responded to this letter from the Financial Regulator on 1 February 2005¹⁴² and this letter was opened to Dr Walsh. He was asked about the comment: *"We operate in a niche market with high net worth customers who have a proven record of success"*¹⁴³, during the following exchange:

"Q. ...given that this was a term of art that we see over and over again, the high net worth customers, the niche market, the track record, isn't it relevant, if you are not getting personal guarantees from them?"

*A. I mean, at one level it is, on another level it isn't. You know, I mean clearly to the extent that you are actually lending to somebody with a, you know, track record. If there are no personal guarantees, then obviously their wealth is not important. What is important – – sorry, it could be important, but not in terms of security, but I mean what is important is that we see a track record of the people".*¹⁴⁴

11.148 Dr Walsh was asked about the commitment given in this letter of 1 February 2005, and confirmed in a letter of 22 March 2005¹⁴⁵ from the Financial Regulator, that Quarterly Reports would be issued to the Board which would monitor and assess the risks of Large Exposure Profit Share Agreements, joint venture development arrangements and restructuring moratorium. These Quarterly Reports when issued did not in fact address profit share lending specifically. Dr Walsh said that the reviews did look at individual loans in significant detail and also said that the Board was concentrating on

¹⁴⁰ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 121 (Doc ID: RDU_SPC7FT_D5-000000001).

¹⁴¹ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 126 line 14 (Doc ID: RDU_SPC7FT_D5-000000001).

¹⁴² Letter from Michael Walsh, INBS, to Liam O'Reilly, Financial Regulator, dated 1 February 2005 (Doc ID: 0.7.120.131433).

¹⁴³ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 129 (Doc ID: RDU_SPC7FT_D5-000000001).

¹⁴⁴ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 130 (Doc ID: RDU_SPC7FT_D5-000000001).

¹⁴⁵ Letter from Liam O'Reilly, Financial Regulator, to Michael Walsh, INBS, dated 22 March 2005 (Doc ID: 0.7.120.20126).

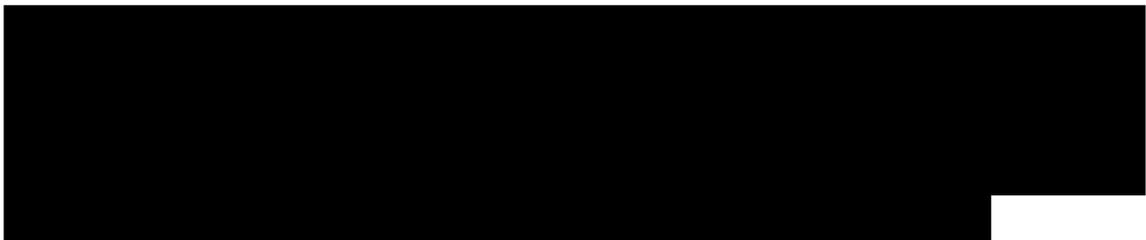
and was fully committed to implementing all of the “Red Box” items in the 2004 KPMG Commercial Credit Review.¹⁴⁶

11.149 Dr Walsh confirmed to the Inquiry that when the Board considered CLAs for approval, they were guided by the commercial loan policies even in the approval of the Profit Share Loans, and inherently therefore, the Profit Share Loans were approved on an exception basis because there was an exception to LTV, guarantees etc. Dr Walsh stated:

*“Everything above a million arguably was coming to the Board on the basis of the fact it wasn’t within the tram tracks”.*¹⁴⁷

11.150 It was put to Dr Walsh that if these Profit Share Loans were coming to the Board as exceptions, the Credit Committee terms of reference provided for a procedure whereby exceptions were to be signed off by two members of the Credit Committee, and it might have been more helpful to the Board members if it had been clearly articulated on the face of the CLA that they were approving a loan with these exceptions in it. Dr Walsh said that the CLA would have been looked at in detail and that it would have been clear on the face of it that the internal policy provisions had not been applied.

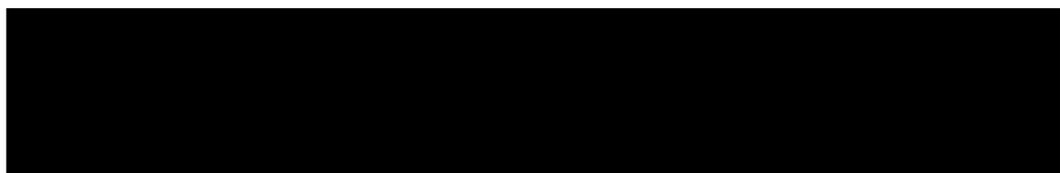
11.151



11.152



...



¹⁴⁶ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 136 (Doc ID: RDU_SPC7FT_D5-000000001).

¹⁴⁷ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 145 (Doc ID: RDU_SPC7FT_D5-000000001).

[REDACTED]

[REDACTED]

11.153

[REDACTED]

11.154

[REDACTED]

[REDACTED]

...

[REDACTED]

¹⁴⁸ Transcript SPC 7 Inquiry Hearing (private hearing), dated 18 July 2019, page 6, line 28 et seq. (Doc ID: RDU_SPC7FT_D5-000000004).

¹⁴⁹ Transcript SPC 7 Inquiry Hearing (private hearing), dated 18 July 2019, page 8 (Doc ID: RDU_SPC7FT_D5-000000004).

[REDACTED]

...

[REDACTED]

11.155

[REDACTED]

11.156 Although it was not referred to by Mr Purcell, it can be noted that the action plan document stated: *“Note: The Secretary will have responsibility for following up and reporting on the timely completion of the Action Plan to the Society’s Board”*.

11.157

[REDACTED]

11.158

[REDACTED]

¹⁵⁰ Transcript SPC 7 Inquiry Hearing (private hearing), dated 18 July 2019, page 10 and 11 (Doc ID: RDU_SPC7FT_D5-000000004).

¹⁵¹ 2003 Action Plan-Update Nov 03, dated 11 November 2003 (Doc ID: 0.7.120.34225).

¹⁵² Transcript SPC 7 Inquiry Hearing (private hearing), dated 18 July 2019, page 13 line 13 (Doc ID: RDU_SPC7FT_D5-000000004).

¹⁵³ Letter from Darragh Daly to Brian Curran, Central Bank of Ireland, dated 26 April 2013 (Doc ID: AD-0.7.120.500899).

¹⁵⁴ Credit Risk Department Plan, dated September 2006 (Doc ID: 0.7.120.272799-000001).



Liam O'Reilly

11.159 Dr Liam O'Reilly was chief executive of the Financial Regulator from May 2003 to the end of January 2006. He provided a witness statement to the Inquiry, dated 2 November 2018¹⁵⁶, and gave evidence to the Inquiry during the SPC 7 module hearing on 19 July 2019. In a letter dated 9 December 2004¹⁵⁷, Dr O'Reilly raised a number of concerns in relation to INBS with the chairman, Dr Walsh. This letter has already featured in a number of witness examinations and is also dealt with in detail at paragraph 11.33 and 11.34 above. For the purposes of SPC 7, the relevant extract was contained in the schedule to the letter and it arose out of the Regulator's review of the 2004 KPMG Commercial Credit Review. This extract stated:

"A brief analysis would indicate that there is a high number of significant risk components within the commercial loan book:

- ***Moratorium facilities***
...
- ***Restructuring of facilities***
...
- ***Facilities based on performance-related fees:***
 - *€1 billion (38% of commercial loan book) at end – 2003*
 - *€0.7 billion is UK lending (almost 60% of UK loan book)*
 - *KPMG note such facilities can have the following characteristics - large size; high LTV (up to 100%); full or partial moratorium*
 - *KPMG noted that the agreements should be documented and kept updated".*

¹⁵⁵ Transcript SPC 7 Inquiry Hearing (private hearing), dated 18 July 2019, page 16 (Doc ID: RDU_SPC7FT_D5-000000004).

¹⁵⁶ Witness Statement of Liam O'Reilly, dated 2 November 2018 (Doc ID: RDU_REL247-000000031).

¹⁵⁷ Letter from Financial Regulator to Michael Walsh, INBS, dated 9 December 2004 (Doc ID: 0.7.120.450640).

11.160 Dr O'Reilly was asked whether INBS addressed the concerns raised about performance related fees. In response Dr O'Reilly referred to correspondence received from INBS dated 1 February 2005¹⁵⁸ and 31 March 2005¹⁵⁹, in which INBS stated that it had done an in-depth analysis of commercial lending, and to a further letter dated 8 April 2005¹⁶⁰, in which INBS said that it had dealt with the issues raised. Dr O'Reilly continued:

*"I would have said after that that I was not satisfied, it was an ongoing issue, and it was an ongoing issue right up to the time that I left, and they were making commitments at that stage to implement the KPMG recommendations from their commercial lending report. And what I asked for there was that they would give me reports on the review of those, how they were progressing in implementing those".*¹⁶¹

11.161 Dr O'Reilly said that before he left his position as chief executive of the Financial Regulator, there had been a report produced by Deloitte and a further report produced by KPMG. He said that there were commitments given by INBS to deal with those reports but he was not satisfied at that stage.

11.162 The specific wording of SPC 7 was opened to Dr O'Reilly and the following exchange took place:

"Q. So what's being faced by the persons concerned, Dr. O'Reilly, is an allegation that by not having a formal Credit Risk Policy in relation to the establishment of the profit share agreements, there was a failure to manage the business of the Society in accordance with sound administrative and accounting principles.

While you were involved as the chief executive of the Regulator, Dr. O'Reilly, was it ever suggested to the Society that they should have a discrete formal Credit Risk Policy in respect of the profit share agreements?

A. Not to my knowledge, no, but I mean it's a long time ago, but I don't think so.

¹⁵⁸ Letter from Michael Walsh, INBS, to Liam O'Reilly, Financial Regulator, dated 1 February 2005 (Doc ID: 0.7.120.131433).

¹⁵⁹ Letter from INBS to Liam O'Reilly, Financial Regulator, dated 31 March 2005 (Doc ID: AD-0.7.120.129476).

¹⁶⁰ Letter from INBS to Liam O'Reilly, Financial Regulator, dated 8 April 2005 (Doc ID: 0.7.120.136261).

¹⁶¹ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 11 (Doc ID: RDU_SPC7FT_D6-000000001).

Q. Well, you have seen all the relevant correspondence that we can find?

A. Yeah, and you know, and there is nothing in that that I can see.

Q. No. So, at no time did the Regulator identify a formal Credit Risk Policy as being appropriate or necessary for the purpose of dealing with these loans, the establishment of them, isn't that right?

A. That is right, yes. But just to say that, there is a question as to what granularity the Regulator goes about its business and to what extent it is the role and responsibility of the Board and management to make sure that the management of the risks are in place".¹⁶²

11.163 Dr O'Reilly was referred to the document entitled "*Presentation on Commercial Lending at IFSRA Meeting on 24 November 2004*".¹⁶³ He confirmed that the presentation by the senior regulator of the banking supervision department, Mr Dermot Finneran¹⁶⁴, outlined the serious concerns that the Financial Regulator had following inspections and reviews. It was proposed to appoint KPMG to conduct a review to address these concerns, which included a large shift towards commercial lending and an increase in the size of Large Exposures. Dr O'Reilly was asked why the large shift towards commercial lending was a matter for concern. He stated:

"Well, the risks would have been increased as a result of the fact that returns on this business were higher and there is a direct relationship, I believe, between returns and risk. So, that by itself.

*There was a question of the familiarity of the Society with the business of commercial lending, and the resources and the – – well, the resources that would be required to manage and monitor and control this risk".*¹⁶⁵

He confirmed that his main concern was that there was no head of commercial lending and that up to the time he left, that position had not been filled.

11.164 Dr O'Reilly was asked about the nature of INBS's business, during the following exchange:

¹⁶² Transcript SPC 7 Inquiry Hearing, Day 6, dated 19 July 2019, page 17 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁶³ Presentation on INBS Commercial lending at IFSRA meeting dated 24 November 2004 (Doc ID: AD-0.7.120.50113).

¹⁶⁴ Mr Finneran was employed in the banking supervision department of the Financial Regulator throughout the Review Period.

¹⁶⁵ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 21 (Doc ID: RDU_SPC7FT_D6-000000001).

“Q. This was a Building Society?”

A. Yes.

Q. I mean building societies traditionally deal with the needs of the members and the provision of home loans for the members, isn't that right?

A. Yes.

Q. This was now radically different business model to what the classic society was?

A. As you see in the letters of reply, Irish Nationwide were saying that they were in the business of property and property lending, but I would have said that we were very and deeply uncomfortable with the idea that this is a different sort of business and needed to be monitored and controlled better.

Q. ...But just standing back and looking at it, it strikes me as an unusual breakout by the Society from the classic business of a Building Society?

A Yes.

Q. Into funding large developers or large developments of a commercial nature, isn't that so?

*A. That's right. And it seemed to have been driven by the profit motive”.*¹⁶⁶

11.165 Dr O'Reilly was asked whether he had been aware, prior to this presentation by Mr Finneran, of the level of performance related fees that were involved in the lending by INBS. He said:

*“At this distance in time, I cannot say for certain, but I seem to remember that this was raising alarm within, you know, the banking supervision department and as well as that, at the Board level”.*¹⁶⁷

11.166 Dr O'Reilly was asked about the concerns raised by the 2004 KPMG Commercial Credit Review, specifically the fact that advances could be up to 100% LTV. Dr O'Reilly agreed that this was very unusual and that it was the reason the Financial Regulator was concerned. One of KPMG's findings was that there was no formal policy in relation

¹⁶⁶ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 23 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁶⁷ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 24 line 28 (Doc ID: RDU_SPC7FT_D6-000000001).

to profit share lending and that it was negotiated on a case by case basis. When asked why the Regulator had not suggested that a formal policy be put in place, Dr O'Reilly said that it was presumed that the KPMG recommendations would be carried out. He said that with hindsight it would have been a good idea to have suggested one.

11.167 Dr O'Reilly was asked about the meeting which occurred on 3 December 2004, which was attended by him and was also attended by Mr Finneran and Mr Patrick Neary, who was prudential director in the Financial Regulator at the time.¹⁶⁸ Dr O'Reilly agreed with the observation of the LPT that *"you couldn't conceive of a more significant Summit meeting of the personnel on both sides"*.¹⁶⁹

At this meeting, the Financial Regulator expressed its concerns, as follows:

"An overall concern at this time is a significant shift in the risk profile of INBS's overall loan portfolio in a relatively short period of time. There are very significant levels of moratorium facilities, restructuring of facilities and facilities based on fee/profit share arrangements.

...

The Regulator advised that the Society must address these concerns immediately, and in this regard the Regulator requires the Board to clearly set out its strategy".¹⁷⁰

The notes of the meeting record INBS's reaction, as follows:

"INBS, while acknowledging the FSR's concerns, advised that it was satisfied with the overall risk profile of its commercial lending portfolio. It added that it had a sound and profitable track record for many years in the area of commercial lending and that it mainly deals with a number of long-standing and proven commercial clients".¹⁷¹

INBS also stated that because there was the perception that INBS was going to be taken over in the near future, it was difficult to recruit suitable management. It stated

¹⁶⁸ Record of meeting between INBS and Financial Regulator, dated 3 December 2004 (Doc ID: AD-0.7.120.1127973).

¹⁶⁹ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 32 line 15 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁷⁰ Record of meeting between INBS and the Financial Regulator, dated 3 December 2004, page 2 and 3 (Doc ID: AD-0.7.120.1127973).

¹⁷¹ Record of meeting between INBS and the Financial Regulator, dated 3 December 2004, page 3 (Doc ID: AD-0.7.120.1127973).

that it wanted amendments to the legislation to be made so that it could be acquired by a larger financial institution.

11.168 The LPT questioned Dr O'Reilly, as follows:

"Q. Is it fair to [say] that the Regulator was insisting on immediate action in respect of a number of things, which you thought were important, including the profit share arrangements, and the Society was taking a slightly blasé attitude saying it was happy with its commercial loan portfolio. And secondly saying that it wanted the amendments to the legislation it had been promised?"

A. Yes

Q. So that's not an unfair way to describe --

A. No, it's absolutely fair. I agree totally".¹⁷²

11.169 This meeting on 3 December 2004 was followed up with by the letter from the Financial Regulator dated 9 December 2004.¹⁷³ With regard to the item in the schedule to that letter identifying concerns in relation to "*Facilities based on performance related fees*", Dr O'Reilly was asked whether he would have expected INBS to have addressed the circumstances in which Profit Share Loans were being entered into on an ongoing basis, as well as the question of the monitoring of loans already incepted, during the following exchange:

"A. Well, I would have thought that as a matter of urgency, the Board itself should have been considering these issues.

...

Yes. And a principles based Regulator expected the Board to deal with these issues.

Q. Yes. And did they deal with the issue of the circumstances in which the loans were begun as opposed to the question of the monitoring of the loans? They don't seem to have addressed that at all?"

¹⁷² Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 35 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁷³ Letter from Financial Regulator to Michael Walsh, INBS, dated 9 December 2004 (Doc ID: 0.7.120.450640).

A. Well, I can only say now, as opposed to then, but I would have expected that to be Central to what they do".¹⁷⁴

11.170 A further meeting took place between INBS and the Financial Regulator on 1 February 2005¹⁷⁵ at which the concerns raised by the Financial Regulator in its letter dated 9 December 2004 were discussed. At this meeting INBS stated that it found the use of the term "*commercial lending*" misleading, on the basis that the bulk of INBS's business was in providing finance for housing that included home loans, residential investment properties and housing development. Dr O' Reilly indicated that he did not agree with that.¹⁷⁶ Although the minutes of this meeting recorded discussions of monitoring, managing and controlling lending risk, there was no mention of profit share lending as such.

11.171 INBS's response to the Financial Regulator's letter of 9 December 2004 was handed over during the meeting on 1 February 2005. Notwithstanding the fact that the issue of profit share lending had been raised by the Financial Regulator, both in face to face meetings and in correspondence, the response from INBS did not address the issue at all. Dr O'Reilly was asked what his response to this letter was and he said that his general reaction was that they were not concrete responses to the concerns.¹⁷⁷

11.172 Dr O'Reilly sent a further letter to INBS on 22 March 2005.¹⁷⁸ This letter once again expressed concern that the control environment within INBS had not kept pace with the significant change in the scale and nature of INBS's activities. It requested that INBS submit a detailed report by the Board of its consideration of the issues raised in the letter of 9 December 2004, by 31 March 2005. Dr O'Reilly said that whilst the issue of profit shares had not been explicitly raised in that letter he expected that it would be addressed in the response. In respect of the time lapse between the letter of 9 December 2004 and the 31 March 2005 date for submission of a report, he said "*It's not ideal at all*".¹⁷⁹

¹⁷⁴ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 41 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁷⁵ Draft Record of meeting between INBS and Financial Regulator, dated 1 February 2005 (Doc ID: AD-0.7.120.133899).

¹⁷⁶ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 45 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁷⁷ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 51 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁷⁸ Letter from Liam O'Reilly, Financial Regulator, to Michael Walsh, INBS, dated 22 March 2005 (Doc ID: 0.7.120.20126).

¹⁷⁹ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 53 line 23 (Doc ID: RDU_SPC7FT_D6-000000001).

11.173 The response from the Board was sent by Dr Walsh to Dr O'Reilly on 31 March 2005.¹⁸⁰ This is a letter which is dealt with in detail in Chapter 12 of this Findings Report at paragraph 12.53. With respect to commercial lending, the letter stated:

"The Board's view is that its commercial loan book has an appropriate risk profile having regard to the Society's long experience and expertise, its low loan losses and the quality of our current book".

The letter went on to commit to implementing the recommendations of the 2004 KPMG Commercial Credit Review, but did not refer to the letter of 9 December 2004. The letter concluded with a summary of the Board's risk appetite:

"In summary: The Board is satisfied with the commercial lending book and the Society's lending strategy. The Society has a tried and trusted business model which is based on maintaining relationships and repeat business with valued customers.

However the Society recognises the importance of continually improving the control of lending through enhanced information and reporting systems and we will with the assistance of KPMG continually improve our systems".

11.174 Dr O'Reilly agreed that it was "odd" that nobody on the Financial Regulator side picked up on the fact that the important issue of the Profit Share Agreements had not been addressed in any way by INBS in its response. The Financial Regulator responded on 21 April 2005¹⁸¹, noting INBS's position and requesting a status report on the progress in implementing the recommendations of the 2004 KPMG Commercial Credit Review on commercial lending by the end of June 2005. Dr O'Reilly agreed that from then on the focus turned to the implementation of the KPMG recommendations, rather than the issues that had been raised by the Financial Regulator in its letter of 9 December 2004. Subsequent correspondence, insofar as it related to profit share lending at all, related to the monitoring of such lending rather than how these loans were granted in the first place. The Financial Regulator received assurances from INBS that the KPMG recommendations were being implemented.

¹⁸⁰ Letter from INBS to Liam O'Reilly, Financial Regulator, dated 31 March 2005 (Doc ID: 0.7.120.10935).

¹⁸¹ Letter from Financial Regulator, to Michael Walsh, INBS, dated 21 April 2005 (Doc ID: 0.7.120.50619).

David Brophy

11.175 Mr Brophy, former non-executive director of INBS, stated in his witness statement to the Inquiry in relation to SPC 7 dated 31 October 2018¹⁸²:

“I have a concern that there may be some misunderstanding about the nature of the profit share agreements. From the perspective of the Society, there [sic] agreements were upside only. They did not add additional risk exposure but were agreed as an additional feature and potential return for the Society in relation to certain loans in the same way as interest margin and arrangement fees were negotiated and individual loans”.

11.176 Further on in his witness statement, in answer to the question posed by the Inquiry as to whether Profit Share Agreement loans were considered when identifying and mitigating INBS's risk as part of the ICAAP process, Mr Brophy stated:

“This question seems to suggest that the profit share arrangements exposed the Society to additional risk, which was not the case.

...

There was no additional risk therefore to be factored in as part of the ICAAP process other than the loans themselves”.

11.177 Mr Brophy gave evidence to the Inquiry during the SPC 7 module hearing on 19 July 2019. He was asked about the above passages from his witness statement and whether he was drawing a distinction between the Profit Share Agreements and the loans themselves, and he confirmed his view:

“The loan was the loan. The exposure, the risk was the amount of the loan in whatever number of pounds or euros that was, that was the risk. There was no additional risk beyond that.

*The existence of a loan, of a fee arrangement on top of the loan didn't add to the risk. It just was what it was...”*¹⁸³

11.178 The LPT opened the 2004 KPMG Commercial Credit Review, in which the following key characteristics of profit share lending were identified: 100% funded; potentially

¹⁸² Witness Statement of David Brophy, dated 31 October 2018 (Doc ID: RDU_REL246-000000006).

¹⁸³ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 70 (Doc ID: RDU_SPC7FT_D6-000000001).

high LTV ratios; shortened lead time for approval of loan; significant absolute values; and repeat business with successful customers with proven track records.

11.179 In the 2004 KPMG Commercial Credit Review, KPMG observed:

*“Some of these distinguishing characteristics could give rise to additional risk in terms of probability of default and the uncertainty of the repayment profile. According to management, 100% of the project may be funded where management believe there is such value at the outset to justify such a funding level”.*¹⁸⁴

11.180 In addition to the characteristics identified by KPMG, it was also the case that most profit share lending was to SPVs and that personal guarantees from directors would not be obtained. Capital and/or interest moratoria were also a common feature.

11.181 Mr Brophy contended that whilst he acknowledged a higher amount of risk in a 100% loan as against a lower LTV *“...this wasn’t casual or wanton or random sort of just issuing of loans. In each case there would have been a very serious consideration through the process as to whether or not the loan should be made and whether it was appropriate for the Society to do that and whether there was a confidence that the loan would be repaid”.*¹⁸⁵ He said that this consideration would have come from the commercial manager and the Credit Committee before coming to the Board.

11.182 When asked if any policy applied to these loans, Mr Brophy stated:

*“Sorry, these were commercial loans. They fell under the general Commercial Lending Policy, which was anything over 1 million had to be approved by the Board”.*¹⁸⁶

11.183 Mr Brophy agreed that the required criteria set out in the commercial lending criteria 2004 document¹⁸⁷ and repeated in the 28 February 2007 Commercial Mortgage Lending Policy were not applied to profit share lending, and he said that each case was decided on its own merits. He was asked whether there should have been a different policy, a specific bespoke policy, in respect of profit share lending. He stated:

¹⁸⁴ 2004 KPMG Commercial Credit Review, page 4 (Doc IDs 0.7.120.735064).

¹⁸⁵ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 80 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁸⁶ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 82 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁸⁷ As noted previously, the Inquiry determined that the 9 November 2004 Commercial Lending Criteria was not an internal INBS policy that applied to commercial lending during the Review Period.

*“From the Board’s perspective the overriding control and, deliberately, was to effectively force any meaningful loan to be put before the Board for approval, and that was why the limit was so low and so low in comparison to any other financial institution around. It was to force it to the Board to have it properly reviewed and considered before being approved. And that, from my perspective, that in effect was, I suppose, the over – – the key control and ultimately the overriding policy”.*¹⁸⁸

11.184 Mr Brophy agreed that the 9 November 2004 Commercial Lending Criteria¹⁸⁹ and the 28 February 2007 Commercial Mortgage Lending Policy¹⁹⁰ applied equally to profit share lending as to other types of commercial lending. However, he said the Board did not check each loan against the applicable policy.¹⁹¹ As outlined previously in this Findings Report, the Inquiry have concluded that the 9 November 2004 Commercial Lending Criteria was not a policy that applied to commercial lending in INBS during the period November 2004 to February 2007.

11.185 Mr Brophy was asked whether it was a matter of concern that there were no formal criteria in respect of Profit Share Loans. He stated:

“It certainly wasn’t a concern... You may disagree with this but the actual strategy of the Board was, and the Society was actually overall, in the round, quite conservative. It was to lend short-term, compared to other financial institutions, and to fund itself long-term”.

11.186 Mr Brophy emphasised that the overall strategy of the Board was to achieve a trade sale and maximise the return from commercial lending by an increasing use of supplementary arrangement fees.¹⁹²

11.187 Mr Brophy was then asked about the extent of profit share lending in INBS. According to the Project Harmony Report, *“of the total commercial loan book at 31 December 2006 of €7.8 billion, 62% or €4.8 billion is subject to profit share arrangements. 77% of loans subject to profit share arrangements are UK based”.*¹⁹³ This represented an increase from €1 billion since the 2004 KPMG Commercial Credit Review. Mr Brophy was asked if the Board had an awareness of the extent of this growth. He indicated

¹⁸⁸ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 90 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁸⁹ 9 November 2004 Commercial Lending Criteria (Doc ID: 0.7.120.450329).

¹⁹⁰ 28 February 2007 Commercial Mortgage Lending Policy (Doc ID: 0.7.120.518837).

¹⁹¹ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 94 line 9 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁹² Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 95 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁹³ Project Harmony Report, dated 20 June 2007, page 63 (Doc ID: 0.7.120.55785).

that the Board did have an awareness. He said many of these loans were short term with a view to achieving planning permission, and he stated:

*“So, in that context, when you are dealing with a very proven developer who has a track record for the last ten years of successfully getting planning on equivalent sites, ..., that’s a risk that can be justified... I am just strongly rejecting the suggestion that it was almost cavalier – – by definition it’s risky and cavalier, that type of lending. The exact opposite. Properly done is the case”.*¹⁹⁴

11.188 It was suggested to Mr Brophy that it was remarkable that there seemed to have been no policy in place which would, for example, limit the proportion of the loan book that would be applied to these loans having additional risk, and that there was no particular criteria in place which would determine the circumstances in which those loans would be given, and the requirements that would be applied. He was asked was that not an omission having no such policy in place. Mr Brophy said that he did not believe so. He said that the Project Harmony Report made no suggestion that there was any inappropriate lending in place in INBS. He said that no consideration had been given to putting a percentage limit on the loan book that would be tied to those loans, because the Board would only approve loans where it was appropriate to do so and where the Board was happy that the loan would be repaid. He said, given that INBS had been doing this “*niche business*” successfully for the previous ten, 15 or 20 years, “*I genuinely don’t think there should have been just an arbitrary limit on these amounts of loans*”.¹⁹⁵

11.189 He explained this by saying that limits might have been appropriate in a very large organisation where thousands of loans were going out and the Board did not have a very intimate knowledge of the type of business that was being done. He indicated that INBS was a small organisation where there was very intimate knowledge of the type of business that was being done and the type of people that were being lent to, and there was a good feeling for what the balance sheet exposure and the overall exposure was. He said that the Project Harmony Report presented the profit share lending as a strength of INBS.¹⁹⁶

¹⁹⁴ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 106 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁹⁵ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 108 and 109 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁹⁶ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 110 and 111 (Doc ID: RDU_SPC7FT_D6-000000001).

11.190 Mr Brophy was asked about the Credit Committee's consideration of loans that emanated from Belfast and the process whereby the loans were initiated by Mr McCollum, who sent a memorandum to the Managing Director, who in turn directed Mr McMennamin to draw up a CLA for presentation to the Credit Committee. Mr Brophy was asked if he was aware that Mr McCollum did not attend Credit Committee meetings until December 2007. Mr Brophy said he was not aware of that and that, as far as he knew, the loans that were brought to the Board had been appropriately processed including through the Credit Committee. He said it was his understanding that all loans coming from the UK had been fully scrutinised.

11.191 Mr Brophy said that he did not believe that the 2004 KPMG Commercial Credit Review or the strategy and risk tolerance documents would have constituted a policy with regard to profit share lending. In this regard, it was put to him by Mr Purcell that the word "*strategy*" in these documents was a synonym for the word "*policy*". Mr Brophy replied that he would not know. Mr Purcell then asked him if the characteristics of profit share lending that were outlined in the 2004 KPMG Commercial Credit Review, could be categorised as a formal policy because it had been brought before the Board. Mr Brophy said he could not comment on the context in which it was presented to the Board but that certainly the document was factually correct as to how INBS carried out business.¹⁹⁷

Vincent Reilly

11.192 Mr Vincent Reilly was the partner in KPMG responsible for the INBS audit and also for overseeing certain non-audit related work. Mr Reilly gave evidence to the Inquiry during the SPC 7 module hearing on 23 July 2019. Mr Reilly was asked about the comment in the 2003 KPMG Management Letter that INBS should put in place a formal policy for dealing with profit share lending.¹⁹⁸ Mr Reilly stated:

"...our detailed substantive work was very much focused on examining the loan files. So when would you [sic] go to the loan files, the informal piece was around the fact that there was really no qualitative documentation around, you know, the granting of loans and the information in relation to assessing the loans in terms of, you know, really kind of thorough credit analysis if you will. The documentation was there. The security was there. The basic loan agreements were there, but it would lack some of that other information that would give you

¹⁹⁷ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 127 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁹⁸ See para 11.19 et seq. above for a full analysis of the 2003 KPMG Management Letter.

*a sense of what's happening and what's going to happen, you know, how much money we're going to make on this".*¹⁹⁹

11.193 Mr Reilly said that as auditor it was not his job to tell INBS whether they should or should not grant particular loans. His main concern would have been how the loans once granted were to be monitored. He was asked in particular about his recommendation that INBS "*should formalise its processes pertaining to the granting and ongoing monitoring of commercial property loans, and, in particular, those loans where arrangement fees are earned on completion*". He said really the use of the word grant in that context did not mean that he was prescribing the way in which lending decisions should be made. He said, in circumstances where the loans were granted with a capital and interest moratorium, his concern would have been how INBS would be able to identify if there was an issue with the loan.

11.194 He said the way KPMG had dealt with it was to suggest that there be regular stress testing of the loan book because of the higher risk loans it was taking on.²⁰⁰

11.195 INBS Management Response to the recommendation in the 2003 KPMG Management Letter was: "*The process of granting commercial loans is very formalised and well documented*". Mr Reilly was asked for his view on this response and he said that it was a matter for management, but that he would interpret it as meaning that all the legal documentation was in place.²⁰¹

11.196 Mr Reilly was asked about the 2004 KPMG Commercial Credit Review. This review was conducted at the request of the Financial Regulator. The scope of the review was determined by the Financial Regulator and a draft had been presented to INBS before being submitted to the Financial Regulator to allow for factual accuracy to be checked.

11.197 Mr Reilly said that he did not recall any specific conversation with the Financial Regulator in relation to Profit Share Agreements. He said they were just included as part of the scope of work (by the Financial Regulator) in order to get an analysis of the profit share lending.

¹⁹⁹ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 10 (Doc ID: RDU_SPC7FT_D7-000000001).

²⁰⁰ Transcript SPC 7 Inquiry Hearing, Day 7, dated 23 July 2019, page 18 (Doc ID: RDU_SPC7FT_D7-000000001).

²⁰¹ Transcript SPC 7 Inquiry Hearing, Day 7, dated 23 July 2019, page 19 (Doc ID: RDU_SPC7FT_D7-000000001).

11.198 Mr Reilly was brought to the executive summary of the 2004 KPMG Commercial Credit Review and in particular the section outlining the key characteristics of commercial loans with performance related fee agreements. Mr Reilly stated:

"...that's what we would point the high level of risk with these loans, that's what that paragraph does".²⁰²

Mr Reilly was quite clear that it was not his job to recommend policies but rather to highlight the risks and to suggest mitigants to those risks. He said he did highlight the elevated risk associated with this type of lending and at the same time recommended that INBS should stress test the portfolio to see what the impact would be if there was a deterioration in property prices and what would happen to the capital base. These recommendations were repeated by KPMG in 2004, 2005, 2006 and 2007.

11.199 Mr Reilly was asked whether he agreed with the assertion by Mr Purcell that the setting out of the characteristics of Profit Share Loans by KPMG amounted to the documentation of a policy on behalf of INBS. Mr Reilly said he was only documenting what management told him, and it was not an independent policy.²⁰³

11.200 Mr Reilly stated that when he drafted the characteristics of the Profit Share Loans in the 2004 KPMG Commercial Credit Review, Mr Fingleton did not agree that there was an additional risk. Mr Reilly stated:

"No. In fact, if you go to the next page of that report... he was unhappy with these additional risk characteristics, and he insisted on having his own sentence in there which is:

'Management are of the view...That the situation as outlined above is highly unlikely given the manner in which world economies are structured and the controls in place centrally or otherwise the Society has.'

So, we would have said look, you know, if there is a deterioration in the commercial property market, the Society may have to call on security in order to work out non-performing loans, and we talked about potential liquidity issues.

²⁰² Transcript SPC 7 Inquiry Hearing, Day 7, dated 23 July 2019, page 31 (Doc ID: RDU_SPC7FT_D7-00000001).

²⁰³ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 38 (Doc ID: RDU_SPC7FT_D7-00000001).

And then that's his sentence, effectively, to say, well, look, we don't really agree with that because we think we will always be able to access liquidity.

So, he wasn't -- you couldn't argue that the other point was you know policy of the Society because he was very unhappy with that wording that we had written in the executive summary".²⁰⁴

11.201 Section 12 of the 2004 KPMG Commercial Credit Review²⁰⁵ set out "*Policies and procedures*" in relation to fee agreements. It was put to Mr Reilly that while the section was headed "*Policies and procedures in place*" there was no reference to any formal policy. Mr Reilly indicated that KPMG was probably just documenting there the processes outlined to KPMG by INBS.²⁰⁶

11.202 Mr Purcell's role in relation to profit share lending was set out in the 2004 KPMG Commercial Credit Review, as follows:

"Mr. Purcell was responsible for obtaining all information from the commercial loan officers regarding the total costs of the project and sales proceeds and uses this information to calculate the final profits due to the Society and for ensuring that the cash is received by the Society. Gary McCollum holds a similar role for UK facilities".²⁰⁷

11.203 Mr Reilly confirmed that the growth in profit share lending outlined in the report as a little over €1 billion in 2003 representing a 101% increase from 2001, was based on figures provided by INBS. He said that although this growth would have been a matter of concern, it was still ultimately a matter for INBS. He said the report highlighted the additional risks in taking on this kind of lending.²⁰⁸

11.204 Mr Reilly was asked why he could not identify his concerns regarding the risks in taking on this lending more clearly in the report and he said that he had to maintain his independence. The following exchange took place:

"A. Well, there is a couple of things, the Belfast office and the branch you know I could hang my hat on the potential for fraud, only five or six people operating up there with, you know, about 2 billion euros worth of money flowing through

²⁰⁴ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 39 (Doc ID: RDU_SPC7FT_D7-000000001).

²⁰⁵ 2004 KPMG Commercial Credit Review, page 82 (Doc ID: 0.7.120.735059).

²⁰⁶ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 43 (Doc ID: RDU_SPC7FT_D7-000000001).

²⁰⁷ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 43 line 29 (Doc ID: RDU_SPC7FT_D7-000000001).

²⁰⁸ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 46 (Doc ID: RDU_SPC7FT_D7-000000001).

it. So that's one particular issue I can, you know, I can have in the background as, and that does impact.

Q. And in the management letter where you identify that, did you specifically refer to fraud?

A. I referred to ensuring segregation of duties and rotation of staff, if you look at the recommendation. So it's framed around that".²⁰⁹

Mr Reilly continued:

"Well, first of all, what we were asked to do, right, was we were asked to do a factual accuracy, an analysis of the loan book. We weren't asked to do anything else. And that was clearly the scope of the Commercial Credit Review.

And outside of that I took the opportunity to highlight the increased risk with this lending, which wasn't included in the scope, but I went there because it was worth highlighting".²¹⁰

11.205 Mr Reilly was asked about the correspondence from the Financial Regulator that followed on from the 2004 KPMG Commercial Credit Review, and he said that he did not see this correspondence at the time. He stated the use of the phrase "*high-level concerns*" would indicate to him that the Financial Regulator had taken on board his message. Although KPMG had not specifically called for extra policies or controls to be put in place, he said that the Financial Regulator could do so.²¹¹

11.206 It was put to Mr Reilly that the Board, in trying to define its risk, should not be concerned about whether there was going to be a collapse in property prices, it should be concerned about what downsides it should be looking at to protect depositors, and if it had looked at downsides on LTV and these extensions, it might have suggested a limit. Mr Reilly responded:

"It might have, yeah, because the stress testing didn't take into – – because with the stress testing, the historic data around declines in property values is very benign. You know, so they had lived in a world of continuous increase in

²⁰⁹ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 47 line 29 (Doc ID: RDU_SPC7FT_D7-000000001).

²¹⁰ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 50 line 1 (Doc ID: RDU_SPC7FT_D7-000000001).

²¹¹ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 56 (Doc ID: RDU_SPC7FT_D7-000000001).

property prices, so, the stress testing allows you to kind of ignore the past and think well, you know, that could happen so.

It was very important from that perspective — ... [it] was an important point because it sort of took away from what everyone was doing and related your lending to your liquidity base.

Now I would say, and it goes back to the 2004 Commercial Credit Review, is that when we raise this point, the Society's view was that even if there was a decrease in property prices, we would have access to the capital markets and get liquidity to tied us over, any decrease of property prices, that was the argument of Mr. Fingleton. As it turned out there was two liquidity crisis [in succession] ..., one on the assets side of the balance sheet and one on the liability side of the balance sheet so. That didn't work".²¹²

Alan Boyne

11.207 Mr Alan Boyne was the KPMG partner responsible for Project Harmony, which was the due diligence project relating to the prospective sale of INBS. Mr Boyne gave evidence during the SPC 7 module hearing on 23 July 2019. The Project Harmony Report was presented to the Board on 20 June 2007. Mr Boyne said that one of the key purposes of the report was to provide potential purchasers with information to allow them to assess the valuation and the recoverability of loans.²¹³

11.208 Mr Boyne said that the characteristics of supplementary arrangement fee lending, as outlined in the 2004 KPMG Commercial Credit Review, would be perceived by him as potential risks.²¹⁴

11.209 When asked whether he tested internal controls, Mr Boyne said that he did not. He said he would not have looked to see whether there was compliance with any written policy or otherwise. The following exchange took place:

"A. Well, you know the issue in terms of whether policies or procedures were being complied with, I wouldn't actually take test items and go through and do

²¹² Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 73 (Doc ID: RDU_SPC7FT_D7-000000001).

²¹³ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 78 line 2 (Doc ID: RDU_SPC7FT_D7-000000001).

²¹⁴ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 82 line 25 (Doc ID: RDU_SPC7FT_D7-000000001).

a walk through their policies and procedures to make sure that they were operating effectively.

What you would do is, you'd actually look at the results of the internal audit reports to see in fact you know if there were items that were raised that would give some indication as to whether policies were being, you know, carried out correctly, being complied with.

...

Q. ...Would a key issue for a potential purchaser be whether profit share loans are tested as against a policy?

A. It's not part of the work you would do as part of a due diligence.

Q. So you wouldn't point out to a purchaser that there isn't a policy in place in relation to this form of lending...?

A. ...it is pointed out in the report that, I think in relation to the Belfast branch, that the Internal Auditor raised the issue about not having a formal policy in place. And that was included in our report.

Q. But would you perceive it as a weakness that there was no policy in place?

A. It was obviously put there by the -- the internal auditor actually raised this as being a perceived weakness.

Q. Would you perceive it as a weakness, Mr. Boyne?

A. Well, it wasn't really for me to say whether it was or it wasn't, but the thing is, you know, that in terms of reporting on a complete basis for potential interested buyers of the Society, we thought it was of interest to them, so we included it".²¹⁵

11.210 Mr Boyne said that whilst Project Harmony would have identified policies that were in place, it would not necessarily have identified policies that were not in place.²¹⁶

11.211 Mr Boyne was brought to page 19 of the Project Harmony Report, which made comparisons with four other lenders in the state. The report stated that INBS had the

²¹⁵ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 89 (Doc ID: RDU_SPC7FT_D7-000000001).

²¹⁶ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 95 line 28 (Doc ID: RDU_SPC7FT_D7-000000001).

lowest asset base and that it had been outperforming the other financial institutions, particularly as regards having the lowest cost base and having the strongest net income to average assets returned. The strong net income to average assets return was identified as having been driven by a combination of INBS's low cost base and a higher return on selected commercial property loans through supplementary arrangement fees earned and maintaining strong commercial lending margins. The report indicated, in relation to Profit Share Loans: *"On a loan by loan basis these arrangements are the most profitable income source for the business"*.²¹⁷

11.212 Mr Boyne stated that it was his understanding that each of the loans would have to stand on its own merits before a supplementary arrangement fee would actually be put in place.²¹⁸

11.213 In terms of identifying applicable policies, Mr Boyne said that his understanding was that there was a framework around the appropriateness of advancing monies in the first place. This framework involved Credit Committee approval and ultimately approval by the Board.²¹⁹

Killian McMahon

11.214 Mr Killian McMahon, who was internal auditor of INBS from 2004, gave evidence at the SPC 7 Inquiry hearing on 24 July 2019. During his interview with Authorised Officers of the Central Bank²²⁰ Mr McMahon had said that he believed that there had been a policy in place for profit share lending however this policy did not extend to the establishment of such loans but rather to the managing of the fee element. During the Inquiry hearing he was asked whether he regarded the lack of a policy for the establishment of Profit Share Loans as a weakness in the internal control of INBS. He stated:

"As you have alluded previously, it became a significant element of the Society's lending strategy. So, the lack of a policy meant Internal Audit couldn't audit against such a policy. It also meant that where there were controls, they weren't documented, and if the controls are not documented, they may not be implemented."

²¹⁷ Project Harmony Report, page 83 (Doc ID: 0.7.120.55785).

²¹⁸ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 103 (Doc ID: RDU_SPC7FT_D7-000000001).

²¹⁹ Transcript SPC 7 Inquiry Hearing, dated 23 July 2019, page 128 and 129 (Doc ID: RDU_SPC7FT_D7-000000001).

²²⁰ Transcript of interview with Mr Killian McMahon, dated 27 January 2014, page 37 (Doc ID: 0.7.120.683749).

...

I would have thought about it from kind of cradle to grave in that — and you may have seen it as part of a formal credit... well commercial lending policy or as a standalone policy whereby you would have processes and controls in place for the underwriting of these loans and then the management of them thereafter and then the exit".²²¹

11.215 Mr McMahon confirmed that he believed there should have been a policy for the establishment of Profit Share Loans and for the ongoing monitoring of them. Mr McMahon also said that he saw Profit Share Loans as a different type of lending to normal commercial lending, in that there were different incentives.²²²

11.216 Mr McMahon was asked about the 2004 Belfast Internal Audit Report.²²³ The findings and recommendations made in this report have already been outlined in full at paragraph 11.40 above. In respect of fee agreements the report stated:

"A formal fee agreement procedure is needed. The Belfast branch has many fee agreements in place, giving the Society a share of any profits in developments, which it financed. There is no formal credit risk policy governing such fee agreements and procedures are needed to ensure that the Society's guidelines are followed in every fee agreement entered into. Finding Rating: 2. Staff members responsible for this are senior management. This recommendation should be implemented immediately".

Mr McMahon confirmed that he would have expected Mr McCollum to have drafted a policy on foot of this recommendation, and that this would ultimately move up to the Board. He said that Mr McCollum had never drafted such a policy to his knowledge.

11.217 The 2004 Belfast Internal Audit Report was discussed at the Audit Committee meeting on 31 May 2005.²²⁴ The minutes for that meeting recorded a number of issues raised by the internal audit, but it did not record that the question of whether the policy or procedure that had been recommended in respect Profit Share Loans had been addressed. Mr McMahon said that he was not responsible for the minutes. He said that

²²¹ Transcript SPC 7 Inquiry Hearing, dated 24 July 2019, page 41 and 42 (Doc ID: RDU_SPC7FT_D8-000000001).

²²² Transcript SPC 7 Inquiry Hearing, dated 24 July 2019, page 44 (Doc ID: RDU_SPC7FT_D8-000000001).

²²³ 2004 Belfast Internal Audit Report (Doc ID: 0.7.120.432168).

²²⁴ Minutes of Audit Committee meeting, dated 31 May 2005 (Doc ID: 0.7.120.56788).

while the minutes summarised particular items that were discussed, they did not detail everything.²²⁵

11.218 The 2006 Belfast Internal Audit Report²²⁶ made a recommendation to that made in the 2004 Belfast Internal Audit Report in respect of Profit Share Loans, stating: *“Board level. A formal profit share agreement procedure is needed”*.

11.219 Mr McMahon confirmed that what he meant by this was that INBS’s guidelines needed to be followed in every fee agreement entered into and that that was not happening with the Profit Share Agreements.²²⁷ He also confirmed that Profit Share Agreements at this stage were becoming an extraordinarily significant aspect of INBS’s business and that this informed the recommendation that he made.

11.220 The 2006 Belfast Internal Audit Report stated:

“In relation to loans with an LTV ratio exceeding 75% and all profit sharing transactions, the terms are initially approved by the Society’s Managing Director before being approved via the Credit Committee and Board”.²²⁸

Mr McMahon said that this was not a documented procedure, but that it was the procedure in place at the time.²²⁹

11.221 This paragraph in the 2006 Belfast Internal Audit Report came from an internal memorandum dated 10 April 2006²³⁰ from Mr McCollum to internal audit, responding to the draft audit report that had been sent. Mr McCollum stated:

“In relation to loans with a LTV ratio exceeding 75% and all profit sharing transactions, please note that in all cases, these terms are initially approved by the Society’s Managing Director before being approved via. Credit Committee and Board.

²²⁵ Transcript SPC 7 Inquiry Hearing, dated 24 July 2019, page 50 (Doc ID: RDU_SPC7FT_D8-000000001).

²²⁶ 2006 Belfast Internal Audit Report (Doc ID: 0.7.120.432484).

²²⁷ Transcript SPC 7 Inquiry Hearing, dated 24 July 2019, page 59 line 5 (Doc ID: RDU_SPC7FT_D8-000000001).

²²⁸ 2006 Belfast Internal Audit Report, page 10 (Doc ID: 0.7.120.432484).

²²⁹ Transcript SPC 7 Inquiry Hearing, dated 24 July 2019, page 60 line 18 (Doc ID: RDU_SPC7FT_D8-000000001).

²³⁰ Internal memorandum from Gary McCollum to Andrea Flanagan, internal audit, dated 10 April 2006 (Doc ID: 0.7.120.714418).

Due to the nature of profit share transactions, each transaction is individually approved as the terms cannot be applied in standard form due to the diverse nature of this lending.

In all cases, the Society's profit entitlement and full details thereof along with the final account is provided to the Society's Director and Secretary, Stan Purcell, and Accounts Department".

11.222 The Audit Committee considered the 2006 Belfast Internal Audit Report at its meeting on 14 June 2006. The Audit Committee had asked Mr McMahon to review how fee agreements and final fees were arrived at and checked. Mr McMahon was asked how he would have set about checking how fee agreements were arrived at. He replied that that was something he could not do because there was no policy.²³¹ He said that this instruction from the Audit Committee referred to the exit rather than the initial terms.²³²

11.223 Mr McMahon confirmed that the recommendations contained in the 2006 Belfast Internal Audit Report had not been implemented when he went to carry out an audit in 2007.

11.224 The final audit conducted by Mr McMahon during the Review Period was the 2007 Commercial Lending Internal Audit Report.²³³ This report made findings in relation to completed profit shares, and Mr McMahon confirmed that for most of the profit shares he looked at all he would have got was a one-page profit and loss account summary. Recommendations were made in this audit report in relation to documentation that should be in place in respect of Profit Share Loans, however there was no repetition of the recommendation that there needed to be a policy or procedure in place for the granting of the loan in the first place.

11.225 Mr McMahon was asked whether Mr Purcell had any responsibility for the fact that the recommendations he made in 2004 and 2006, about a procedure being put in place for the establishment of Profit Share Loans, were not in fact implemented. Mr McMahon stated:

"As a board member he would have expected that and would have looked for and should have looked for a profit share agreement to be in place. Also, I suppose, while ultimately profit share is within the commercial lending realm,

²³¹ Transcript SPC 7 Inquiry Hearing, dated 24 July 2019, page 63 line 28 (Doc ID: RDU_SPC7FT_D8-000000001) (Note that the word "no" appears to be missing from the Transcript).

²³² Transcript SPC 7 Inquiry Hearing, dated 24 July 2019, page 63 (Doc ID: RDU_SPC7FT_D8-000000001).

²³³ 2007 Commercial Lending Internal Audit Report (Doc ID 0.7.120.31185).

there is a finance element to it so Mr. Purcell would have been consulted on that as well".²³⁴

11.226 In his cross-examination of Mr McMahon, Mr Purcell opened a document entitled "*Recommendations not implemented in a timely manner*".²³⁵ He noted that there had been no repetition of the previous recommendation for a profit share policy. Mr McMahon said this was not a formal document and that the recommendation had clearly simply been omitted. Mr Purcell also referred to the Project Harmony Report and said that that report did not refer to the recommendation that a profit share policy be put in place. Mr McMahon said he did not have any involvement with Project Harmony.

Gary McCollum

11.227 Mr McCollum, the Belfast Branch manager, gave evidence to the Inquiry during the SPC 7 module hearing on 18 September 2019. He confirmed that the UK Version of the April 2003 Credit Risk Policy²³⁶ was a document that he was familiar with. One of the requirements of the UK version of the policy was that CLAs in excess of £500,000 were to be referred to INBS's Managing Director for initial approval prior to being approved by the Credit Committee and the Board. Mr McCollum said he did not know why this provision had been included in the UK guidelines, other than that he reported directly to Managing Director, Mr Fingleton.²³⁷

11.228 Mr McCollum confirmed that, to his knowledge, none of the proposals that had come from the Belfast Branch and had been approved by Mr Fingleton had ever been refused by either the Credit Committee or the Board.

11.229 In relation to profit share lending, Mr McCollum said that he had never encountered that type of lending before coming to INBS, and that whilst he did encounter it in some London institutions, it was generally on a small scale, probably about 10%.

11.230 Mr McCollum was brought through the characteristics of a Profit Share Loan. He agreed that they generally had high LTV ratios. On the issue of a shortened lead-in time for the approval of these loans, he said that there would have been quite a lot of discussion prior to the formal documentation relating to a loan and therefore there

²³⁴ Transcript SPC 7 Inquiry Hearing, dated 24 July 2019, page 71 (Doc ID: RDU_SPC7FT_D8-000000001).

²³⁵ Document headed "Recommendations not implemented in a timely manner" (Doc ID: 0.7.120.56461).

²³⁶ UK Version of the April 2003 Credit Risk Policy (Doc ID: 0.7.120.622022).

²³⁷ Transcript SPC 7 Inquiry Hearing, dated 18 September 2019, page 20 (Doc ID: RDU_SPC7FT_D9-000000001).

would not necessarily have been a shortened lead-in time. He said there would have been a moratorium on capital and interest repayments because the lending was for a very short period of time, usually 12 to 36 months. He said the *modus operandi* was the purchase of property to either sell on or refinance it. He agreed that an SPV would be set up and that that would have been the norm in the UK. He said:

“The UK had gone through a recession in the early nineties and most of the major developers had suffered huge losses, so therefore the norm in lending was to special purpose vehicles set up. It also gave the lender a degree of control because you actually were able to appoint receivers specifically over the asset. Whereas, if the property had been owned and a company owned other assets, then you’d all sorts of views in terms of actually perfecting your security”.²³⁸

11.231 Mr McCollum was asked whether a developer who was not prepared to agree to a profit share would have been offered a loan with the same characteristics of a Profit Share Loan. He said that they would not have been offered a 100% loan and probably would not be offered a moratorium. In relation to guarantees, he said that guarantees were not a feature of the UK property market:

“Guarantees were not a feature of the UK property market. Again, I would refer you back to my earlier point that most of the property developers in the UK had gone through a recession in the early nineties where a vast amount of them had provided personal guarantees and as a result of that gone bankrupt. Major companies had also lost substantial — So guarantees were not a feature of the UK property market from 2000 on, or it’s probably from 1995 on when the recession ended, they had been burnt in the same way as the Irish developers this time round have been burnt accordingly”.²³⁹

11.232 Mr McCollum was brought through the 2004 KPMG Commercial Credit Review and in general he agreed with the descriptions of profit share lending. At page 85, the report stated that fee share arrangements were not based on any formulaic approach but were based on negotiation with customers during the loan application process. Mr

²³⁸ Transcript SPC 7 Inquiry Hearing, dated 18 September 2019, page 32 (Doc ID: RDU_SPC7FT_D9-000000001).

²³⁹ Transcript SPC 7 Inquiry Hearing, dated 18 September 2019, page 39 (Doc ID: RDU_SPC7FT_D9-000000001).

McCollum said that there was a formulaic approach but that it wasn't formalised, and there wasn't a formalised policy.²⁴⁰

11.233 Mr McCollum was asked about the statement in the 2004 KPMG Commercial Credit Review that:

"The Group places trust in the borrower in respect of the information being provided. Once the profit handed to the Society in respect of such fees is similar to the original amount stated at the outset, management do not pursue or dispute with the customer on the actual profit generated on the development. This is to ensure that the Group does not breach its trust with the customer and increase the likelihood of repeat business going forward".

It was put to Mr McCollum that that did not sound like how banks usually operate. He responded:

"I think that's manifestly incorrect.

...

No, I would disagree with the very last paragraph which says this is to ensure that the Group doesn't breach its trust with the customer. No, there was a very set formula within the fee agreements which allowed us to check profits. In other words, are you trying to say that – – sorry, is this trying to say that we just let developers do what they want? I think that's manifestly incorrect".²⁴¹

It was put to Mr McCollum that the statement was information that had been given to KPMG by INBS management. Mr McCollum stated that it may have been the opinion or perception of other people interviewed by KPMG, regarding how INBS worked in relation to fee arrangement, *"But certainly as UK Branch Manager, this was not my opinion and perception".²⁴²*

Mr McCollum indicated that he would have tested customers on the actual profit, but that in fact disputes very rarely arose.

²⁴⁰ Transcript SPC 7 Inquiry Hearing, dated 18 September 2019, page 54 (Doc ID: RDU_SPC7FT_D9-000000001).

²⁴¹ Transcript SPC 7 Inquiry Hearing, dated 18 September 2019, page 60 line 12 (Doc ID: RDU_SPC7FT_D9-000000001).

²⁴² Transcript SPC 7 Inquiry Hearing, dated 18 September 2019, page 61 line 28 (Doc ID: RDU_SPC7FT_D9-000000001).

11.234 Mr McCollum stated that he did not recall being asked to substantially change the procedures in relation to fee share arrangements at any time between 2004 and 2008.²⁴³

11.235 Mr McCollum was asked about the 2004 Belfast Internal Audit Report, which made the recommendation that a formal fee agreement policy was needed. It identified the need for such a credit risk policy to ensure that INBS's guidelines were followed in all fee agreements entered into. The staff member responsible for this was identified as senior management. Mr McCollum said that he would have been given a draft of the report and have been invited to comment on specific findings before sign off. He said he would have regarded senior management in this instance as the executive directors, and he said he had never been asked to devise a procedure in response to this recommendation.

11.236 Mr McCollum was then asked about the 2006 Belfast Internal Audit Report in which the same recommendation was made. He said that to his knowledge nothing had happened as regards the recommendation for a policy concerning fee share arrangements.

11.237 He was asked whether, as head of the Belfast and the London office, it was his perception that the lack of a formal Profit Share Agreement procedure was a significant control weakness, and he responded: "*No, not at that time*".²⁴⁴

11.238 Mr McCollum was asked about a memorandum that he sent to Ms Andrea Flanagan²⁴⁵ in the internal audit department in relation to the 2006 Belfast Internal Audit Report that has already been referred to above.²⁴⁶ In this memorandum he addressed a number of the issues raised by the internal auditor and specifically, in relation to profit shares, he stated:

"In relation to loans with a LTV ratio exceeding 75% and all profit sharing transactions, please note that in all cases, these terms are initially approved by the Society's managing director before being approved via the Credit Committee and the Board.

²⁴³ Transcript SPC 7 Inquiry Hearing, dated 18 September 2019, page 76 (Doc ID: RDU_SPC7FT_D9-000000001).

²⁴⁴ Transcript SPC 7 Inquiry Hearing, dated 18 September 2019, page 86 line 26 (Doc ID: RDU_SPC7FT_D9-000000001).

²⁴⁵ Ms Flanagan commenced employment with INBS in May 2005 as an internal auditor. From 2006 to 2007 she worked as a financial accountant. She ceased employment with INBS in January 2007.

²⁴⁶ Internal Memorandum from Gary McCollum, INBS Belfast, to Andrea Flanagan, Internal Audit, dated 10 April 2006, paragraph 13 (Doc ID: 0.7.120.328218-000001).

...

Due to the nature of profit share transactions, each transaction is individually approved as the terms cannot be applied in standard form due to the diverse nature of this lending.

In all cases, the Society's profit entitlement and full details thereof along with a final account, is provided to the Society's director and secretary, Stan Purcell, and Accounts Department".²⁴⁷

11.239 Mr McCollum stated that in this memorandum he was not saying that a formal credit risk policy would not be suitable, he was simply stating a fact. He continued, as follows:

"I think response indicates that my belief is it would have been difficult to formulate a specific policy, but in all cases, the loans being approved by the Society's managing director, subsequently by Credit Committee and Board. So, what I was saying is the control factor here was such that, and I think this was probably not happening on the other organisations where the managing director actually was involved in the approval process, and then subsequently it went through Credit Committee and then went to the Board.

So, the terms and conditions of each profit — what you call profit share, what we call fee agreement, were disclosed to the highest ranking person in the organisation.

...

No, and by all means, if senior management or Board, as had been the previous recommendation the previous year, had sought and wished to implement the policy, we would have obeyed the policy it was implementing".²⁴⁸

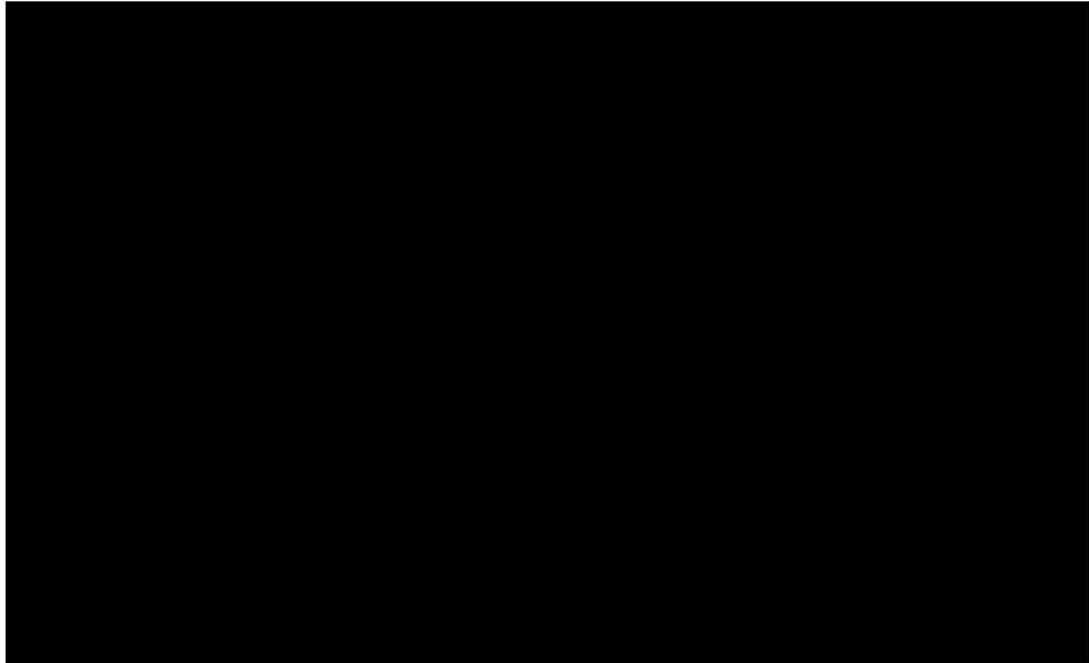
11.240 Mr McCollum was asked whether he was saying that because there was an approval process and because these loans were individually approved that you could not have standard terms or a standard policy, or whether he was saying that it would be difficult to do so. He indicated he was saying that it would have been difficult.²⁴⁹

²⁴⁷ Transcript SPC 7 Inquiry Hearing, dated 18 September 2019, page 94 line 4 (Doc ID: RDU_SPC7FT_D9-000000001).

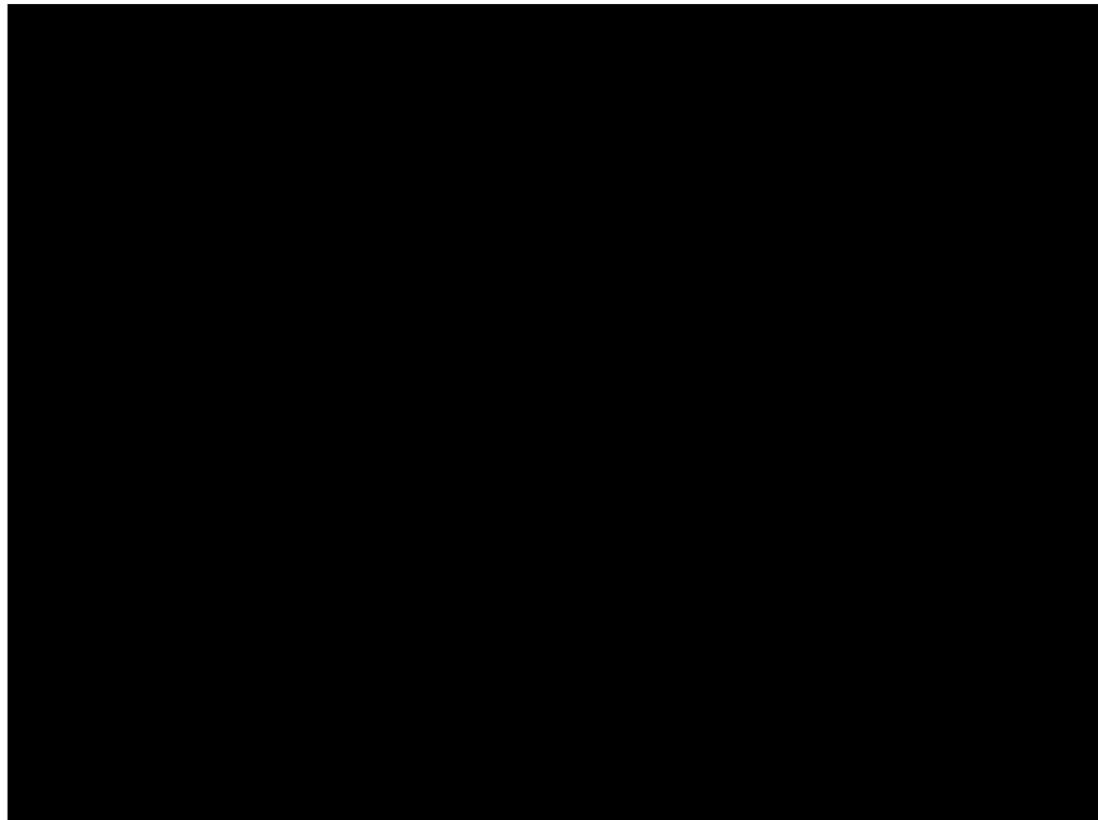
²⁴⁸ Transcript SPC 7 Inquiry Hearing, dated 18 September 2019, page 96 line 11 (Doc ID: RDU_SPC7FT_D9-000000001).

²⁴⁹ Transcript SPC 7 Inquiry Hearing, dated 18 September 2019, page 97 line 26 (Doc ID: RDU_SPC7FT_D9-000000001)

11.241



...



²⁵⁰ Transcript SPC 7 Inquiry Hearing (private hearing), dated 18 September 2019, page 4 et seq. (Doc ID: RDU_SPC7FT_D9-000000004).

11.242 In cross-examination of Mr McCollum by Mr Purcell, Mr Purcell opened a document prepared by Mr McMahon in September 2008 entitled "*Recommendations not implemented in a timely manner*".²⁵¹ He drew Mr McCollum's attention to the final seven entries in this document all of which referred to Belfast audits. Mr Purcell noted that the person cited as responsible for the implementation of the recommendations was Mr McCollum and that the executive director with responsibility was Mr Fingleton. Mr McCollum stated that he did not agree with Mr Purcell's description of him as being senior management as regards Belfast.

Alleged Participation by Mr Purcell

11.243 The Investigation Report set out the allegation against Mr Purcell in respect of SPC 7 at paragraphs 12.94 and 12.95.²⁵² It stated:

"It is alleged that Mr Purcell participated in INBS's alleged failure to ensure that the establishment of profit share agreements was the subject of any formal credit risk policy.

... it is alleged that the failure to put in place a formal credit risk policy in this regard was a breach of the requirements of Regulation 16 (1) of the 1992 Regulations and of Section 76 of the 1989 Act from 1 August 2004 (on the basis that there was a failure to put in place or establish an internal control) and of Section 3.1 of the 2005 Regulatory Document from 10 July 2006. INBS policy provisions set out in the 27 June 2007 Credit Risk Management Policy are also alleged to have been breached".

11.244 Paragraph 12.98 of the Investigation Report identified Mr Purcell as a member of the Board and senior management and suggested that, accordingly, Mr Purcell was "*responsible for ensuring that INBS had appropriate processes in place to capture credit risk for all aspects of business it conducted and to ensure that the risk management processes in place were appropriate in light of INBS's risk profile. Profit share agreements made up a significant proportion of INBS business*".

11.245 It was alleged in the Investigation Report alleged as follows:

"12.99 As a member of senior management, Mr Purcell was also responsible for developing and establishing credit risk policies as part of INBS's overall

²⁵¹ Document headed "Recommendations not implemented in a timely manner" (Doc ID: 0.7.120.56461) and Transcript SPC 7 Inquiry Hearing, dated 18 September 2019, page 113 (Doc ID: RDU_SPC7FT_D9-000000001).

²⁵² Investigation Report Chapter 12, paragraphs 1294-1295 (Doc ID: RDU_REL-000000036).

system of credit risk management (and ensuring these were approved by the Board). This responsibility was reflected in the 27 June 2007 Credit Risk Management Policy...

12.100 Mr Purcell attended Audit Committee meetings throughout the Review Period in his capacity as secretary of INBS. In this capacity, Mr Purcell was in receipt of a number of Contemporaneous Reports from KPMG and INBS's Internal Audit Department in relation to the absence of a formal profit share policy...

12.101 ...Mr Purcell, as the only member of executive management in attendance at Audit Committee, had responsibility for following up on the implementation of recommendations made in Contemporaneous Reports issued by the Internal Audit Department".²⁵³

11.246 In the Investigation Report, policies relevant to SPC 7 were reviewed and it outlined Enforcement's view on these policies and Mr Purcell's responsibility in this regard as follows:

"12.103 ...all policies gathered during the Investigation (including documents which could have been considered to have been INBS policies or other control documentation, not all of which appear to have been operational) were reviewed and this review has not identified a stand-alone policy addressing the establishment of profit share agreements nor has it identified the establishment of profit share agreements as having been addressed as part of any other policy.

12.104 As secretary and executive director of INBS throughout the Review Period Mr Purcell was familiar with and had a responsibility in respect of INBS's policy framework. Mr Purcell was therefore aware, or should have been aware, that the establishment of profit share agreements was not addressed in INBS's policies".

11.247 As already pointed out above, the following three Contemporaneous Reports referred to the need for a profit share lending policy.

²⁵³ Investigation Report Chapter 12, paragraph 12.99 et seq. (Doc ID: RDU_REL-000000036).

2003 KPMG Management Letter

11.248 While Mr Purcell did not attend the Board meeting on 14 July 2004 at which the 2003 KPMG Management Letter was discussed, he did attend the Audit Committee meeting on 24 June 2004, in his capacity as secretary, at which this report was also discussed. The 2003 KPMG Management Letter was included in the pack for the Audit Committee meeting, which was provided to Mr Purcell. The subsequent follow-up to the 2003 KPMG Management Letter did not include any focus on the absence of a formal profit share policy.

11.249 Mr Purcell was aware of a letter from the Financial Regulator to INBS, dated 9 December 2004, which highlighted Profit Share Agreements as a “*significant risk component within the commercial loan book*”.²⁵⁴ The Financial Regulator also stated that: “*While it is a matter for a credit institutions’ board and management to decide upon the business activities it engages in, it is essential that there are appropriate policies, procedures, resources, internal controls and reporting structures in place commensurate with the risk arising from these activities which are sufficient to effectively manage, monitor and control that risk*”.²⁵⁵

2004 Belfast Internal Audit Report

11.250 The 2003 KPMG Management Letter and the letter from the Financial Regulator in December 2004, were followed by the 2004 Belfast Internal Audit Report. This report was included in the pack for, and was discussed at, the 31 May 2005 Audit Committee meeting attended by Mr Purcell. The minutes of the Audit Committee meeting were reviewed by the Board in a meeting on 25 July 2005, also attended by Mr Purcell. As indicated above, review of the Board and Audit Committee meeting minutes suggest that the Board and Audit Committee did not follow up on the specific recommendation regarding the establishment of a formal procedure for Profit Share Agreements prior to its recurrence in the 2006 Belfast Internal Audit Report.

2006 Belfast Internal Audit Report

11.251 The 2006 Belfast Internal Audit Report again highlighted that a formal Profit Share Agreement procedure was needed, flagging this as a “*Board level*” recommendation and assigning responsibility for resolution to “*senior management*”. This report was

²⁵⁴ Letter from Liam O’Reilly, Financial Regulator, to Michael Walsh, INBS, dated 9 December 2004 (Doc ID: 0.7.120.450640).

²⁵⁵ Letter from Liam O’Reilly, Financial Regulator, to Michael Walsh, INBS, dated 9 December 2004, page 3 (Doc ID: 0.7.120.450640).

included in the pack for, and discussed at, the 14 June 2006 Audit Committee meeting, attended by Mr Purcell. The minutes for this meeting were reviewed by the Board at its meeting on 24 August 2006, also attended by Mr Purcell. As outlined above, there was no follow up with regard to putting a formal procedure in place in relation to the establishment of Profit Share Agreements in general, although INBS did put a procedure in place in relation to the valuation of outstanding Profit Share Agreements.

11.252 In the Investigation Report it was suggested that the basis for the allegation of participation against Mr Purcell was that although he was aware of the extent to which Profit Share Agreements had become a feature of commercial lending in INBS, he did not develop or establish (or cause to be developed or established) a formal policy in relation to Profit Share Agreements. In the Investigation Report it was alleged that Mr Purcell had received two reports during the Review Period that highlighted the absence of a formal policy for Profit Share Agreements and the requirement for same, which were identified as being “*Board level*” recommendations and assigned responsibility for the resolution of this recommendation to “*senior management*”, which included Mr Purcell.²⁵⁶

Mr Purcell’s replies to Examination Letter

11.253 In his voluntary responses to the Examination Letter, Mr Purcell denied participation in the commission of any SPCs which would include SPCs 7(a), 7(b) and 7(c).

11.254 In response to the following specific question “*Please explain why risk controls for profit share arrangements were not incorporated into lending policies*”, Mr Purcell stated:

“These arrangements are properly termed Supplemental Arrangement Fees and were not joint venture arrangements or partnerships as the term used by the Central Bank might connote. The profit was a method of calculating the level of the fee on the successful completion of the development in addition to the initial arrangement fee, security and interest margin attaching to the loan. There was no downside exposure by these arrangements to the Society other than the non-payment of the fee over and above Non-Supplemental Arrangement Fee Loans. The Society adopted IAS 39 in relation to accounting for profit shares the implementation of which was noted by KPMG as satisfactory. KPMG Commercial Credit Review August 2004... addresses the application of Profit Share arrangements at pg 80 – 93.

²⁵⁶ Investigation Report Chapter 12, paragraph 12.106 (Doc ID: RDU_REL-000000036).

The KPMG Vendors Due Diligence also addresses these arrangements at page 20 and pages 58- 72 and noted that potentially €750 million could be generated in cash from such fees based on information as at 31 December 2006.

I am not aware of any issues raised by the Financial Regulator in relation to supplemental arrangement fees during the Period²⁵⁷.

Mr Purcell's submissions

11.255 Mr Purcell, in his opening statement to the Inquiry at the commencement of the SPC 7 module of the Inquiry hearings²⁵⁸, began by denying participation in the commission by INBS of SPCs 7(a), (b) and (c). He addressed his roles and responsibility during the Review Period and the roles and responsibilities of senior management. He also identified a credit risk policy for commercial loans with supplementary arrangement fee agreements.

11.256 Mr Purcell reiterated the points made in his submissions for SPC 5 in relation to his roles and responsibilities during the Review Period. These submissions are set out in detail in Chapter 9 of this Findings Report.

11.257 In relation to his position as senior manager with regard to credit risk, Mr Purcell referred to the minutes of the ICAAP committee meeting held on 11 April 2007²⁵⁹ which stated on page 3: "*The committee agreed that the Society's Credit Risk Policy would be updated by DD to reflect ICAAP requirements*".

11.258 Mr Purcell submitted that senior management in relation to credit risk was the Managing Director and the credit risk manager. He said that senior management in relation to the Belfast Branch was the Managing Director and the manager of the Belfast Branch. He submitted that the recommendations in the 2004 and 2006 Belfast Internal Audit Reports were identified as being Board level recommendations. He stated that the resolution of these recommendations was assigned to senior management and that the persons responsible were Mr McCollum and Mr Fingleton.

11.259 The third item addressed by Mr Purcell in his opening statement was his assertion that INBS did have a formal credit risk policy for entering into commercial loans with Profit

²⁵⁷ Letter from McKeever Rowan Solicitors, on behalf of Stan Purcell, to Central Bank of Ireland, dated 31 May 2012, pages 9 and 10 (Doc ID: 0.7.120.56484).

²⁵⁸ Transcript SPC 7 Inquiry Hearing, dated 3 July 2019, page 118 et seq. (Doc ID: RDU_SPC7FT_D1-000000001).

²⁵⁹ Minutes of First Meeting of the INBS's ICAAP Committee, dated 11 April 2007 (Doc ID: 0.7.120.18583).

Share Agreements. He said that the credit risk policy for commercial loans was set out formally in the 2004 KPMG Commercial Credit Review. He stated, as follows:

“The commercial credit review of 2004 was a formal Board document produced by KPMG, in fact its production was requested by the Financial Regulator, it was approved by the Board of INBS and submitted to the Financial Regulator.

In addition, four documents entitled “Strategy risk tolerance” dated respectively, 17 May 2005, 19 September 2005, the 18 May 2006 and the 17 June 2006 referred to commercial loan business where supplemental arrangement fees applied. These strategy risk tolerance documents record of the said meetings with funders and/or rating agencies by the managing director”.

11.260 Mr Purcell concluded his opening statement by submitting that the veracity of the strategy risk documents could be relied upon, unlike the recollections of individuals, which could be subject to bias and inaccuracy.

Mr Purcell’s evidence to the Inquiry

11.261 Mr Purcell gave evidence to the Inquiry during the SPC 7 module hearing on 20 September 2019.

11.262 When asked whether he would agree that Profit Share Agreements were relatively unusual in the context of banking in Ireland generally, Mr Purcell said that he was not aware of what other institutions did them but he did understand that to be the case from the evidence he had heard in the course of the Inquiry hearings. He agreed with the proposition that a small proportion of other lending institutions in Ireland had engaged in profit share lending.²⁶⁰ He said there had never been a discussion that he could recall about the existence of this kind of lending in other institutions.²⁶¹

11.263 Mr Purcell said that profit share lending began in INBS in the 1990s, following the passing of the 1989 Act. He said this new legislation allowed more freedom as to the type of lending that a building society did, and this new type of lending was seen as availing of these provisions. He also said his initial impression of profit share lending was that it seemed to be a very successful form of lending and that he did not see a problem with it at all. He stated: *“they were a successful form of lending in a very*

²⁶⁰ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 12 line 19 (Doc ID: RDU_SPC7FT_D10-000000001).

²⁶¹ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 12 line 25 (Doc ID: RDU_SPC7FT_D10-000000001).

competitive environment".²⁶² Mr Purcell said that he did not recall any reservations early on about this type of lending, but that it was a very unusual environment in 2005 and 2006. He was asked when he would have started having reservations and he said:

"possibly around August 2007 when liquidity was being affected. When the financial markets were sort of reflecting the fact that it would appear that liquidity was beginning to become tight, at that stage I can clearly recollect that we all had reservations. I would take that about August 2007".²⁶³

11.264 He stated that the liquidity crisis could impact on profit shares as it could result in people considering it necessary to sell assets at discounted prices. He stated that it depended on the quality of the asset and it would be assessed on a case by case basis.

11.265 Mr Purcell was asked about the extent of profit share lending as outlined in his letter to the Financial Regulator in September 2008, which stated that it accounted for approximately 65% of INBS's commercial loan book. He was asked if he would accept, given the characteristics of these loans, that this kind of lending was inherently more risky. He said that a great deal of reliance was placed on the people they were dealing with. He stated these were people who had a proven track record and knew the market. He believed that this greatly mitigated the risk involved in the lending.²⁶⁴

11.266 Mr Purcell reiterated the assertion made in his opening statement to the Inquiry at the commencement of the SPC 7 module hearings, in which he outlined the policy recorded in the 2004 KPMG Commercial Credit Review that applied in relation to profit share lending. He said:

"Yeah, it recorded our policy. I think someone said it, like, put up a mirror to our policies and recorded them.

...

But afterwards in meetings with lenders and funders, as I said, in those strategy documents the elements of what is there is repeated".²⁶⁵

²⁶² Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 15 line 8 (Doc ID: RDU_SPC7FT_D10-00000001).

²⁶³ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 15 line 22 (Doc ID: RDU_SPC7FT_D10-00000001).

²⁶⁴ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 20 (Doc ID: RDU_SPC7FT_D10-00000001).

²⁶⁵ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 22 line 12 (Doc ID: RDU_SPC7FT_D10-00000001).

11.267 Mr Purcell was asked what a policy in INBS would normally look like and how it would be laid down, and the following exchange took place:

"A. Well, there are examples. I mean, it would be a document, it would be a document headed up in relation to the policy it was and it would come from the department. In other words, if it was a policy about liquidity, it would come from me and the managers who reported to me and it would be brought before the Board.

...

Q. ...were any of those steps taken in respect of that policy?

A. No, I am saying that the policy was recorded in the Commercial Credit Review, that's where it was recorded. It wasn't a standalone policy. I mean I'm not putting that forward.

...

A. Well I would say this was [a policy]. This was a formal document, I call it a formal document because a lot of work went into it by people in INBS, it was compiled by KPMG and it was requested by the Central Bank and went to the Central Bank. It was setting out a review of our commercial lending. So in the context of that, it recorded policy.

Q. ...did it record really an approach or a practice of the Society or strategy rather than a policy?

A. Well I mean, I think I said it before, the dictionary definition of policy... uses a synonym of the word strategy. I mean what is recorded there, to my mind it was our policy is what... what was the type of lending we wanted to do and it describes that type of lending.

Q. And then I suppose in that analysis, it was different to every other policy of INBS?

A. Yeah, exactly, it was different. That was different, yeah".²⁶⁶

²⁶⁶ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 22 (Doc ID: RDU_SPC7FT_D10-00000001).

11.268 Mr Purcell's witness statement for SPC 7 set out what he regarded as constituting the profit share lending policy as outlined in the 2004 KPMG Commercial Credit Review. He stated, as follows:

"The Credit Risk Policy for commercial loans with SAF's was formally set out in the Commercial Credit Review (CCR04) dated 28 October 2004 as follows:

Decision Process

Michael Fingleton, Managing Director, and the Senior Commercial Lenders are highly involved in the introduction, vetting and monitoring of the commercial loans. The areas are highly judgemental in nature and their experience and knowledge of the customer plays a significant part in this process. The society also benefits from a wide pool of third-party experience and expertise. (Page 4 of the CCR04).

Criteria for SAF loans can include some or all of the following

- *Full (No interest or principal payments) or partial moratorium period.*
- *100% Funded.*
- *Potentially high loan to value ratios.*
- *Shortened lead time for approval of loan.*
- *Repeat business with successful customers with proven track records. (Restricting transactions to a limited number of counterparties who have proven track records) (Pages 4 and 5 of the CCR04).*
-

Circumstances where SAF loans are appropriate

Management belief [sic] that there is sufficient value at the outset to justify the funding level. (Page 4 CCR04). If the Society perceives the deal to have value at the outset and a good risk profile, INBS may fund 100% of the development but may charge a fee based on a percentage share of the profit on the development. The percentage may vary depending on the risk and value of the loan. (Page 81 of CCR04).

Negotiation, Case by Case basis and Security

Fee sharing arrangements are not based on any formulaic approach. They are based on negotiation with clients during the loan application process. (Page 86 CCR04).

The commercial loan officer will have details of initial cash-flow projections which will have been submitted with the loan application. A Commercial Loan Application (CLA) is subsequently completed by the loan officer which includes the significant details of the arrangement (Page 82 CCR04).

Profit share arrangements were a matter for the Credit Committee to consider as part of the overall assessment of a given credit. Each case was assessed on its own merits and as appropriate recommended to the board for final decision. (Investigation Report page 1770 quoting CCR04).

The Society places a key emphasis in obtaining accurate and reliable security valuations and in obtaining first legal charge over the assets on which it is lending and using experienced firms of solicitors to act on its behalf. (Page 100 CCR04).

The following types of commercial loans gave rise to SAF's:

Development Finance: typically, short-term loans (1 – 5 years) to experienced developers for purchase/development/construction.

Buy and Hold Strategy: loans to companies for the purchase of commercial properties (including hotels) to renovate, hold for a period and eventually sell.

The Commercial Credit Review 2004 was a formal board document produced by KPMG, approved by the board of INBS and submitted to the Financial Regulator.²⁶⁷

11.269 Mr Purcell was referred to the final sentence in the 2004 KPMG Commercial Credit Review 2004, which was not included by Mr Purcell in his witness statement summary. This sentence stated:

“Some of those distinguishing characteristics could give rise to additional risk in terms of probability of default and the uncertainty of the repayment profile.

²⁶⁷ SPC 7 Witness Statement of Stan Purcell, dated 17 May 2019, pages 3 and 4 (Doc ID: RDU_REL341-000000026).

According to management, 100% of the project may be funded when management believe there is sufficient value at the outset to justify such a funding level".

11.270 Mr Purcell said that that was a comment from KPMG and was not part of the policy as such. He was asked how commercial lenders could have known what the policy was and he said that the persons concerned were Mr Fingleton and Mr McMEnamin and that they would have known the type of lending involved.²⁶⁸

11.271 Mr Purcell was referred to pages 82, 86 and 100 of the 2004 KPMG Commercial Credit Review, and was asked whether this was more a description of the practice in INBS rather than a policy. He stated "*It does describe the practice, but I say it also describes the policy*".²⁶⁹

11.272 Mr Purcell said that during the period the Inquiry was looking at there was a different attitude to lending. He said that there was generally a more positive attitude as regards the emphasis on relationships up until 2008. It was put to Mr Purcell that this optimism was not necessarily shared by the Financial Regulator and he acknowledged that this had been expressed in correspondence.²⁷⁰

11.273 Mr Purcell was asked about the letter from Dr O' Reilly to the chairman of INBS dated 9 December 2004.²⁷¹ This was the letter in which Dr O'Reilly, the chief executive of the Financial Regulator at the time, expressed serious concern in relation to a number of issues. This letter is cited in detail at paragraphs 11.33 and 11.34 above. For the purposes of SPC 7 the relevant section is at page 3 of the letter under the heading "*Commercial Lending*". The Financial Regulator's overall concern was the significant shift in the risk profile of INBS's loan portfolio in a relatively short period of time and it expressed a view that the appropriate policies, procedures, resources, internal controls and reporting structures were not in place commensurate with the risk arising from the risk profile. Mr Purcell stated: "*There were concerns that were raised there, and those concerns were addressed as you are aware, in the letter of 1st February*".²⁷²

²⁶⁸ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 29 (Doc ID: RDU_SPC7FT_D10-000000001).

²⁶⁹ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 30 line 29 (Doc ID: RDU_SPC7FT_D10-000000001).

²⁷⁰ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 32 (Doc ID: RDU_SPC7FT_D10-000000001).

²⁷¹ Letter from Liam O'Reilly, Financial Regulator, to Michael Walsh, INBS, dated 9 December 2004 (Doc ID: 0.7.120.450640).

²⁷² Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 36 line 13 (Doc ID: RDU_SPC7FT_D10-000000001).

11.274 The response from INBS, dated 1 February 2005, was opened to Mr Purcell. He was asked whether he was involved in administration concerning the Quarterly Reports that were identified in the response. He stated that he was not involved in producing them and that it was a function of the lending area. He said that he did convey to the people who were preparing them what the Board wished them to put into the Quarterly Reports. He also agreed that he was a conduit between the Board and the commercial lending department, and stated:

*“Yeah, and also maybe the conduit between what – – you know, if you look maybe at what KPMG was saying and the Regulator was saying and what the Board was discussing, I would have done maybe a number of memos...”*²⁷³

11.275 Mr Purcell was asked about Mr McCollum’s assertion that he did not recall any loan being refused. Mr Purcell said that he could not recollect that but that generally the loans came through Mr Fingleton and the Credit Committee, *“So they came well recommended to the Board”*.²⁷⁴

11.276 Mr Purcell was asked about the 2004 Belfast Internal Audit Report. That report recommended that a formal fee agreement procedure was needed and it also recommended that new procedures and controls be put in place to deal with loans with a LTV ratio exceeding 75%. The report stated:

“New procedures and controls must be put in place to deal with loans with a loan-to-value ratio exceeding 75%. The Belfast branch has many fee agreements in place and such loans are often advanced based on an LTV of 100%. This is not covered by the credit risk policy and the Society must ensure it has additional controls to alleviate the greater risk associated with advances with an LTV > 75%”.

With regard to fee agreements the report stated:

“The Belfast branch has many fee agreements in place, giving the Society a share of any profits in developments, which it financed. There is no formal credit risk policy governing such fee agreements and procedures are needed to

²⁷³ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 38 (Doc ID: RDU_SPC7FT_D10-000000001).

²⁷⁴ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 40 line 4 (Doc ID: RDU_SPC7FT_D10-000000001).

ensure the Society's guidelines are followed in every fee agreement entered into".

11.277 Mr Purcell stated that looking at Mr Reilly's witness statement and the transcript of his evidence to the Inquiry, Mr Reilly seemed to interpret this as a recommendation about monitoring. Mr Purcell said the Audit Committee meeting minutes also seemed to focus on checking fees and providing information.²⁷⁵

11.278 Mr Purcell said that in terms of lending, when "*Board level*" was mentioned it was a synonym for Mr Fingleton, and the following exchange took place:

"Q. And that would mean, I suppose, that in practice the only Board members who would ever have responsibility for implementing recommendations would be executives, that's right, isn't it?"

A. No, in the first -- I mean, again, the line of control would be that it would be the manager involved which -- he would be senior management, so the senior management in respect of lending would be, in respect of UK commercial lending, would be Gary McCollum and Michael Fingleton, and the executive director responsible would be Michael Fingleton.

Q. ...if Board level only means those members of the Board who have responsibility for a department, the other members, the non-exec board members...

A. The non-exec board members have overall control, but in the first instance it is the director, the executive director responsible.

Q. But just in relation to the overall control, you were a board member and you had responsibility for the overall control. In that capacity wouldn't you have had some responsibility for ensuring this recommendation?"

A. Well in relation to this recommendation the responsibility would lie in most part with the executive director responsible, and his decision would be rarely overruled by the Board".²⁷⁶

²⁷⁵ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 47 (Doc ID: RDU_SPC7FT_D10-000000001).

²⁷⁶ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 48 et seq. (Doc ID: RDU_SPC7FT_D10-000000001).

11.279 Mr Purcell was asked about the hypothetical situation of a Board member who was initially responsible for an action, not carrying out this duty. Mr Purcell confirmed that the Board was in control of the management of INBS, and if the matter was brought up the Board could instruct the executive director to carry out its duties.

11.280 He was asked about his role as secretary to the Audit Committee, during the following exchange:

“Q. So I suppose if you saw a recommendation in an Internal Audit report, you saw it going through the Audit Committee, you then are on the Board, you are very aware if something isn’t happening, aren’t you, because you have full visibility?”

A. Yeah, but the initiative was with the Internal Auditor. The Internal Auditor maintained the log of recommendations not dealt with, and that would have come up at regular internal Audit Committee meetings. I mean the log he would have kept of recommendations that we’ll say are in the pipeline would have related to ones that would concern my departments as well, as well as the lending departments”.²⁷⁷

11.281 Mr Purcell was then asked about the 2006 Belfast Internal Audit Report, in which the recommendation in relation to fee agreements appeared once again. It stated:

“No formal credit risk policy. Procedures are needed to ensure the Society’s guidelines are followed...”.

11.282 The report referred to this as a *“Board level”* recommendation and it stated that *“New procedures and controls must be put in place...”*.

11.283 The 2006 Belfast Internal Audit Report stated: *“this is a high risk area and appropriate controls must be put in place to minimise potential loss”*.

11.284 Mr Purcell said that *“Board Level”* in this context effectively meant Mr Fingleton. Mr Purcell was asked that if Mr McMahon had intended to refer only to the Managing Director, Mr Fingleton, in his recommendation then surely he could have said that, however he used the words *“Board Level”*. The following exchange took place:

²⁷⁷ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 52 (Doc ID: RDU_SPC7FT_D10-00000001).

"A. To my mind, when he sets out Board level there, he is referring to Michael Fingleton.

Q. Only. Is he exclusively referring to him?

A. I think in the first instance -- yeah, it's Michael Fingleton he is referring to who will make the decision, or whom he is asking to be responsible for this".²⁷⁸

11.285 Mr Purcell was asked about the recommendation that a formal Profit Share Agreement procedure was needed. He was asked if that would be something that Mr Fingleton would have had authority to decide unilaterally without the Board. Mr Purcell stated:

"Well the procedure would be that when a policy was developed, it would be developed by the managers involved, let's say in commercial lending it would be the Credit Risk Manager, it could be the Commercial Lending Manager, in consultation with the Managing Director, in the same way in the areas I was dealing with it would be developed with the manager involved in it and myself and we would run it through the Managing Director. That would be the way the thing would be written".²⁷⁹

11.286 Mr Purcell was asked about the memorandum referred to above, sent from Mr McCollum to Ms Flanagan, of internal audit, in response to this recommendation from the internal auditor. In this memorandum Mr McCollum indicated that a profit share policy would be difficult to apply because each loan was decided on a case by case basis. Mr Purcell said that he did not agree with this assessment because it was his contention that a policy was in place.²⁸⁰

11.287 Mr Purcell said that although the Investigation Report seemed to suggest that there was no follow-up to the 2006 Belfast Internal Audit Report recommendation, he would refer to the Project Harmony Report in that regard. He said that at page 160 of that report there was a list of items highlighted as having been identified for improvement. The third bullet point stated:

²⁷⁸ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 58 (Doc ID: RDU_SPC7FT_D10-000000001).

²⁷⁹ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 58 (Doc ID: RDU_SPC7FT_D10-000000001).

²⁸⁰ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 60 (Doc ID: RDU_SPC7FT_D10-000000001).

*“In addition it was identified that there was no formal credit risk policy governing supplemental arrangement fees and procedures are needed to ensure the Group’s guidelines are followed in every arrangement entered into”.*²⁸¹

The Project Harmony Report cited an excel-based system that had been devised in the latter half of 2005 to comply with applicable standards for reporting supplementary arrangement fee income.

11.288 Mr Purcell referenced the 28 February 2007 Commercial Mortgage Lending Policy. This policy, which was approved by the Board on 28 February 2007, had a section entitled *“Fair Value of Supplementary Arrangement Fees (SAF)”*. He said that he believed this is what the Project Harmony Report had been referring to. It standardised how future cash flows were timed and how probabilities were assigned to future cash flows in supplementary arrangement fees projects.²⁸² This document was updated again in 2008.

11.289 In addition to the allegation of a failure to ensure that a profit share policy had been put in place in INBS, SPC 7 also alleged that Mr Purcell was in breach of the 27 June 2007 Credit Risk Management Policy. Paragraph 1.1 of this policy, which was approved by the Board on 27 June 2007, set out the role of the Board in relation to credit risk. It stated:

*“It is the Board’s overall responsibility to approve the Society’s Credit Risk Management Policy and other significant policies relating to credit risk and its management. The Board must ensure that the Society’s overall credit risk exposure is maintained at prudent levels consistent with available capital. The Board must also ensure that the Society implements practices and procedures for the identification, measurement, monitoring and control of credit risk. The first task of the Board, in approving the Credit Risk Management Policy, is to determine the risk appetite of the Society”.*²⁸³

11.290 Mr Purcell stated that all of these tasks identified in the above paragraph had been done by the Board of INBS.²⁸⁴ Mr Purcell also confirmed that the Board had overall responsibility for the management of INBS under the 1989 Act.

²⁸¹ Project Harmony Report dated 20 June 2007, page 159 (Doc ID: 0.7.120.55785).

²⁸² 28 February 2007 Commercial Mortgage Lending Policy, pages 81 to 87 (Doc ID: 0.7.120.518837).

²⁸³ 27 June 2007 Credit Risk Management Policy (Doc ID: 0.7.120.431329).

²⁸⁴ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 70 line 3 (Doc ID: RDU_SPC7FT_D10-000000001).

11.291 Paragraph 2.2 of the 27 June 2007 Credit Risk Management Policy stated that:

*“The Society’s Senior Management have responsibility for developing and establishing credit risk policies and credit administration procedures as part of the Society’s overall system of credit risk management”.*²⁸⁵

Mr Purcell was asked whether he was a member of senior management with respect to paragraph 2.2 above. He said he was not a member of senior management for areas in which he had no executive responsibility. He was asked whether the policy only assigned to senior management those areas they already had responsibility for and it was not an assignment to all senior management of the tasks in respect of credit risk, irrespective of what part of INBS they were in. The following exchange took place:

“A. I don’t think so. I mean, I think it relates – – this is to do with credit risk policy. I mean the senior management in terms of credit risk policy, as regards the commercial lending, I had set out as Darragh Daly and Michael Fingleton. I mean, if it related to the sort of the areas I was dealing with, liquidity management, I would have responsibility there with my managers.

Q. So, do you say that 2.2 didn’t apply to you at all?

A. If it’s in relation to credit risk in relation to commercial lending I was not a part of that senior management.

Q. And why does the policy not say that? Isn’t that quite important that you would be excepted from that?

*A. Well I mean policies were written possibly without a view to maybe thinking forward, you know. I mean it would be obvious to us, it would be obvious to me who was in charge of commercial lending”.*²⁸⁶

11.292 Mr Purcell was asked whether it was relevant that he was the only member of senior management, apart from Mr Fingleton, who was on the Board. He said that he did not think it was relevant, stating *“I didn’t have any you know overall role. I wasn’t Assistant Managing Director”.*²⁸⁷

²⁸⁵ 27 June 2007 Credit Risk Management Policy (Doc ID: 0.7.120.431329).

²⁸⁶ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 71 et seq. (Doc ID: RDU_SPC7FT_D10-000000001).

²⁸⁷ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 74 line 26 (Doc ID: RDU_SPC7FT_D10-000000001).

11.293 Mr Purcell said that in the context of paragraph 1.1 of the 27 June 2007 Credit Risk Management Policy, the role of the Board applied to the Board as a unit. He agreed that he did have an obligation as a member of the Board to carry out duties under that paragraph. He said that as a member of the Board, the Board would carry out acts and would delegate things to people. He said he was mandated to do certain things by the Board.²⁸⁸

11.294 Mr Purcell was referred to a memorandum prepared by Mr McMahon dated 25 October 2006, which listed all of the recommendations from completed audits and identified whether they had been implemented.²⁸⁹ The recommendation from the 2006 Belfast Internal Audit Report, that there should be a Profit Share Agreement procedure, was noted in the memorandum, but under the heading "*Implemented*" the word "*No*" was inserted. Mr Purcell confirmed that this memorandum had gone to the Audit Committee.²⁹⁰

11.295 A list of recommendations prepared subsequently by Mr McMahon²⁹¹ was opened to Mr Purcell. This list was provided to the Audit Committee meeting on 30 March 2007. This subsequent memorandum did not have the recommendation in relation to the Profit Share Agreement procedure listed. Mr Purcell stated:

*"Yeah, I mean it's not on that document and I haven't seen it, you know, and a document you would expect it to be on. There is two things I'd say was: there was a thing forwarded that was supposed to be dealt with at the commercial audit of Belfast in 2007. So I don't know what happened with that. But the thing I would go back to is that page 160 of the Vendor's Due Diligence Report which, to my reckoning, provides an explanation as to the disposal of that recommendation".*²⁹²

11.296 Mr Purcell was asked about evidence given by Mr Daly that he believed senior management in INBS consisted of Mr Purcell and Mr Fingleton. Mr Daly had stated:

²⁸⁸ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 75 (Doc ID: RDU_SPC7FT_D10-000000001).

²⁸⁹ Audit of Commercial Admin Department (Doc ID: 0.7.120.431690).

²⁹⁰ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 79 (Doc ID: RDU_SPC7FT_D10-000000001).

²⁹¹ Audit of Commercial Lending Dept. (Doc ID: 0.7.120.431422).

²⁹² Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 81 (Doc ID: RDU_SPC7FT_D10-000000001).

"...in terms of the overall context of the operation of the Society, I'm not referring in specific to credit risk, for want of a better phrase. The people who mattered within the organisation were Michael Fingleton and yourself".²⁹³

Mr Purcell stated:

"Well, yeah, I mean I could even amplify that. There were a number of people who mattered. You know, everybody in the organisation mattered because they do things right or wrong, but in terms of when work had to be done and I think it's probably best summarised by, if you look at I think it's in the Vendor's Due Diligence Report, I am trying to remember, about page 3 or 4 of that, it listed out the names of ten people and they are the ones who would have been the main people that the vendor's due diligence team would have talked to, and they working people. So, you know, when it comes to say IT, I mean the IT manager reported to me but he mattered a lot. I mean his work was very important, you know, as you can see, a lot of things were got right by him.

...

So the same would apply to the personal auditor, he is listed in that ten as well. As is the manager of the Belfast branch, who was, and I try to emphasise it, was a key player in every way there".²⁹⁴

11.297 Mr Purcell was asked whether Mr Fingleton involved the Board in the decision making on whether Profit Share Agreements should be entered into. Mr Purcell stated:

"Well I mean, I think going back, I mean, the entering into, the establishment of all of that was gradually done over a number of years and it was gradually something that was discussed with the Board, if I could explain, you know. In other words, we started off quite small, maybe with one particular case, you know, in the early nineties, middle nineties and then we gradually expanded. So, as we expanded the thing would have been discussed and well known to the Board. ...

I don't recall, you know, where it was -- but there was, there would have been discussions. Whether they were minuted or not, but... but the Board was well

²⁹³ Transcript SPC 7 Inquiry Hearing, dated 11 July 2019, page 97 (Doc ID: RDU_SPC7FT_D3-000000001).

²⁹⁴ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 84 (Doc ID: RDU_SPC7FT_D10-000000001).

*aware of what we were doing and I think that's borne out by the evidence of board members that you had here".*²⁹⁵

11.298 Mr Purcell was asked, given the nature of profit share lending, the fact that the borrower had no skin in the game, and looking at the growth of this kind of lending from 30% to 65%, whether he considered it necessary at any time to place a limit on that kind of lending. He said:

*"At the time feeling was that we were doing good business and that we were, let's say, we were dealing with people that were regarded as competent in the business they were dealing with, and we were also working within, where I would have come into it, we were working within our capital and our liquidity and we were able to finance it. So, in the environment of say 2005, 2006 and up to the middle of 2007, people felt that we were... more than okay with what we were doing. And also, we were in the -- at that time, and from 2006 and before it, we were seeking a trade sale. So we were looking at that. We were developing an asset that could be regarded as valuable in the context of a trade sale. And with those parameters, that's why, let's say, the Board were content with the book".*²⁹⁶

11.299 Mr Purcell was asked whether a person on the other side of a trade sale might have felt that there was quite a bit of downside risk in the loan book. He stated:

"Perhaps that — we didn't get to that, I mean no one said that. But it did seem that there was, that the book was regarded as a good book to sell at the time".

11.300 Mr Purcell was asked if the Board had ever sat down and gone through a "what if scenario" of a very hostile environment posing particular dangers. He stated:

*"No, I think we were living in a -- or we were experiencing a benign environment and we were looking at there would be a trade sale. So, in other words, around the corner we would be selling the Society and it looked very much in 2006 and into -- well especially into 2007, that that's what would happen".*²⁹⁷

²⁹⁵ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 92 (Doc ID: RDU_SPC7FT_D10-000000001).

²⁹⁶ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 94 (Doc ID: RDU_SPC7FT_D10-000000001).

²⁹⁷ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 95 (Doc ID: RDU_SPC7FT_D10-000000001).

11.301 Mr Purcell was asked whether he had ever been concerned about the fact that Mr Fingleton was involved in the inception of the loan, the Credit Committee process and the presentation of the loan to the Board. He said:

*“I don’t recollect any concern about it at the time. All I can say is what we [have] would have put in front of us was the CLA, which would be presented by Mr. Fingleton, and he would have presented the case, he would have knowledge of the case and he would have presented in a very robust manner and would have dealt with any queries of any other board members”.*²⁹⁸

INQUIRY FINDING – SPC 7

Finding in relation to INBS

11.302 **SPC 7 alleges that INBS failed to ensure that the establishment of Profit Share Agreements was the subject of any formal credit risk policy. The Inquiry has examined the policy and control documentation listed at Figure 12.4 of the Investigation Report and is satisfied that this documentation does not contain any formal policy with regard to the establishment of profit share lending.**

11.303 **The Inquiry has considered Mr Purcell’s submission that the 2004 KPMG Commercial Credit Review set out what was effectively a policy document with respect to profit share lending. Mr Purcell emphasised the fact that this review was requested by the Financial Regulator, approved by the Board and subsequently submitted to the Financial Regulator. Mr Purcell also identified “Strategy risk tolerance” documents, which he stated referred to commercial loan business where supplementary arrangement fees applied. The Inquiry finds, as follows:**

- (a) Whilst the 2004 KPMG Commercial Credit Review (as described in detail at paragraph 11.24 et seq. above) does outline the procedures followed in profit share lending, it does not address any procedures regarding the establishment of such loans other than to describe them as specifically not based on any formulaic approach.**
- (b) In addition, the characteristics of profit share lending as identified by KPMG in the report does not purport to be exhaustive and excludes a**

²⁹⁸ Transcript SPC 7 Inquiry Hearing, dated 20 September 2019, page 96 (Doc ID: RDU_SPC7FT_D10-000000001).

number of important elements, including the prevalence of SPVs, the 100% LTV and the lack of any personal guarantee from directors.

(c) Evidence heard by the Inquiry did not support Mr Purcell's submission that the 2004 KPMG Commercial Credit Review constituted a policy with regard to profit share lending.

(i)



(ii) Mr Brophy also said that he did not believe that the 2004 KPMG Commercial Credit Review or the strategy and risk tolerance documents would have constituted a policy with regard to profit share lending (see paragraph 11.191 above).

(iii) Mr Reilly, the author of the 2004 KPMG Commercial Credit Review, said that he had only documented what management told him and it was not an independent policy (see paragraph 11.199 above).

(d) The Inquiry finds that there was no formal credit risk policy in INBS in relation to the establishment of Profit Share Agreements.

11.304 In order to establish whether the lack of a formal credit risk policy amounted to a breach of the legislative provisions and condition on INBS's authorisation relevant to SPC 7, as identified at paragraph 11.2 of this chapter, the Inquiry considered a number of factors. These were:

- (a) the prevalence and growth of profit share lending;
- (b) the characteristics of profit share lending from a credit risk perspective;
- (c) the effective management oversight of profit share lending; and
- (d) the potential impact of a credit risk policy in profit share commercial lending within the organisation.

Prevalence and growth of profit share lending

11.305 Contemporaneous documents opened to the Inquiry identified the exponential growth in profit share lending before and during the Review Period. Between the 2004 KPMG Commercial Credit Review and the Project Harmony Report in 2007,

profit share lending had increased from 39.5% to 59% of INBS's commercial loan book.

11.306 The growth in commercial lending had already been identified by the Financial Regulator as a high level concern. In a letter dated 9 December 2004²⁹⁹, the Financial Regulator noted that the commercial loan book had increased by over 60% between 2001 and 2003. An analysis of INBS's loan book showed that performance related fees stood at 38% of the commercial loan book at the end of 2003.

11.307 A summary of the growth in profit share lending is set out in the 'Background' section of this chapter at paragraphs 11.4 and 11.5 above. Between the 2004 KPMG Commercial Credit Review and the Project Harmony Report, that dealt with data up to 31 December 2006, profit share lending in INBS had increased from 39.5% of the commercial loan book to 59%. Mr Purcell's letter to the Financial Regulator dated 26 September 2008³⁰⁰, was based on data from 30 June 2008 and it stated that profit share lending accounted for 65% of the commercial loan book by value.

11.308 77% of profit share lending in INBS emanated from the Belfast Branch.

11.309 An analysis of the 98 loans in the Loan Sample provided to the Inquiry and summarised at paragraphs 11.7 and 11.8 above further illustrated the extent to which profit share lending was a dominant feature of commercial lending in INBS. 78 out of the 98 loans in the Loan Sample were Profit Share Loans.

11.310 The concerns of the Financial Regulator expressed in correspondence and at face to face meetings in 2004 and 2005 is significant. Specifically, it was emphasised that policies and procedures must keep pace with the changing risk profile of INBS. The changing risk profile arose from the exponential growth in commercial lending. This commercial lending was characterised by a high percentage of Profit Share Loans, a percentage that continued to grow throughout the Review Period. The Financial Regulator was particularly concerned at the information contained in the 2004 KPMG Commercial Credit Review, which outlined the nature and extent of profit share lending.

²⁹⁹ Letter from Liam O'Reilly, Financial Regulator, to Michael Walsh, INBS, dated 9 December 2004 (Doc ID: 0.7.120.450640).

³⁰⁰ Letter from Stan Purcell, INBS, to Con Horan, Financial Regulator, dated 26 September 2008 (Doc ID: 0.7.120.22587).

- 11.311 The evidence from the Financial Regulator and Mr Buckley cited above, that profit share lending was not a common feature of banking in Ireland, is noted. In particular, INBS employees who had previously worked in other banking institutions, for example, Mr McMenamin gave evidence that they had never come across profit share lending until they joined INBS (see paragraph 11.82 above).
- 11.312 The responsibility of directors in financial institutions regulated in accordance with the “*principles based*” regulation is an important aspect of this contravention. The Financial Regulator relied on boards of directors to manage institutions prudently and in accordance with sound administrative and accounting principles. The Financial Regulator was entitled to rely on the Board’s commitments and undertakings to address the concerns expressed by the Financial Regulator in relation to commercial lending in INBS. These concerns would have been addressed by INBS identifying the risk factors associated with profit share lending and putting in place policies that would allow for these risks to be fully considered when lending decisions were being made.
- 11.313 The Inquiry does not accept that the commercial lending policies in operation in INBS were adequate to provide a framework for profit share lending. The “*tramlines*” (referred to above) set by these policies did not apply to this category of lending and there were no guidelines in place to ensure that credit risk was properly managed or monitored. Both Mr Brophy³⁰¹ and Dr Walsh³⁰² gave evidence that when considering Profit Share Loans, the Board was guided by the general commercial lending policies in operation at the time, and that the elements of any particular loan that did not comply with policy were exceptions to policy. Dr Walsh said that because the loan was approved by the Board, it was not necessary to apply the exceptions policy as outlined in the Credit Committee terms of reference.
- 11.314 The Inquiry finds that the exceptions policy was applicable to loans coming before the Board for approval. The policies themselves do not exclude such loans from a requirement to comply and they provide an important risk

³⁰¹ See paragraph 11.181 above.

³⁰² See paragraph 11.148 and 11.149 above.

management control for all commercial lending including lending approved by the Board.

The characteristics of profit share lending

11.315 The characteristics of profit share lending were set out in the 2004 KPMG Commercial Credit Review and these are reproduced at paragraph 11.25 above. Additional characteristics were noted by the Inquiry at paragraph 11.179 above. When the totality of the characteristics of profit share lending is considered, the credit risk implications are clear. Profit Share Loans were loans that had some or all of the following elements:

- (a) full interest and capital moratoria;
- (b) 100% funded;
- (c) up to 100% LTV;
- (d) shortened lead-in time for approval of loan;
- (e) significantly large sums of money advanced;
- (f) repeat business with successful customers with proven track records;
- (g) lending conducted through SPVs;
- (h) no personal guarantees; and
- (i) loans primarily emanating from the Belfast Branch of INBS.

11.316 In return for these terms, INBS took between 25% and even up to 50% of profits made from the project that was being financed.³⁰³

11.317 These characteristics were evident in the loan files that were analysed by the Inquiry and a picture emerged of loans with high LTVs that also had interest and capital moratoria. In addition, the loans were for 100% of the purchase price of the asset and the asset was the only security held by INBS. The loans were granted to SPVs and personal guarantees were very rarely sought or received from the borrower. Although the theory behind this lending was that INBS provided these high risk loans on a short-term basis with the intention of being

³⁰³ 2004 KPMG Commercial Credit Review, page 158 et seq. (Doc ID: 0.7.120.735070).

paid off once planning permission had been obtained, in many cases the Inquiry saw loan extensions granted for significantly longer periods. Evidence from witnesses such as Mr O'Brien (see paragraph 11.105 above) and from the Project Harmony Report indicated that there was no effective monitoring of these loans and, in particular, there was no effective monitoring of the profit share element, which was left to the discretion of the borrower. This was disputed by Mr McCollum in his evidence, but the finding in the Project Harmony Report that management fees charged by the developer which were deducted from the overall profit available for distribution were rarely if ever disputed, is compelling.

11.318 It was put to Dr Walsh (see paragraph 11.126 above), that it was hard to see what risk the developer was bearing in the kind of lending with the characteristics of a Profit Share Loan. He replied that applying for planning permission was time-consuming and expensive. The Inquiry does not accept that this was either a risk or a cost for the developer. Effectively, the borrower enjoyed a risk-free loan with the requirement to share a percentage of profit (after costs as identified by the borrower) with INBS once the property in question had been sold on or refinanced. The Inquiry agrees with the proposition (see paragraph 11.113 above) that this kind of borrowing was more akin to equity financing than traditional banking.

11.319 The Inquiry noted in particular the evidence of Dr O'Reilly, former chief executive of the Financial Regulator, which is outlined at paragraph 11.163 above, that the nature of INBS's business as a building society, which would have traditionally provided home loans for its members and home loan related commercial activity, was radically different from the business conducted during the Review Period. Profit share lending was the major factor in this change of lending profile.

11.320 One of the points raised continuously in both documentary and oral evidence, was the fact that INBS only provided facilities to high net worth individuals, known to INBS, with a known track record. However, the net worth of the individual borrower was of little value to INBS in circumstances where no personal guarantee was obtained. Furthermore, a proven track record, whilst helpful, is no protection against non-performance in respect of future projects.

11.321 The issue of personal guarantees arose in SPC 3 (see Chapter 7 of this Findings Report). Sixty-six of the 98 loans in the Loan Sample did not have a personal

guarantee from the directors of the borrowing company. The reason given by Mr McCollum was that a recession in the early 1990s in the UK had made property developers risk adverse and they were no longer willing to provide personal guarantees. It would appear that INBS did not learn any lessons from the 1990s recession and were prepared to offer loans on extremely favourable terms without any personal guarantee.

11.322 The Inquiry finds that the nature and extent of profit share lending in INBS required appropriate policies and the lack of any policy for such lending was a failing in credit risk management.

Effective management oversight of profit share lending

11.323 In theory, commercial loans including those with a profit share element, were vetted by commercial lenders and, in the case of loans emanating from Belfast, by the Managing Director. A CLA was drawn up and the loan was presented to the Credit Committee for approval or, in the majority of cases, a recommendation for approval by the Board. The CLA was then presented to the Board, and the loan was formally approved.

This sequence was referred to repeatedly by witnesses to the Inquiry. In particular, the fact that the Board ultimately approved all commercial lending above a certain threshold was presented as evidence of a high degree of oversight on the part of the Board of INBS.

11.324 The Inquiry has heard evidence throughout each module of this Inquiry of how loans were in fact processed in INBS. One of the first pieces of information that emerged in evidence was the perception that there was a different procedure with respect to loans that emanated from the Belfast Branch of INBS (see paragraph 11.69 et seq. and 11.72 et seq. above). 77% of all profit share lending emanated from Belfast as at September 2008. Of the Loan Sample files analysed for the purposes of this Findings Report, 80 of the 98 loans in the original Loan Sample emanated from Belfast.

11.325 All UK lending was conducted from the Belfast Branch. The Inquiry notes the evidence of Mr Buckley at paragraph 11.110 et seq. above. Mr Buckley expressed concern at the fact that one and a half managers supported by three administrative staff had been dealing with a loan book worth €5.5 billion. He said

that they had no previous experience in commercial lending and the loans were all extremely complex and needed clear management and monitoring.

- 11.326 Dr Walsh defended the level of staffing in Belfast (see paragraph 11.139 above) by saying that there were a low number of borrowers involved. There were, however, a large number of loans and these loans were for large amounts and for large and often complicated projects. In addition, the vast majority of this lending was in the form of Profit Share Loans that were, by their nature, significantly more difficult to monitor. The Inquiry is of the view that the Belfast Branch was seriously understaffed for the volume of work it undertook.
- 11.327 When an existing UK client sought finance for a project, they either went directly to Mr Fingleton or Mr McCollum. Mr McCollum would set out the detail of the proposed scheme in an internal memorandum to Mr Fingleton. If Mr Fingleton approved the proposal, he would write on the internal memorandum instructing Mr McMenamin to proceed with drawing up the CLA. This CLA should then have been presented to the Credit Committee for a full discussion of the proposal. As is clear from the evidence outlined above, this did not happen. Loans emanating from Belfast were effectively rubber-stamped by the Credit Committee and passed on to the Board for approval. Evidence from the SPC 5 module indicates that the Credit Committee members were, in some cases, unaware that loans from Belfast came to the Credit Committee for approval at all.
- 11.328 The Credit Committee in INBS did not comply with its terms of reference. It did not fully discuss loans presented to it and it did not minute any discussion that was held. As is evidenced by the Credit Committee meeting minutes during the Review Period, it was often inquorate and the Inquiry has seen occasions where loan recommendations were signed off by members who had not been present at the relevant meeting.
- 11.329 The lack of any proper scrutiny of Belfast loans, including its Profit Share Loans represented a major weakness in INBS's loan approval process. It deprived the Board of any comfort it may have derived from the belief that proper scrutiny by the Credit Committee had occurred.
- 11.330 Mr Fingleton, who was listed as a member of the Credit Committee throughout the Review Period, never attended any meetings until after the decision taken on 17 December 2007 to transfer all loan approvals above certain thresholds from the Board to the Credit Committee.

- 11.331 Mr McCollum, who was the commercial lender in respect of all loans coming from Belfast, never personally presented loans to the Credit Committee until after December 2007.
- 11.332 The CLAs in respect of these loans were presented to the Board for approval by Mr Fingleton. Mr Fingleton had originally vetted the loan, had instructed that the CLA be prepared, and he was then the person who presented the loan to the Board. Dr Walsh, in his evidence, described Mr Fingleton's presentation to the Board as being "*robust*". He answered any questions raised by Board members in relation to the loans. Given the lack of scrutiny by the Credit Committee, a particular duty of care rested with the Board to ensure that risk factors were appropriately considered in respect of each loan. The Inquiry is not satisfied that this duty was adequately discharged.
- 11.333 The Inquiry regard it as being of some significance that the evidence (both from the loan files and from oral evidence of former Credit Committee members) before the Inquiry showed that no loan which came from the Belfast Branch was ever refused by the Credit Committee, and always proceeded to the Board with a recommendation for approval. The evidence also showed that the Board did not refuse any loan that came with the recommendation of the Credit Committee. It is not possible to reconcile these two facts with an adequate consideration of the Belfast lending.
- 11.334 The volume of loans passing through the Credit Committee and Board at each individual meeting is noteworthy. The Inquiry has seen minutes for Credit Committee meetings where up to 30 loans were approved or recommended at a single meeting.³⁰⁴ There was a total of 93 Credit Committee meetings during the Review Period. In 16 of these meetings more than 20 loans were recommended or approved by the Credit Committee. In 39 of these meetings, 10 to 20 loans were recommended or approved by the Credit Committee. Similarly, the Inquiry has seen Board meeting minutes where up to 40 loans were approved at a single meeting of the Board. At a Board meeting held on 29 November 2006³⁰⁵, 39 loans with a combined value of over half a billion euro were approved at this one Board meeting. No loan was declined at this meeting. A month earlier, on 25 October 2006³⁰⁶, 38 loans were approved, also with a combined value of over €500 million.

³⁰⁴ Minutes of Credit Committee meeting, dated 9 June 2006 (Doc ID: 0.7.120.36880).

³⁰⁵ Minutes of Board meeting, dated 29 November 2006 (Doc ID: 0.7.120.23075).

³⁰⁶ Minutes of Board meeting, dated 25 October 2006 (Doc ID: 0.7.120.35325).

No loan was declined at this meeting. On 19 July 2006³⁰⁷, 40 loans were approved to a combined value of over €450 million. No loan was declined at this meeting. Loans were approved by the Board at 45 Board meetings held during the Review Period. In 11 of these Board meetings over 30 loans were approved by the Board, and in 14 Board meetings, 20 to 30 loans were approved by the Board.

The Inquiry does not believe that it was possible for the Board to scrutinise each loan adequately given the sheer volume of approvals that were being processed at each meeting. The contention that Board approval provided a risk management control is not supported by the evidence.

11.335 Dr Walsh stated that the purpose of policies was to govern how executives behaved (see paragraph 11.141 above). Without an effective and enforced profit share policy, there was no check on how executives behaved in INBS.

11.336 If each of the loans that had a profit share element were required to meet certain specific policy criteria before presentation to the Board, and if the Board had been alerted to exceptions to these policy criteria, the Board would have been in a position to make more informed decisions regarding the risks presented by this lending.

11.337 The Inquiry notes the evidence of Dr Walsh (see paragraphs 11.137 et seq. above), that the Board placed a great deal of reliance upon the recommendation of the Credit Committee. He also said that each loan proposal was carefully examined by the Board and assessed strictly on its merits. He said that the Board also had confidence in the executive and he believed that Mr McMenamin, the head of commercial lending for the Republic of Ireland, had the expertise to scrutinise UK loans at Credit Committee. Mr McMenamin himself has denied any such expertise.

11.338 The Inquiry finds that there was no proper oversight of the establishment of profit share lending in INBS during the Review Period.

Potential impact of a credit risk policy in relation to profit share lending

11.339 Witnesses to the Inquiry who were involved in commercial lending in INBS were to some extent ambivalent or uncertain as to whether a defined profit share

³⁰⁷ Minutes of Board meeting, dated 19 July 2006 (Doc ID: 0.7.120.33969).

policy would have had any impact on commercial lending. However, KPMG was clear that such a policy was needed, as was the internal auditor.

11.340 The Inquiry believes that a profit share policy would have outlined precisely what constituted profit share lending and what a supplementary arrangement fee was. It would also have set out the parameters within which such a loan would be granted. It would identify the tolerance of the Board for such lending by giving a percentage of the book as being acceptable in terms of risk bearing capacity. Such a policy would have provided minimum standards that had to be adhered to.

11.341 The build-up of Profit Share Loans with very high LTVs and capital and interest moratoria and no personal guarantees seriously exposed INBS to a property market downturn. Whilst the directors pointed to the benign environment that prevailed at the time, they had a responsibility as a Board to anticipate a more hostile environment. It is the directors' responsibility to anticipate what might go wrong and thereby insulate the depositors from adverse effects. This could have been identified in stress testing, which INBS manifestly failed to carry out, and the risks should have been identified and controlled within a dedicated profit share policy.

11.342 Given the nature of profit share lending and the extent of it, the Inquiry is satisfied that proper credit risk management required that the Board of INBS should have set a policy for the establishment of profit share lending.

11.343 With regard to the legislative provisions and condition on INBS's authorisation underpinning SPC 7(a), 7(b) and 7(c), the Inquiry finds in respect to INBS as follows:

(a) Regulation 16(1) of the 1992 Regulations

The Inquiry finds that from 1 August 2004 to 30 September 2008, INBS failed to ensure that the establishment of Profit Share Agreements was the subject of a formal credit risk policy and thereby failed to manage its business in accordance with sound administrative and accounting principles and failed to put in place and maintain internal control and reporting agreements and procedures to ensure that the business was so managed. Accordingly, the Inquiry finds that a contravention of Regulation 16(1) of the 1992 Regulations occurred.

(b) Section 76(1) of the 1989 Act

The Inquiry finds that from 1 August 2004 to 30 September 2008, INBS failed to ensure that the establishment of Profit Share Agreements was the subject of a formal credit risk policy and thereby failed to establish and maintain systems of control of its business and records and systems of inspection and report thereon. Accordingly, the Inquiry finds that a contravention of section 76(1) of the 1989 Act occurred.

(c) Part 1 of the 2005 Regulatory Document

The Inquiry finds that from 10 July 2006 to 30 September 2008, INBS failed to ensure that the establishment of Profit Share Agreements was the subject of a formal credit risk policy and thereby failed to comply with the condition of its authorisation imposed in accordance with the 2005 Regulatory Document. Accordingly, the Inquiry finds that a contravention of Part 1 of the 2005 Regulatory Document occurred.

Finding in relation to Mr Purcell's participation

11.344 The Inquiry has considered Mr Purcell's submissions in which he denies participation in SPC 7.

11.345 As already outlined above, the Inquiry has found that there was no policy created by the 2004 KPMG Commercial Credit Review.

11.346 The Inquiry has already outlined Mr Purcell's roles and responsibilities in INBS in Chapter 2 of this Findings Report. It is Mr Purcell's submission that as finance director, he was not directly responsible for ensuring that a credit risk policy was put in place to cover profit share lending. He said that such a responsibility rested with the credit risk manager and with Mr Fingleton, to whom the credit risk manager reported.

11.347 The Inquiry accepts that Mr Purcell was not the executive with primary responsibility for commercial lending. The Inquiry also accepts that responsibility for aspects of commercial lending was properly delegated to senior management in INBS. The Inquiry further accepts that Mr Purcell was entitled to rely on senior management and his fellow executive director to carry out recommendations from the Financial Regulator and the Audit Committee. However, in circumstances where INBS is shown to have been failing in its

obligations, Mr Purcell together with the other members of the Board had a responsibility to act by virtue of their role in risk management.

11.348 The concerns expressed by the Financial Regulator from 2004 onwards imposed an obligation on the Board to ensure that commercial lending in INBS was conducted in a prudent and responsible way. In particular, the Board had a responsibility to ensure that this kind of lending was appropriately monitored and controlled. Mr Purcell shared that responsibility.

11.349 The Board members, including Mr Purcell, would have been or ought to have been aware of the risks associated with profit share lending and they were aware of Contemporaneous Reports recommending that a profit share policy be put in place.

11.350 Mr Purcell's letter dated 26 September 2008 to the Financial Regulator shows a marked misunderstanding as to the actual risks involved in profit share lending. The assertion that INBS bore none of the risks associated with these loans is patently untrue. In circumstances where INBS had no recourse to the individual directors of the borrowing company and where the loans were solely secured on the asset the subject matter of the loan, any deterioration in the value of the asset impacted on the security of the loan. This is particularly the case where loans were typically granted for 100% of the value of the property with interest and capital moratoria.

11.351 The Board is responsible for risk management and approving policies in connection therewith. In failing to approve a Profit Share Loan policy the Board failed in its obligations in this regard. As a member of that Board, Mr Purcell fully shares in that responsibility. Mr Purcell's responsibility does not arise because of his executive functions or his particular responsibilities in the organisational structure of INBS, but it arises by virtue of his Board membership.

11.352 For the reasons set out above, the Inquiry finds that Mr Purcell did participate in SPC 7 in failing to ensure that the establishment of Profit Share Agreements was the subject of a formal credit risk policy.

11.353 Accordingly, the Inquiry finds that the allegation of participation by Mr Purcell in SPC 7, and in the commission by INBS of SPCs 7(a), 7(b) and 7(c), is proven.

CHAPTER 12

FINANCIAL REGULATORY CORRESPONDENCE AND EVIDENCE

INTRODUCTION

- 12.1 In identifying INBS's potential liability and Mr Purcell's potential participation in allegations outlined in SPCs 1 to 7, the Inquiry has drawn on various strands of evidence including: loan files; corporate governance documents; Contemporaneous Reports; witness statements and evidence, and submissions from Mr Purcell, the LPT and Enforcement. The Inquiry has also referenced correspondence from the Financial Regulator that occurred throughout the Review Period.
- 12.2 What follows is an account of the correspondence and meetings between the Financial Regulator and INBS in relation to the concerns that the Financial Regulator had about governance and risk management within INBS. The correspondence referenced is only in relation to the issues raised in the seven SPCs, the subject of this Findings Report. The Inquiry is not in a position to confirm that this represents a complete review of all correspondence and meeting notes between INBS and the Financial Regulator during the Review Period. This section also includes evidence from former Financial Regulators, Dr Liam O'Reilly and Mr Patrick Neary, both of whom served during the Review Period, and Ms Yvonne Madden a former employee of the Financial Regulator.

These letters and memoranda of meetings are dealt with in chronological order.

FINANCIAL REGULATORY CORRESPONDENCE AND DOCUMENTATION

Letter from Liam O'Reilly, Assistant Director General of the Central Bank of Ireland, to Peter O'Connor, Chairman of INBS, dated 29 October 1999¹

- 12.3 This is the first letter in terms of date, seen by the Inquiry that identifies the very serious concerns that the Financial Regulator had in relation to INBS. Previous letters had expressed a desire on the part of the Central Bank that INBS should improve its policies etc. This letter struck a significantly different note. The letter stated:

"I refer to the recent inspection of Irish Nationwide Building Society (the society) by Central Bank examiners and the meeting with your Board yesterday. A number of matters of serious prudential concern, which are set out in detail in

¹ Letter from Liam O'Reilly, Assistant Director General, Central Bank of Ireland, to Peter O'Connor, Chairman, INBS, dated 29 October 1999 (Doc ID: AD-0.7.120.140294).

the following paragraphs, were noted by the examiners during the course of the inspection. Due to the serious nature of these findings, it is imperative that your Board consider the points raised as a matter of urgency and submit a plan of action to the Bank within one week of receipt of this letter”.

- 12.4 The letter went on to outline the concerns referred to in the opening paragraph. There were seven concerns in all. Four involved Y2K preparation, liquidity, funding and money laundering, that are not relevant to this Inquiry. Of the three remaining issues, one shortcoming in the area of corporate governance was entitled “*CREDIT QUALITY*” and under this heading the letter stated:

“The Bank’s Standards require that credit institutions shall have in place appropriate policies relating to the management and control of lending including policies on credit assessment and review, risk management, large exposures and prudent provisioning. The examiners concluded that the current credit policy failed to address adequately a number of issues such as sectoral concentrations, repayment ability and pricing and does not cover commercial lending.

The examiners noted that, based on information included on the monthly prudential return of non-performing assets, the level of balances on accounts in arrears has increased by 49 per cent, from Euro 82 million to Euro 122 million, over the period January to July 1999. Commercial lending accounts for almost 70 per cent of this increase in non-performing balances. Management was unaware of this and was unable to provide any satisfactory documentary evidence to the examiners during the course of the inspection to explain the underlying reasons for the increase. The examiners concluded that management information available to monitor and control arrears is entirely inadequate.

The examiners also confirmed that the society does not have a formal provisioning policy. There was no documentary evidence on the criteria used by management for reviewing the adequacy of provisions and it was noted that such reviews were conducted only once annually.

Accordingly, in order to provide assurances regarding the quality of the loan portfolio, it is required that the society engage its external auditors immediately to carry out a review of the credit function. This review should cover lending policy and approval procedures, arrangements for management of out-of-order

loans, the adequacy of provisions and the adequacy of the oversight of the credit function by the Board. A report on the auditors' findings should be submitted to the Bank no later than end of November 1999".

- 12.5 The fifth issue identified by the Financial Regulator was entitled "*Internal Audit*". The position of head of internal audit had been vacant since mid-September 1999 and no replacement had been identified. The level of expertise in the two staff members assigned to this role was inadequate. It also noted that the two executive directors were members of the Audit Committee and that this was not best practice.
- 12.6 The final issue raised in the letter was entitled "*BOARD & MANAGEMENT*" and it identified major shortcomings in the area of corporate governance. The letter stated:

"The Bank's Standards require that it be satisfied with the structure of the Board and senior management of a credit institution and that internal control systems and reporting arrangements are such as to provide for the effective, prudent and efficient administration of its assets and liabilities. There are now a number of major shortcomings in this area in relation to corporate governance, management information and compliance issues. This must be put right without further delay.

In relation to the Audit Committee the examiners noted that membership includes the two executive directors of the society. This is not in line with best practice. In addition, the terms of reference of the Committee do not address items such as frequency of meetings and duties of the Committee.

...

The Bank requires all credit institutions to have in place such committees of management and other management structures as are necessary to ensure the business of the credit institution is being well managed, conducted and controlled in a prudent manner. In this connection, the examiners noted that no senior management committees are in place and formed the view that the society is controlled to a very large extent by the Managing Director. The Bank requires that the society should significantly strengthen its Board and management and it awaits specific proposals in this regard".

12.7 The letter concluded with an unequivocal expression of concern, as follows:

“I cannot overemphasise the Bank’s unease about the inadequacies identified by the examiners. An immediate and detailed response from the Board is required and there must be evidence, without further delay, that satisfactory arrangements are being put in place urgently”.

12.8 The Inquiry has not seen what response INBS made to this letter, but it is clear that there were ongoing meetings between the Financial Regulator and the Board and senior management.

Letter from Mary O’Dea², Deputy Head of Banking Supervision Central Bank of Ireland, to Michael Fingleton, INBS, dated 22 December 2000³

12.9 This letter set out a number of matters of concern that arose from a review by Central Bank examiners of commercial mortgage lending in INBS. The schedule to this letter set out these concerns, as follows:

“Commercial Lending Policy

1. *The examiners formed the view that:*
 - *The commercial lending policy does not address the full range of lending undertaken or is vague on aspects of the lending process. For example, it does not set out specific policies in relation to different types of commercial lending such as residential property development, commercial property investments etc.*
 - *INBS’s policy does not set out minimum acceptable levels of either interest or repayment cover.*

Loan Review Process

2. *The examiners noted that there was no formal system in operation for the ongoing review of loans after drawdown.*

² Ms O’Dea was the consumer director at the Financial Regulator throughout the Review Period.

³ Letter from Mary O’Dea, Deputy Head of Banking Supervision, Central Bank of Ireland, to Michael Fingleton, INBS, dated 22 December 2000 (Doc ID: 0.7.120.138037).

Credit Grading

3. *It was noted that INBS does not use a credit grading system in order to evaluate loan applications. There would appear to be merit in such a systematic process whereby an institution assesses the quality of the borrower based on a number of factors including repayment capacity, financial position of the borrower and sustainability of income streams during the period of the loan.*

Valuations

4. *It was noted that INBS carries out its own valuations of commercial properties. The Bank is concerned that it may be imprudent not to seek an independent professional valuation.*

Resources

5. *The examiners formed the view that the number of experienced commercial lending staff remaining in INBS may be inadequate to deal with the size of the portfolio allocations.*

Sectoral Concentration

6. *The examiners found no evidence of internal sectoral classifications or limits being applied for the risk management purposes. It is recommended that procedures be amended to ensure that INBS classifies and monitors the sectoral concentration of its loan portfolio".*

12.10 The Inquiry has not seen correspondence from INBS in response to this letter from the banking supervision department. The next document that came to the Inquiry's attention was a Financial Regulator update dated 21 November 2003, which included a note of a meeting with Mr Maurice Harte that took place the previous week following his departure as a director of INBS. Mr Harte said that he was not aware of any issues which should be brought to the Financial Regulator's attention which would in any way affect the solvency or overall standing of INBS. However, he did say that he felt there were some aspects of INBS's business controls and procedures that needed to be strengthened.⁴

⁴ Central Bank of Ireland and Financial Services Authority of Ireland, Irish Financial Services Regulatory Authority (IFSRA) Update, No. 155 of 2003, dated 21 November 2003, page 4 (Doc ID: AD-0.7.120.50301).

Minutes of the meeting of the Irish Financial Services Regulatory Authority (IFSRA), dated 26 May 2004⁵

12.11 This document recorded the following:

*“The Authority noted the forthcoming third party review by KPMG of **Irish Nationwide’s** commercial loan portfolio. The process for the re-designation of loans from retail to the commercial portfolio will form part of the investigation. It was noted that such redesignations raise both control and consumer protection issues. KPMG will report exclusively and directly to the Authority. At the next meeting, Patrick Neary will advise the Authority of the agreed deadlines for the delivery of the report and will provide further details on KPMG’s concerns in their role as auditor, including whether the Authority has received a copy of their management letter”.*

12.12 Dr O’Reilly was asked about this excerpt from the minutes of the Financial Regulator meeting. He was asked why it provided that KPMG was to report directly and exclusively to the Financial Regulator. He stated:

*“Well, the level of concern was such that we wanted to make sure that we were in control of the terms of reference to the report and that we would have management and information independently of any information that would be provided to the Society”.*⁶

IFSRA Presentation on INBS Commercial Lending Review, dated 24 November 2004⁷

12.13 Mr Dermot Finneran⁸, senior regulator in the banking supervision department made a presentation to the Board of the Financial Regulator which set out the key findings in the 2004 KPMG Commercial Credit Review.

This presentation identified the reasons for establishing the 2004 KPMG Commercial Credit Review as being:

⁵ Minutes of the meeting of IFSRA, dated 26 May 2004 (Doc ID: AD-0.7.120.50666).

⁶ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 20 line 1 (Doc ID: RDU_SPC7FT_D6-000000001).

⁷ IFSRA Presentation on Irish Nationwide Building Society, dated 24 November 2004 (Doc ID: AD-0.7.120.50113).

⁸ Mr Finneran was employed in the banking supervision department of the Financial Regulator throughout the Review Period.

“Reasons:

- *Concerns arising from FSR inspections & reviews*
- *Large shift towards commercial lending*
- *Departure of M. Harte who overseen [sic] function*
- *Increase in size of large exposures*
- *Reclassification of loans”.*

12.14 The 2004 KPMG Commercial Credit Review made a number of observations in relation to the growth of the total portfolio. It stated that the commercial loan book had increased by over 60%, rising from €1.6 billion in 2001 to €2.6 billion in 2003. The residential loan book had not increased.

12.15 When asked by the Inquiry why the large shift towards commercial lending was a matter for concern, Dr O’Reilly stated:

“Well, the risks would have been increased as a result of the fact that returns on this business were higher and there is a direct relationship, I believe, between returns and risk. So, that by itself.

*There was a question of the familiarity of the Society with the business of commercial lending, and the resources and the — well, the resources that would be required to manage and monitor and control this risk”.*⁹

12.16 The 2004 KPMG Commercial Credit Review noted that in 2001, the commercial loan book represented 47% of the total portfolio. In 2003, the commercial loan book represented 58% of the total portfolio.

12.17 The growth in the commercial portfolio was 59% in Ireland and 76% in the UK over the three year period 2001 to 2003. 30% of the borrowers were Irish and 62% were UK borrowers.

12.18 The number of loans had also increased significantly. In 2001 the report noted that there were 565 commercial loans on the books of INBS totalling €1.6 billion. By 2003 there were 1,963 commercial loans totalling €2.6 billion. The 2004 KPMG Commercial

⁹ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 21 line 19 (Doc ID: RDU_SPC7FT_D6-000000001).

Credit Review noted the increase in the value of loans. 84% of the commercial portfolio was identified as comprising of loans greater than €2 million. The €20 to €50 million category had trebled in that time. The report noted four loans totalling €280 million in 2003.

- 12.19 Another issue covered by the 2004 KPMG Commercial Credit Review and raised in Mr Finneran's presentation was the increase in Large Exposures. The top 30 exposures represented 63% of the portfolio in 2001 and 76% in 2003.¹⁰
- 12.20 The 2004 KPMG Commercial Credit Review and the Financial Regulator presentation emphasised the importance of fee income to INBS. In particular, what was called performance related fees (or profit share lending) that accounted for 85% of the total fees in 2003. This was an increase of 139% during the period.
- 12.21 Arrears and non-performing loans were both down during the three year review period and the total provisions had remained constant. The 2004 KPMG Commercial Credit Review recorded that there had been no bad debt write-offs on the commercial portfolio during the period.
- 12.22 Page 32 of the presentation dealt with performance related fees. By way of background it set out the characteristics of such lending, as follows:

“... ”

- *Facilities where INBS charges a fee by way of a percentage share of final profits on development*
- *Only in place for facilities where INBS funds site purchase and development costs*
- *Features:*
 - *Approved by INBS board*
 - *Security held until [sic] all fee/profit share received*
 - *May advance up to 100% LTV*
 - *May charge lower margin*

¹⁰ IFSRA Presentation on Irish Nationwide Building Society, dated 24 November 2004, page 20 (Doc ID: AD-0.7.120.50113).

- *INBS monitors development*
- *No formal policy – negotiated case-by-case*.¹¹

12.23 The presentation set out the scale of performance related fees, as follows:

“...Profit share earnings in 2003:

- *Profit-share fees - €33.4m (85% of overall fees)*
- *Profit-share fees increased by 200% during period*
- *Facilities subject to profit share:*
 - *End- 2003 - Total €1bn (€0.7bn is UK)*
 - *Value of portfolio increased by 100% during period*
- *Profit-share fees mainly based on residential development, commercial acquisition & land purchase categories*.¹²

12.24 The presentation set out the main issues and concerns. Under the heading “*General*” it stated:

“...Macroeconomic

- *Reliance on commercial property market*
- *Risk of asset price shock or deterioration in economy*
- *Relative scale in highly competitive market*
- *Corporate Governance*
 - *Reliance on small group of executive management*
 - *Succession planning for MD*
- *Internal audit & Compliance*

¹¹ IFSRA Presentation on Irish Nationwide Building Society, dated 24 November 2004, page 32 (Doc ID: AD-0.7.120.50113).

¹² IFSRA Presentation on Irish Nationwide Building Society, dated 24 November 2004, page 33 (Doc ID: AD-0.7.120.50113).

- *Level of resources*
- *Lack of experience & expertise*
- *External Audit - Management Letter 2003*
 - *Mainly concerns with commercial lending*.¹³

12.25 The presentation listed a further three items of concern that do not relate to this Inquiry.

12.26 Under the heading "*Major issues & concerns - Commercial lending review*", the presentation identified five areas of concern, as follows:

"...Rapid growth in portfolio

- *Increase in loan size & complexity*
- *Concentration (counterparty & geographic)*
- *Moratorium facilities*
 - *16% of commercial portfolio*
 - *Difficult to monitor from credit perspective*
- *Performance-related facilities*
 - *High LTV's & moratorium facilities*
- *Joint Venture arrangements*
 - *Monitoring, due diligence, legal documentation*
- *Manual intervention*
 - *Regulatory, Consumer & Financial impact*".¹⁴

12.27 The presentation recommended the following "*Regulatory follow-up*":

"...Commercial Loan Portfolio:

¹³ IFSRA Presentation on Irish Nationwide Building Society, dated 24 November 2004, page 34 (Doc ID: AD-0.7.120.50113).

¹⁴ IFSRA Presentation on Irish Nationwide Building Society, dated 24 November 2004, page 36 (Doc ID: AD-0.7.120.50113).

- *KPMG commercial lending report*
- *KPMG 2003 management letter*
- *Internal Audit & Compliance*
- *Corporate governance*
 - *Strengthen board & executive management*
 - *Succession planning*
- *Revert to Authority Q1 2005*
- *Review:*
 - *Solvency requirement*
 - *Property Development Exposure Limits*
- *Possible imposition of directions:*
 - *Require strengthening of board & executive management within defined period*
 - *Cessation of Joint Venture arrangements".¹⁵*

12.28 The Inquiry discussed this presentation with Dr O'Reilly who was the Financial Regulator at the time, in the course of the Inquiry hearings in the SPC 7 module (see Chapter 11 paragraph 11.159 et seq.). In relation to performance related fees, Dr O'Reilly said that he seemed to remember that it raised alarm within the banking supervision department and at the Board level of the Central Bank. He said that LTV ratios of up to 100% was very unusual and was one of the reasons that the Financial Regulator was so concerned. When asked if he had considered directing that a profit share policy be put in place he said that it was not foremost in his mind at that time and that he was more concerned about the root problem which was how INBS was being managed.

¹⁵ IFSRA Presentation on Irish Nationwide Building Society, dated 24 November 2004, pages 37 and 38 (Doc ID: AD-0.7.120.50113).

He stated:

“Well, the risks would have been increased as a result of the fact that returns on this business were higher and there is a direct relationship, I believe, between returns and risk. So, that by itself.

*There was a question of the familiarity of the Society with the business of commercial lending, and the resources and the – – well, the resources that would be required to manage and monitor and control this risk”.*¹⁶

Record of meeting between IFSRA and INBS held on 3 December 2004¹⁷

12.29 The Financial Regulator presentation of 24 November 2004, was followed by a meeting held at the request of the Financial Regulator which was attended by: Dr O’Reilly, chief executive; Mr Neary, prudential director and Mr Finneran, banking supervision. Dr Walsh, INBS chairman; Mr Power, INBS vice chairman; Mr Fingleton, INBS Managing Director and Mr Purcell, INBS director and secretary, attended on behalf of INBS. The purpose of the meeting was to discuss a number of issues of serious prudential concern arising in relation to INBS.

12.30 The minutes for this meeting recorded that the Financial Regulator advised it had a number of serious concerns in relation to INBS. It said that many of these concerns arose from the recent 2004 KPMG Commercial Credit Review on INBS’s commercial lending, while others were general concerns that the Financial Regulator had for some time. The minutes stated: *“These concerns, which are inter-related, are centred on the areas of corporate governance, internal audit and commercial lending activity”.*¹⁸

12.31 The minutes listed the Financial Regulator’s concerns as follows:

“...

- *There has been a very significant increase in the level of commercial lending in recent years, particularly in the UK.*
- *There are significant concentrations in the commercial loan book, both by counterparty and on a geographic basis.*

¹⁶ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 21 (Doc ID: RDU_SPC7FT_D6-000000001).

¹⁷ IFSRA Record of meeting with Irish Nationwide Building Society, dated 3 December 2004 (Doc ID: AD-0.7.120.1127973).

¹⁸ IFSRA Record of meeting with Irish Nationwide Building Society, dated 3 December 2004, page 2 (Doc ID: AD-0.7.120.1127973).

- *An overall concern at this time is a significant shift in the risk profile of INBS's overall loan portfolio in a relatively short period of time. There are very significant levels of moratorium facilities, restructuring of facilities and facilities based on fee/profit share arrangements.*
- *Of particular concern is that while the level and nature of the Society's activities have changed significantly, the control mitigants which would be necessary to manage, monitor and control these risks had not kept pace with this change.*
- *...*
- *The KPMG 2003 management letter raised a significant number of issues of concern in relation to controls, documentation and management of commercial lending activities.*
- *KPMG also highlighted the risks to INBS of a significant deterioration in the commercial property market. In particular, it highlighted a lack of experience in dealing with a 'workout' of major facilities and the associated risk which any delays in cashflows may have on the liquidity position of INBS.*
- *There is an over-reliance on the Managing Director and there is a need for the executive management team to be strengthened with a particular emphasis on oversight of the commercial lending function and succession planning for the Managing Director.*
- *The FSR has very serious concerns with regard to the level of resources, expertise and experience within the Internal Audit function of INBS. These concerns have increased considerably with the recent departure of the Head of Internal Audit¹⁹.*

12.32 The Financial Regulator required that INBS address these concerns immediately and in particular that it set out its strategy in relation to its lending business, its risk appetite and what systems it had and would put in place to effectively monitor, manage and control these risks. The Financial Regulator advised that it was critical that INBS had appropriate expertise and resources in place to comprehensively manage its

¹⁹ IFSRA Record of meeting with Irish Nationwide Building Society, dated 3 December 2004, pages 2 and 3 (Doc ID: AD-0.7.120.1127973).

commercial lending activities, including dealing with a “workout” of major facilities which could impact on the liquidity position of INBS.

12.33 The minutes of the meeting recorded INBS’s response as:

“INBS, while acknowledging the FSR’s concerns, advised that it was satisfied with the overall risk profile of its commercial lending portfolio. It added that it had a sound and profitable track record for many years in the area of commercial lending and that it mainly deals with a number of long-standing and proven commercial clients. With regard to recruitment of suitable management, INBS advised that it was finding it increasingly difficult to attract individuals given the public perception that INBS would be taken-over in the near future, following amendments to the Building Societies Act, 1989 (the Act).²⁰ Such a perception left questions in candidates’ minds as regards long-term job security.

INBS also advised that it was concerned with ongoing delays in proposed amendments to the take-over provisions of the Act. It confirmed that its preferred strategy was to convert and be acquired by a larger financial institution”.²¹

12.34 The minutes of the meeting recorded the following “Conclusion”:

“The FSR, while noting these comments, advised that it had to operate on the basis that INBS would remain in its current form for some time and therefore some serious remedial actions were required to address the FSR’s concerns. The FSR advised that it would be issuing a letter to the INBS Chairman next week outlining its concerns and setting out some specific follow-up actions which will be required from INBS”.²²

²⁰ See Chapter 2, paragraph 2.38 et seq. regarding the potential sale of INBS.

²¹ IFSRA Record of meeting with Irish Nationwide Building Society, dated 3 December 2004, page 3 (Doc ID: AD-0.7.120.1127973).

²² IFSRA Record of meeting with Irish Nationwide Building Society, dated 3 December 2004, page 4 (Doc ID: AD-0.7.120.1127973).

Letter from Liam O'Reilly, IFSRA Chief Executive, to Michael Walsh, Chairman of INBS, dated 9 December 2004²³

- 12.35 This letter was a follow-up from the meeting of 3 December 2004. It raised a number of serious issues and some of these are dealt with at length at various points in this Findings Report.
- 12.36 The letter began by referring to the meeting of 3 December 2004 and stated that this letter would summarise the concerns that had been discussed at that meeting and also set out the Financial Regulator's position in relation to these concerns. It stated:

"1. High-level concerns

(i) Corporate Governance

As you are aware, the FSR has, on many occasions, expressed its concerns with regard to the level of resources at a senior/executive management level within INBS. In particular, the FSR stressed the need for an increase in the size of the board and a strengthening of the executive management team. The latter point was to address concerns such as: an over-reliance on the Managing Director (MD); succession planning for the MD; and the absence of a senior executive to oversee the Commercial Lending function.

While the Society addressed many of these concerns with the appointment of Maurice Harte in 2002, it is of serious concern, that almost two years after his departure, there is still no replacement for him. While the matter has been raised by the FSR on a number of occasions, most recently in its letter dated 13 October 2004 INBS has not responded with a plan to address it.

Action required:

The FSR requires INBS immediately to set out its plans to address the executive resources issue including the recruitment of suitable persons to provide for succession and oversee the Commercial Lending function.

²³ Letter from Liam O'Reilly, Chief Executive, IFSRA, to Michael Walsh, Chairman of INBS, dated 9 December 2004 (Doc ID: 0.7.120.15106).

(ii) Internal Audit Function:

The FSR has had concerns for some time with regard to the level of expertise and experience within INBS's Internal Audit (IA) function. These concerns have been considerably heightened with the recent departure of the Head of IA.

I understand that KPMG has commenced a review of the IA function. The FSR would wish to see, urgently, a copy of the report based on this review together with an action plan from INBS setting out how it will deal with any recommendations arising.

Action required:

Notwithstanding the above,

- The FSR requires INBS to recruit a senior person with appropriate expertise and experience to manage the IA function.*
- A comprehensive review of staffing of IA must be undertaken and sufficient expertise recruited as necessary to enable IA to review adequately higher risk areas within the Society such as Commercial Lending, Treasury and IT.*
- Pending satisfactory resolution of the above matters, the FSR requires that, with immediate effect, INBS engages a suitable external professional consultant to manage and run its IA function.*

(iii) Commercial Lending:

The FSR has reviewed the contents of the KPMG report based on a review of INBS's commercial lending business. This report raises many issues which were of concern to the FSR. From an initial review of the report, the FSR's high-level concerns are set out in the Schedule attached to this letter.

The FSR's overall concern at this time is the significant shift in the risk profile of INBS's overall loan portfolio in a relatively short period of time. While it is a matter for credit institutions' board and management to decide upon the business activities it engages in, it is essential that

there are appropriate policies, procedures, resources, internal controls and reporting structures in place commensurate with the risk arising from these activities which are sufficient to effectively manage, monitor and control that risk.

What is of particular concern to the FSR is that while the level and nature of the Society's activities have changed significantly, the control mitigants referred to above have not kept pace with this change. Furthermore, the KPMG 2003 management letter raised a significant number of issues of concern in relation to controls, documentation and management of commercial lending activities. It is also noted that KPMG has highlighted the risks to INBS of a significant deterioration in the commercial property market. In particular, it highlighted a lack of experience in dealing with a 'workout' of major facilities and the associated risk which any delays in cash flows may have on the liquidity position of INBS.

INBS must address these concerns immediately, and in this regard the FSR requires the Board to set out a clearly articulated business plan and strategy in relation to INBS's lending business, its risk appetite and what system it has and will put in place to effectively monitor, manage and control these risks. It is critical that INBS has appropriate expertise and resources in place to comprehensively manage its commercial lending activities, including dealing with a 'workout' of major facilities which could impact on the liquidity position of INBS.

Action required:

- *INBS Board report to the FSR by 31 January 2005 on the above matters and setting out actions taken, or to be taken, to address these concerns.*
- *Notwithstanding the above, a senior management position should be created which will have specific responsibility for the commercial lending function.*
- *Sufficient resources must be in place to review and assess the risk of the entire commercial loan book on a formalised and regular basis, including monitoring of profit-sharing*

arrangements, joint venture development arrangements, restructuring and moratorium arrangements.

- *INBS must review the adequacy of its management information systems in relation to all aspects of its lending activities”.*²⁴

12.37 The letter went on to set out what action the Financial Regulator proposed taking. In relation to “*Capital Adequacy Requirements*” the letter stated:

*“There has been a significant shift in the nature and risk profile of INBS’s business, particularly in the last couple of years. INBS has moved from being predominantly a broadly based residential mortgage lender to a commercial property lender. In this context, the FSR has decided that it is appropriate that the Minimum Capital Adequacy requirement applicable to INBS be increased from nine per cent to **ten per cent** to reflect this change. This increase will take effect from 1 January 2005”.*²⁵

12.38 The letter reduced the limit in relation to exposures arising from the holding and development of land by INBS from 10% and 25% of “*Own Funds*”, and for individual and aggregate development exposures to 5% and 12% respectively. The Financial Regulator also banned INBS from entering into any further joint venture property development arrangements with a partner where that partner was also a customer of INBS.

12.39 The schedule to this letter dealt with a number of areas of concern to the Financial Regulator. This Findings Report deals with commercial lending, corporate governance and credit risk issues. The concerns expressed by the Financial Regulator with respect to those issues were:

“KPMG report on a review of commercial lending

Arising from an initial review of the KPMG report, the high-level concerns arising are as follows:

- *There has been a significant increase in the level of commercial lending in recent years. This in turn has had a very material impact on the overall business and risk profile of INBS. The commercial loan book has*

²⁴ Letter from Liam O’Reilly, Chief Executive, IFSRA, to Michael Walsh, Chairman, INBS, dated 9 December 2004, pages 1 to 4 (Doc ID: 0.7.120.450640).

²⁵ Letter from Liam O’Reilly, Chief Executive, IFSRA, to Michael Walsh, Chairman, INBS, dated 9 December 2004, page 4 (Doc ID: 0.7.120.450640).

increased by over 60% between 2001 and 2003 and commercial lending as a proportion of overall lending has increased from 47% to 58% during the same period.

- *There has been a very significant increase in UK-based commercial property lending which has increased by 76% during the period.*
- *There are significant concentrations in the commercial loan book, both by counterparty and on a geographic basis. At end-2003, it is noted that the top 30 exposures accounted for 63% of the commercial loan book (the top 5 accounted for 20%).*
- *There has been a significant increase in the overall size of facilities with 84% of the commercial loan book represented by loans in excess of €2 million”.²⁶*

12.40 The schedule to the letter outlined findings in relation to “*performance-related fees*” as follows:

“... ”

- *€1 billion (38% of commercial loan book) at end-2003*
- *€0.7 billion is UK lending (almost 60% of UK loan book)*
- *KPMG note such facilities can have the following characteristics – large size; high LTV (up to 100%); full or partial moratorium*
- *KPMG noted that the agreements should be documented and kept updated”.²⁷*

12.41 When questioned about this letter and this schedule, Dr O’Reilly said that because the Financial Regulator operated a principles-based system of regulation, it was up to individual boards of directors and management to ensure that appropriate steps were taken when problems were pointed out to them.²⁸

²⁶ Letter from Liam O’Reilly, Chief Executive, IFSRA, to Michael Walsh, Chairman, INBS, dated 9 December 2004, page 7 (Doc ID: 0.7.120.450640).

²⁷ Letter from Liam O’Reilly, Chief Executive, IFSRA, to Michael Walsh, Chairman, INBS, dated 9 December 2004, page 8 (Doc ID: 0.7.120.450640).

²⁸ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 41 line 11 (Doc ID: RDU_SPC7FT_D6-000000001).

Draft Record of meeting between the Financial Regulator and INBS held on 1 February 2005²⁹

12.42 This meeting was attended on behalf of the Financial Regulator by Dr O'Reilly, chief executive; Mr Neary, prudential director; Mr Con Horan head of the banking supervision department and Mr Andrew Guiney³⁰, banking supervision department. Dr Walsh, Mr Power, Mr Terence Cooney, Mr Fingleton and Mr Purcell all attended on behalf of INBS. The meeting was called by INBS to discuss its response to the Financial Regulator's letter of 9 December 2004 that is set out in detail above. In relation to commercial lending, the minutes of the meeting recorded:

"The Society advised the FR that they have advertised the position of Head of Commercial Lending on Friday 28 January 2005.

...

The Society further advised the FR that lending in relation to buying and developing land for residential and commercial purposes was a strategic aim of the Society and that this strategy has been accepted by the market, as the Society has been able to raise wholesale funding of €1bn in just one day.

The Society confirmed that it has no problems whatsoever with its lending book.

The FR stated that its concerns result directly from the pace of the change in the mix of the Society's lending book i.e. residential mortgages to commercial mortgages (commercial mortgages have moved from 30% of the portfolio to c. 70% in a relatively short period of time). The FR highlighted that this created a change in risk profile and that the Society systems and controls have not kept apace of this change.

Internal Audit:

The Society advised that KPMG are currently completing their review of the Society's Internal Audit function. The Society stated that it was theirs and KPMG's opinion that the acting Internal Auditor (Mr. Killian McMahon) was capable of being the Internal Auditor of the Society but required training and expert help in the areas of Treasury and IT from KPMG. The Society advised

²⁹ Draft Record of meeting between the Financial Regulator and INBS, dated 1 February 2005 (Doc ID: AD-0.7.120.133899).

³⁰ Mr Guiney was employed in the banking supervision department in the Financial Regulator throughout the Review Period.

that KPMG would supply personnel (separate from the KPMG external audit team) to help in these areas. The Society confirmed that it would forward a copy of KPMG's review of its Internal Audit Function upon completion of the report".³¹

12.43 The record of the meeting showed that INBS once again raised the issue of the building society legislation that would allow them to proceed with a trade sale. The Financial Regulator said that it would seek an update. The Financial Regulator concluded the meeting by stating:

"The FR stated that it would study the Society's response to its letter (of the 9 December 2004) and would respond in due course. It further advised that it requires the Society to outline clearly and articulately its strategy and provide comfort regarding the controls being implemented by the Society to mitigate the extra risks associated with commercial lending, especially in the area of Internal Audit and the Commercial Lending Function".³²

12.44 In the course of his evidence during the SPC 7 Inquiry hearings, Dr Walsh, chairman of INBS, confirmed that he handed over INBS's response dated 1 February 2005 to the Financial Regulator at the end of the meeting.³³

Letter from Michael Walsh, INBS, to Liam O'Reilly, Chief Executive of IFSRA, dated 1 February 2005³⁴

12.45 This was a lengthy letter that sought to address the concerns raised by the Financial Regulator in the letter of 9 December 2004. A number of issues were addressed but for the purposes of this Findings Report only the concerns relating to commercial lending, corporate governance and credit risk are referred to.

12.46 In response to the "*High Level Concerns*" of the Financial Regulator in relation to corporate governance, the letter stated that:

"The Society has not ignored the FSR's request to strengthen the resources at senior/executive management level. On the contrary the Society is always interested in improving the quality of its staff; however we have found it difficult to recruit senior executives as the perception in the recruitment market is that

³¹ Draft Record of meeting between the Financial Regulator and INBS, dated 1 February 2005, page 1 and 2 (Doc ID: AD-0.7.120.133899).

³² Draft Record of meeting between the Financial Regulator and INBS, dated 1 February 2005, page 2 (Doc ID: AD-0.7.120.133899).

³³ Transcript SPC 7 Inquiry Hearing, dated 18 July 2019, page 128 (Doc ID: RDU_SPC7FT_D5-000000001).

³⁴ Letter from Michael Walsh, INBS, to Liam O'Reilly, Chief Executive, IFSRA, dated 1 February 2005 (Doc ID: 0.7.120.131433).

the Society will soon convert to a company and come under new ownership. This has made it difficult to interest suitable candidates in senior/executive management level positions with the Society".³⁵

12.47 The letter went on to inform the Financial Regulator of the appointment of a financial controller who had been engaged in order to allow INBS's finance director undertake other management tasks. Three other recent appointments were also notified to the Financial Regulator.

In relation to succession planning, Mr Purcell and Mr McCollum were named as potential managing directors and the letter indicated that it was hoped that the successful candidate for the advertised head of commercial lending position might also be a possible candidate.

The letter said that Mr Killian McMahon would be appointed as internal auditor and management would ensure that he was provided with the appropriate support and mentoring from KPMG. The letter stated:

"The Board is of the view that the proposed approach will achieve the required results at an earlier date and there would be more certainty than the alternative of engaging external consultants [to] manage and run the internal audit function".³⁶

12.48 Under the heading "*Commercial Lending*", the letter stated:

"Business Plan and Strategy – Lending

The use of the expression "commercial lending" is misleading in the context of the Society's lending. The principal focus of the Society's business is on the provision of finance for housing that includes home loans, residential investment property and housing development. In aggregate, housing related lending accounts for two thirds of our loan book. The balance of our lending is focused on leisure (hotels), retail and offices.

Our strategy is clear and focused particularly since the enactment of the Building Societies Act, 1989. We anticipated the increased level of competition and the consequent pressure on margins. We decided to diversify into non-

³⁵ Letter from Michael Walsh, INBS, to Liam O'Reilly, Chief Executive, IFSRA, dated 1 February 2005, page 1 (Doc ID: 0.7.120.131433).

³⁶ Letter from Michael Walsh, INBS, to Liam O'Reilly, Chief Executive, IFSRA, dated 1 February 2005, page 3 (Doc ID: 0.7.120.131433).

home lending particularly in the housing development market where we would obtain better margins and this we have done in a gradual and focused manner. The success of our strategy is evident from our results and we have built up a very strong business going forward. Although we are active in the highly competitive home loans market, we do not have the resources to pursue market share. We operate in a niche market with high net worth customers who have a proven record of success. Alongside this strategy we have avoided retail banking and exited from areas such as life and pensions and ATM services. The Board feels that the objective of this strategy has been highly successful as evidenced by the strength of our balance sheet and our Accounts for the current year.

We have built our lending on customer loyalty and relationships developed over time. A substantial part of our lending is repeat business with high net worth individuals. The Society seeks to exploit its built up experience in its chosen markets and focuses on identifying opportunities where there is value in what is proposed at the outset. The combination of repeat business with successful clients and value led opportunities has the effect of reducing the risks in our lending compared with attempting to increase market share by lending to the broader market.

The Society prioritises its home loans business. No one meeting the appropriate credit criteria has ever been rejected for a home loan. However, even though our rates are on a par with most lenders we find it difficult to generate the volumes we would like because of intense competition and the share of the market sourced by brokers who have preferred arrangements with our main competitors. The Society must utilise the funds available to it in other areas of the lending market.

...

Systems to effectively monitor, manage and control lending risk.

The Society's lending risk is controlled in the first instance by careful underwriting of new lending in line with its lending strategy. All non home loan applications are dealt with by the Credit Committee. Loans under €635 K can be approved or declined by the Committee. Loans over €635 K are either declined by the committee or recommended to the Board for final approval. Once a loan has been advanced it is monitored through regular contact

between the commercial lenders and the borrower as well as an ongoing process of credit review of large and material exposures.

In October 2004 the Society set up a dedicated Commercial Lending Administration Section to enhance the formal control of lending by regular compiling of information and reporting on large exposures including fee sharing arrangements.

This section is managed by Brian Fitzgibbon with Frank Casey carrying out file reviews and checking the large exposures return. There are also a number of support staff in this section.

The Society plans to enhance commercial lending administration in the light of KPMG's recommendations and the FSR's requirements to review and assess the risk of the entire commercial loan book.

The enhancement of commercial lending administration will involve.

- Making available whatever resources are necessary to carry out comprehensive and up to date reporting on the entire loan book on a formalised and regular basis.*
- Regular visits to large projects by suitably qualified personnel. Maintaining and documenting the existing constant personal contact with significant borrowers, including a formal assessment of the improvement or deterioration in the credit.*
- Supplying the Board with quarterly reports that will monitor and assess the risks on large exposures, profit sharing arrangements, joint venture development arrangements and restructuring and moratorium arrangements.*
- The Society will review, with the support of KPMG, the adequacy of our management information systems in relation to all aspects of the Society's lending activities.*

In addition to the above the Board will carry out a high level review of the Society's commercial lending.

This review will set out the Board's views on

- (1) *The risk profile of the existing commercial loan book.*
- (2) *The systems and procedures to review, monitor and report on lending.*
- (3) *The Board's appetite for risk i.e. the type of lending and attendant risk profile the Society plans to take on.*

This review will commence immediately and is expected to be concluded by 31 March 2005".³⁷

12.49 The letter went on to address some specific ventures entered into by INBS and it concluded:

"In Summary, The Board is actively addressing all the matters raised in your letters. However the Board is satisfied that the Society is run in a professional manner as evidenced by the consistent and strong performance with an unbroken record of increased profitability over thirty years. During that period we have annually increased staff numbers, had no redundancy programmes or closed branches. The Society has built up an exceptionally strong balance sheet with profits before tax for 2004 in excess of €135m and reserves and provisions of over €800m with the return on assets of 1.86% for the year".³⁸

12.50 In his evidence to the Inquiry, Dr O'Reilly said that his general reaction to the letter was that there were no concrete responses to the concerns raised.³⁹

Letter from Liam O'Reilly, Chief Executive of IFSRA to Michael Walsh, Chairman of INBS dated 22 March 2005⁴⁰

12.51 This letter was written in response to the letter outlined above dated 1 February 2005. The Financial Regulator noted the Board's commitment to addressing all the matters raised by it and further noted INBS's track record in terms of business performance and profitability. The letter went on, as follows:

"However, as advised at our meeting on 1 February 2005, the Financial Regulator's primary concern is that the control environment within the Society

³⁷ Letter from Michael Walsh, INBS, to Liam O'Reilly, Chief Executive, IFSRA, dated 1 February 2005, pages 3 to 6 (Doc ID: 0.7.120.131433).

³⁸ Letter from Michael Walsh, INBS, to Liam O'Reilly, Chief Executive, IFSRA, dated 1 February 2005, page 11 (Doc ID: 0.7.120.131433).

³⁹ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 51 line 16 (Doc ID: RDU_SPC7FT_D6-000000001).

⁴⁰ Letter from Liam O'Reilly, Chief Executive, IFSRA, to Michael Walsh, Chairman, INBS, dated 22 March 2005 (Doc ID: 0.7.120.20126).

has not kept pace with the significant change in the scale and nature of the Society's activities.

With regard to the specific responses contained in your letter, I would make the following comments:

(i) Corporate Governance

I note your comments in relation to certain management appointments over the past number of years and the difficulties experienced by the Society in recruiting senior personnel. However, the Financial Regulator continues to have concerns about the concentration of responsibilities and the resultant over-dependence on the Managing Director. The Financial Regulator considers it appropriate that the Society strengthen the executive management team and is strongly of the view that this be achieved by the appointment of an additional executive director.

The Financial Regulator notes the remarks by the Society about difficulties in recruiting executives of sufficient calibre who would also have executive director potential. This should not detract from an early recruitment effort; however, contingency arrangements should be made to recruit a non-executive director to provide for the situation where the search the desired executive proves fruitless

I note that the Society has commenced a process to recruit a Head of Commercial Lending and this is welcomed. This process should be expedited as a matter of priority. It may well be the case that this individual would be qualified to fulfil the additional executive director position.

(ii) Internal Audit Function

In the letter of 9 December, the Financial Regulator required the recruitment of a senior person with appropriate expertise and experience to manage the internal audit function. This reflected our concern that the Society had a small executive team which required the support of a strong internal audit function. The report of KPMG's review of the Society's internal audit function has also raised concerns. While we note the measures being proposed, the Financial Regulator's concerns have not been alleviated. Accordingly the Financial Regulator requires:

- *The Audit Committee to clearly demonstrate how it can be satisfied that, in light of the serious concerns raised, that its proposals are sufficient to address these concerns. Specifically, I would be obliged if you would submit the detailed Audit Plan covering the next year, as approved by the Audit Committee, outlining the areas of audit work where the Internal Audit Function will require assistance from external sources and in what form this assistance will be received; this is to ensure that internal audit is adequately resourced for the time being.*
- *The Audit Committee to provide an evaluation of who will provide expert assistance and in what risk areas; in this regard, what administrative and supervisory arrangements are in place to ensure the professional development and expertise of the current internal auditor and to the level required for a properly functioning internal audit department.*

(iii) Commercial Lending

The Financial Regulator remains concerned that the internal control environment of the Society has not kept pace with the changing nature of its business and activities. In this regard, I note you will submit a detailed consideration by your Board of these matters by 31 March 2005. The Financial Regulator expects that your report will incorporate all of the concerns raised in my letter of the 9 December 2004⁴¹.

12.52 When questioned by the Inquiry, Dr O'Reilly was unable to explain why the important issue of the Profit Share Agreements that had been raised in the letter of 6 December 2004 and at the meeting of 1 February 2005 had not been addressed in this letter.⁴²

Letter from Michael Walsh, Chairman of INBS, to Liam O'Reilly, Chief Executive of IFSRA, dated 31 March 2005⁴³

12.53 This letter was a further response to Dr O'Reilly's letter of 9 December 2005. The subject matter was stated to be "*Review of commercial lending*". The letter stated:

⁴¹ Letter from Liam O'Reilly, Chief Executive, IFSRA to Michael Walsh, Chairman, INBS, dated 22 March 2005, pages 1 to 3 (Doc ID: 0.7.120.20126).

⁴² Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 57 line 19 (Doc ID: RDU_SPC7FT_D6-000000001).

⁴³ Letter from Michael Walsh, Chairman, INBS, to Mr Liam O'Reilly, Chief Executive, IFSRA, dated 31 March 2005 (Doc ID: 0.7.120.10935).

"I refer to my letter of 1 February in response to yours of 9 December. In the letter dated 1 February the Society responded to the issues raised in your letter of 9 December and indicated the actions the Society has taken and plans to take to address the concerns raised. Since then the Board of the Society has carried out a high level review of our commercial lending and the board's views and lending strategy are set out below.

Risk profile of the book

The Board reviewed the risk profile of the Society's commercial lending book. A summary of the Society's lending is set out in the table below.

Summary of the Loan Book at 31 December 2004

	Total			Provisions	Total before bad debt provisions	Ireland			UK	
	No	€m	%	€m		No	€m	%	€m	%
<i>Home loans (Incl. RIP's)</i>	24,899	2,102	38%	-21	2,123	24,544	2,010	56%	113	5%
<i>Housing Development</i>	320	1,632	29%	-42	1,674	193	829	23%	845	40%
<i>Retail, Leisure, Other</i>	1,415	1,450	26%	-40	1,490	1,146	548	15%	942	45%
<i>Offices</i>	54	415	7%	-12	427	30	211	6%	216	10%
	26,688	5,599	100%	-115	5,714	25,913	3,598	100%	2,116	100%
					100%		63%		37%	
									Stg€1,474	

In addition to traditional homeloans the Society has been advancing money for residential investment property, housing development and other commercial property purposes for the past 35 years. In the past decade greater emphasis has been placed on residential investment property, housing development and other commercial property lending where the product is less commoditised. In line with this growth the Society has developed its lending expertise and

achieved outstanding results with very low loan losses. Where we have had adverse experiences we have carried out successful workouts. Our pre-tax profits of €135m in 2004 which (excluding exceptional items) was a 35% increase on the 2003 results is an indication of the underlying strength of the Society's commercial lending programme and the repetitive business from long term customer relationships.

The Board's view is that its commercial loan book has an appropriate risk profile having regard to the Society's long experience and expertise, its low loan losses and the quality our current book.

Systems and procedures to review, monitor and report on lending

KPMG's review of the Society's commercial lending issued in October 2004, made a number of recommendations to improve systems and procedures. The Board of the Society is fully committed to implementing these recommendations and has made substantial progress to date.

As set out in the letter of 1 February we are in the process of enhancing our commercial lending administration function so as to continually improve the control environment within the Society. The Board will continue to carry out quarterly reviews of our major loan exposures and our commercial lending generally. In addition the Board will engage KPMG to commence work in May 2005 to examine and advise on the continuing improvement of our management information systems with regard to the control of commercial lending.

The Society's lending strategy and appetite for risk

The Society's priority is to maintain its strong customer base built up over the years by continuing to give our borrowers a good service appropriate to the value of their business to the Society. The Society's current lending strategy, which will be subject to regular review, is to seek to maintain 30% of its lending as traditional home loans and in relation to the balance of our lending we will seek to limit our non housing related lending to on third of our overall lending.

The Society views the UK and Ireland as a single market where the allocation of loans will depend on opportunities that arise for safe profitable lending. However within the overall objective of maintaining a secure and simple

structure we will seek to maintain our UK lending at levels consistent with our sterling loans and deposits.

***In summary:** The Board is satisfied with the commercial lending book and the Society's lending strategy. The Society has a tried and trusted business model which is based on maintaining relationships and repeat business with valued customers. However the Society recognises the importance of continually improving the control of lending through enhanced information and reporting systems and we will with the assistance of KPMG continually improve our systems".*

Letter from Dr Michael Walsh, Chairman of INBS, to Dr Liam O'Reilly, Chief Executive of IFSRA, dated 8 April 2005⁴⁴

12.54 This letter was the response from INBS to the Financial Regulator's letter of 22 March 2005 outlined above. It confirmed that INBS would expedite the process of recruiting a head of commercial lending with the intention of employing a person of sufficient calibre to be appointed as an additional executive director. It also confirmed that INBS would seek a suitable person to act as a non-executive director before the end of the year if the search for an executive with director potential proved fruitless.

12.55 The letter stated that INBS intended to engage specialist service providers to assist the internal auditor in audits of IT, treasury, commercial lending and commercial lending administration. In relation to the points made by the Financial Regulator under the heading "*Commercial Lending*", the letter stated: "*My letter of 31 March last addresses the issues raised under this heading*".⁴⁵

Letter from Liam O'Reilly, Chief Executive of IFSRA to Michael Walsh, Chairman of INBS, dated 21 April 2005⁴⁶

12.56 This letter was a response to the letters of 31 March 2005 and 8 April 2005, which were in turn responding to the letter from the Financial Regulator dated 22 March 2005. The Financial Regulator welcomed INBS's commitment in respect of further recruitment at

⁴⁴ Letter from Michael Walsh, Chairman, INBS, to Dr Liam O'Reilly, Chief Executive, IFSRA, dated 8 April 2005 (Doc ID: 0.7.120.136261).

⁴⁵ Letter from Michael Walsh, Chairman, INBS, to Dr Liam O'Reilly, Chief Executive, IFSRA, dated 8 April 2005, page 2 (Doc ID: 0.7.120.136261).

⁴⁶ Letter from Liam O'Reilly, Chief Executive, IFSRA, to Michael Walsh, Chairman, INBS, dated 21 April 2005 (Doc ID: 0.7.120.50619).

Board level and stated: *"Given the importance of this matter, I would ask you to update me on the position by end-June 2005"*.

The letter also noted the proposal to engage specialist services to assist the internal auditor in the audit of IT, treasury and commercial lending and that a revised 2005 audit plan would be submitted by the end of the month.

12.57 Under the heading *"Commercial Lending"*, the letter stated:

"I note the Society's lending strategy as outlined in your letter of the 31 March 2005, and in particular, your board's assurance that it is satisfied with this strategy. I further note that your board is satisfied with the nature and risk profile of the commercial loan book.

The proposal to engage KPMG to examine and advise on improvement of the Society's management information systems with regard to the control of commercial lending is welcomed. The successful completion of this process will facilitate the monitoring of the loan book and enable the Board to form robust assessments in relation to the risk management and control.

I would be obliged if you would provide the Financial Regulator with a status report on the progress in implementing the recommendations of the 2004 KPMG report on commercial lending by end June 2005".

Letter from Michael Walsh, Chairman of INBS, to Liam O'Reilly, Chief Executive of IFSRA, dated 29 June 2005⁴⁷

12.58 This letter informed the Financial Regulator that INBS had not succeeded in its effort to recruit a head of commercial lending. It also said that it was in the process of checking out a suitable candidate for appointment as a non-executive director and that it would update the Financial Regulator the following month. It enclosed a status report on the progress in implementing the recommendations of the 2004 KPMG Commercial Credit Review.

12.59 The 2004 KPMG Commercial Credit Review made a total of 14 recommendations. This Findings Report looks at the following eight recommendations that are relevant to the SPC's under consideration:

⁴⁷ Letter from Michael Walsh, Chairman, INBS, to Liam O'Reilly, Chief Executive, IFSRA, dated 29 June 2005 (Doc ID: 0.7.120.17067).

Item No.	Recommendation	Page Ref. in KPMG Report	Progress	Status
1	Management may wish to consider preparing and circulating a report for senior management outlining the geographic split of the portfolio on a more timely basis e.g. monthly/quarterly basis.	28	A quarterly report on the geographic split is now prepared	Implemented
2	We recommend that management obtain for significant loans more current valuations of the security held.	36	We are in the process of obtaining current valuations for the Top 100 large exposures	Work In Progress
3	Management may wish to consider preparing a report on individual loans analysing the commercial return being earned over the life of the loan which reflects margins and arrangement fees.	50	Net interest margin analysis on the total book now forms part of the monthly management accounts. The next stage is an account by account analysis of deferred fees amortisation which forms part of the IAS implementation project. This will be completed later in the year.	Work in progress.
4	
5	KPMG recommended that credit reviews performed by Frank Casey should be reported to the credit committee.	58	Completed credit reviews are now submitted to the credit committee	Work in progress
6	KPMG included the following in the 31 December 2003 management letter: It is recommended that the Credit Committee or Board of Directors approve all amendments to facilities in excess of individual credit authorities. In addition, all amendments to original facility agreements should result in a new facility	62	A monthly report on term extensions with explanations for the extensions is submitted to the Board and at the Boards request only accounts in excess of €1m are detailed. All amendments to accounts are made with the agreement of the customer and an 'amendment letter' is sent to the customer	Implemented

	<p>agreement that should be signed by all parties.</p> <p>The Society should maintain an exception report that details all accounts that have been amended and highlights the nature of the amendment which should be highlighted to the credit committee.</p>		<p>outlining the amendment.</p>	
7	<p>KPMG included the following in the 31 December 2003 management letter:</p> <p>We recommend that the Society should formalise its processes pertaining to the granting and ongoing monitoring of commercial property loans and in particular those loans. These procedures may include:</p> <ul style="list-style-type: none"> • Progress reports on all underlying commercial property developments • Reports the credit status of the borrower • Information pertaining to relevant macro and market developments • Confirmation from legal advisors whenever a change of title occurs, • Submission and review of quarterly status report to the Board on all major developments <p>Management may wish to consider further the liquidity risk that could arise due to a downturn in the property sector and the associated problems of delayed cash flows in order to repay liabilities as they fall due. This may be done through stress testing techniques.</p>	64	<p>Progress reports on all facilities within the top thirty loan exposures are updated and reported to the credit review officer on a timely basis.</p> <p>Assessments of the credit status of the Borrower are made from previous dealings and through the Society's wide range of contacts.</p> <p>The Society is close to market developments and reports are made to the Board on markets such as the UK and London property.</p> <p>Quarterly status reports have been and will continue to be submitted to the Board on all major commercial property developments.</p>	Implemented
8	
9	

10	Management should ensure a more detailed approximation of the fee share arrangement is documented and maintained on the loan file and should be updated on a regular basis (e.g. quarterly) following discussions with the borrower.	83	All fee sharing arrangements have been documented and will be updated on a quarterly basis.	Work In Progress
11	Management should keep an up to date central database of level of personal guarantees as well as evidence of guarantees in individual files.	95	A database has been established for personal guarantees. At this stage this database consists of guarantees for the top thirty exposures. It is planned to populate the database with personal guarantees for the remainder of the portfolio.	Work In Progress.
12	
13	
14	

12.60 From this letter onwards, the Financial Regulator Correspondence concentrated on requiring compliance with internal audits and commercial lending reviews conducted in INBS during the Review Period. The concerns raised by the Financial Regulator in the foregoing correspondence dating from December 2003, were not again addressed by either the Financial Regulator or by INBS. In the course of his evidence to the Inquiry in the SPC 7 module, Dr O'Reilly explained that after Dr Walsh suggested that they would implement the specific recommendations of the Financial Regulator, the Financial Regulator accepted that and did not draw attention to specific concerns, such as Profit Share Loans after that assurance had been given.⁴⁸

12.61 The following correspondence was referred to in the context of the individual SPCs in the relevant chapters of this Findings Report, but it is set out here to offer a chronological overview of the interaction between INBS and the Financial Regulator.

⁴⁸ Transcript SPC 7 Inquiry Hearing, dated 19 July 2019, page 59 line 25 (Doc ID: RDU_SPC7FT_D6-000000001).

Letter from Andrew Guiney⁴⁹, Banking Supervision Department of IFSRA, to Stan Purcell, Director and Secretary of INBS, dated 14 July 2005⁵⁰

12.62 This letter was a response to the Chairman's letter of 29 June 2005. It stated that the Financial Regulator required further clarification with respect to the implementation of the recommendations in the 2004 KPMG Commercial Credit Review. It identified a number of items (six of these related to specific SPCs) that required follow up, as follows⁵¹:

"Item 2

- *Please outline the progress been made to date with respect to obtaining current valuations for the top 100 exposures (including any adverse findings).*

Item 3

- *It would appear that KPMG recommended a "report" on individual loans, the Society is only preparing such a report on a portfolio basis, please advise within what timeframe does the Society expect to have access to the individual loans report i.e. which will analyse inter alia the commercial return being earned over the life of the loan, reflecting both margins and arrangement fees?*

Item 6

- *Does the Credit Committee approve all amendments to facilities in excess of individual credit authorities (i.e. in excess of the individual limit and up to €1m, as it is noted that the Board approves amendments in excess of €1m)?*
- *Does the "amendment letter" sent by the Society to customers outlining amendment(s) to the original facility require the customer's written agreement to the amendment? If not, has the Society received legal*

⁴⁹ Mr Guiney was employed in the banking supervision department in the Financial Regulator throughout the Review Period.

⁵⁰ Letter from Andrew Guiney, Banking Supervision Department, IFSRA, to Stan Purcell, Director and Secretary, INBS, dated 14 July 2005 (Doc ID: 0.7.120.131148).

⁵¹ Letter from Andrew Guiney, Banking Supervision Department, IFSRA, to Stan Purcell, Director and Secretary, INBS, dated 14 July 2005, pages 2 and 3 (Doc ID: 0.7.120.131148).

advice whether the notification is in a form sufficient to presume the customer's agreement?

Item 7

- *Why does the Society not keep progress reports on all underlying commercial property developments, (as opposed to only the top thirty loan exposures), as recommended by KPMG?*
- *Are reports compiled with respect to the credit status of the borrower as recommended by KPMG?*
- *Can the Society confirm that the quarterly status reports submitted to the Board of the Society on all major commercial property developments include confirmation from legal advisors whenever a change in title occurs?*
- *How does the Society propose to consider the liquidity risk that could arise due to a downturn in the property sector and the associated problems this would have?*

...

Item 11

- *Within what timeframe does the Society expect the personal guarantee database to be rolled out to the remainder of the portfolio?*

...

Item 13

- *Please confirm that the specific actions as outlined by KPMG have been implemented".*

Letter from Liam O'Reilly, Chief Executive of IFSRA, to Michael Walsh Chairman of INBS, dated 27 July 2005⁵²

12.63 This letter was a response to Dr Walsh's letter of 1 February 2005. It stated:

⁵² Letter from Liam O'Reilly, Chief Executive, IFSRA, to Michael Walsh, Chairman, INBS, dated 27 July 2005 (Doc ID: 0.7.120.448902).

"I note the position in relation to recruitment of a Head of Lending and the additional measures the Society is taking in endeavouring to address this matter. I would again emphasise the importance attaching to such a key position and ask you to keep me advised of developments.

I have also noted your comment in relation to a non-executive director and look forward to hearing from you next month".

12.64 Dr O'Reilly concluded by saying that the implementation of the recommendations in the 2004 KPMG Commercial Credit Review had been referred to the banking supervision department.

Letter from Stan Purcell, Director and Secretary of INBS, to Andrew Guiney, Banking Supervision Department of IFSRA, dated 29 July 2005⁵³

12.65 In this letter Mr Purcell, on behalf of the Board of INBS, outlined the responses to the queries raised by Mr Guiney in his letter of 14 July 2005. In relation to the items of relevance to this report, Mr Purcell set out the position as follows:

"Item 2 – Query

- *Please outline the progress been made to date with respect to obtaining current valuations for the top 100 exposures (including any adverse findings).*

Response

Current valuations have been requested for the top 100 exposures and we are working on the process of getting these valuations in at present. No adverse findings have come to light at this stage.

Item 3 – Query

- *It would appear that KPMG recommended a "report" on individual loans, the Society is only preparing such a report on a portfolio basis, please advise within what timeframe does the Society expect to have access to the individual loans report i.e. which will analyse inter alia the*

⁵³ Letter from Stan Purcell, Director and Secretary, INBS, to Andrew Guiney, Banking Supervision Department, IFSRA, dated 29 July 2005 (Doc ID: 0.7.120.432634).

commercial return being earned over the life of the loan, reflecting both margins and arrangement fees?

Response

We now analyse gross income by loan. We also analyse arrangement fees by loan. The next step in the project is to derive an acceptable allocation of cost of funds and combine all three to get the effective return. We hope to start work on this phase next year.

Item 6 – Query

- *Does the Credit Committee approve all amendments to facilities in excess of individual credit authorities (i.e. in excess of the individual limit and up to €1m, as it is noted that the Board approves amendments in excess of €1m)?*
- *Does the “amendment letter” sent by the Society to customers outlining amendment(s) to the original facility require the customer’s written agreement to the amendment? If not, has the Society received legal advice whether the notification is in a form sufficient to presume the customer’s agreement?*

Item 6 – Response

Two members of the credit committee approve amendments. A report which sets out amendments to accounts with balances greater than €1mil is submitted on a monthly basis to the Board. Written agreement is not sought from the customer; the Society will obtain legal advice on this matter.

Item 7 – Query

- *Why does the Society not keep progress reports on all underlying commercial property developments (as opposed to only the top thirty loan exposures,) as recommended by KPMG?*
- *Are reports compiled with respect to the credit status of the borrower as recommended by KPMG?*
- *Can the Society confirm that the quarterly status reports submitted to the Board of the Society on all major commercial property developments*

include confirmation from legal advisors whenever a change in title occurs?

- *How does the Society propose to consider the liquidity risk that could arise due to a downturn in the property sector and the associated problems this would have?*

Response

- *The Society decided to initially report on the Top 30 Loan Exposures as the Top 30 account for about half of Commercial Lending.*
- *Any material change in credit status would be reported.*
- *Changes in title would be included in the report.*
- *As indicated in the management letter the Society plans to stress test its commercial loan book on a half yearly basis.*

...

Item 11 – Query

- *Within what timeframe does the Society expect the personal guarantee database to be rolled out to the remainder of the portfolio?*

Response

We hope to have this work completed towards the end of next year”.

Email from Stan Purcell, Director and Secretary of INBS, to Lisa O’Rourke⁵⁴ of the Financial Regulator, dated 15 August 2005⁵⁵

12.66 This email was an update from a meeting that had been held with the banking supervision department the previous week. The Inquiry has no record of what was discussed at that meeting. Included in this email was a statement that: *“Frank Casey has extended his credit beyond the Top 50 Exposure to 27 out of the next 50 Large Exposures”*. Mr Purcell also stated:

⁵⁴ Ms O’Rourke was employed in the banking supervision department of the Financial Regulator throughout the Review Period.

⁵⁵ Email from Stan Purcell, Director and Secretary, INBS, to Lisa O’Rourke, Financial Regulator, dated 15 August 2005 (Doc ID: 0.7.120.137585).

“In order to strengthen Commercial Lending Administration the Society has assigned a senior employee, Ms. Melody Van Der Berg, on a full-time basis to take responsibility for commercial lending administration. In addition we are recruiting two accountants who will work in commercial lending and commercial lending administration”.

Letter from Joyce Sharkey, Banking Supervision Department of Financial Regulator to Ita Rogers, Compliance Manager of INBS, dated 20 October 2005⁵⁶

12.67 This letter stated:

“I refer to the finalised KPMG management letter for the year ended 31 December 2004, received by the Financial Regulator on the 21 June 2005. I should be obliged to receive a status report on all recommendations contained in the report”.

Letter from Con Horan, Head of Banking Supervision of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 3 November 2005⁵⁷

12.68 This letter related to *“Impairment Provisions for Credit Exposures – Notification to the Society and every Officer thereof of Proposed Amendments and Additions to Conditions of the Authorisation of the Society”*. The first part of this document set out qualitative requirements on the nature of the credit risk management policies and procedures which the Financial Regulator expected to see in all credit institutions. The second part set out the Financial Regulator's perspective on impairment provisioning setting out quantitative criteria and reporting guidelines.

Email from Joyce Sharkey, Banking Supervision Department of the Financial Regulator, to Ita Rogers, Compliance Manager of INBS, dated 17 November 2005 and responding email from Ita Rogers to Joyce Sharkey, dated 17 November 2005⁵⁸

⁵⁶ Letter from Joyce Sharkey, Banking Supervision Department, Financial Regulator, to Ita Rogers, Compliance Manager, INBS, dated 20 October 2005 (Doc ID: 0.7.120.140157).

⁵⁷ Letter from Con Horan, Head of Banking Supervision, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 3 November 2005 (Doc ID: 0.7.120.449383).

⁵⁸ Email from Joyce Sharkey, Banking Supervision Department, Financial Regulator, to Ita Rogers, Compliance Manager, INBS, and responding email from Ita Rogers to Joyce Sharkey, dated 17 November 2005 (Doc ID: 0.7.120.129553).

12.69 This email was a reminder from the banking supervision department requesting the status report on the recommendations contained in the 2004 KPMG Management Letter. Ms Rogers responded that it would be forwarded later that day or the next day.

Email from Ita Rogers, Compliance Manager of INBS, to Lisa O'Rourke of the Financial Regulator, bcc'd to Stan Purcell, dated 21 November 2005⁵⁹

12.70 This email enclosed the update on the 2004 KPMG Management Letter.⁶⁰ There were a total of 12 issues which had been raised by the 2004 KPMG Management Letter that were dealt with in this update. Three of these are relevant to the SPCs under consideration in this Findings Report. In respect of these three items the update stated:

Section	KPMG Recommendation	Management Response	Due Date	Status
MGT Letter 2004 Commercial & residential Lending 1. Stress testing	<p>1. We recommend the loan portfolio be stress tested regularly using a number of assumptions which are workable, realistic and timely and that the results of this analysis be reported to the board The stress testing may be performed to predict how much is the loss if a particular scenario occurs or what event could occur that would cause the Society to lose, for example. €30m in equity</p> <p>2. Examples of the type of factors to be applied may</p>	<p>In all new applications, all relevant macro economic factors are considered as part of the normal credit assessment of proposed facilities</p> <p>Consideration is given to up to date professional commentary, supplied by Central Bank economic forecast, ESRI and from the top property research publications</p> <p>There is always a level of comfort in</p>	January 2006	<p>All relevant macro economic factors continue to be taken into account when assessing proposed facilities.</p> <p>Residential mortgages are stressed by interest rate at drawdown. Stress testing of the book has not taken place.</p> <p>Extension to moratoria accounts, arrears and non-performing data are continuously monitored</p>

⁵⁹ Email from Ita Rogers, Compliance Manager, INBS, to Lisa O'Rourke, Financial Regulator, BCC'd to Stan Purcell, dated 21 November 2005 (Doc ID: 0.7.120.266089).

⁶⁰ KPMG Management Letter 2004, Update on Recommendations, dated 21 November 2005 (Doc ID: 0.7.120.266089-000001).

	<p>include the following.</p> <ol style="list-style-type: none"> 3. extension of all moratoria accounts by specified periods 4. reduction in customer/deposit base by specified amounts 5. increase in arrears on non-moratoria loans 6. reducing security value to a fire sale price 	<p>the projected profits. Marginal cases are declined as a possible downturn in the market could result in potential loss for the Society.</p> <p>Extensions on term and moratoria are only allowed when the Society is satisfied as to the ongoing safety of the facility</p> <p>Going forward the commercial book will be stress tested half yearly along the lines suggested.</p>		<p>and reported to the Board on a monthly basis</p>
<p>MGT Letter 2004</p> <p>Commercial & residential Lending</p> <p>2. Commercial Credit Review</p>	<p>We acknowledge that the Society has made significant progress in its reporting of the commercial credit portfolio to the Board. However, management should now consider the merits of formally reporting the results of the credit reviews performed by the Credit Review Officer to the credit committee on a</p>	<p>Credit Reviews, to specifically include the Credit Risk grading on individual accounts, will be submitted to the Credit Committee on a quarterly basis.</p> <p>Issues arising will be discussed</p>	<p>September 2005</p>	<p>First report was submitted to the Credit Committee in October 2005</p> <p>The Credit Review Officer will monitor the results of action steps and ensure that the recommendations have</p>

	<p>quarterly basis.</p> <p>In addition, follow up reviews should be scheduled within one month of the formal reporting of these reviews to ensure any recommendations/actions have been implemented.</p>	<p>and appropriate action steps implemented. The Credit Review officer will monitor the results of action steps.</p>		<p>been implemented.</p>
<p>MGT Letter 2004</p> <p>Commercial & residential Lending</p> <p>3. Progress reports on commercial loans</p>	<p>Given the growth in the Society's commercial lending, management should consider implementing a more structured approach to the ongoing monitoring of commercial loans</p> <p>The current report produced by the Society's Credit Review Officer should be tailored to include a number of key performance indicators. which for example may include:</p> <ul style="list-style-type: none"> • expected time to completion and continuous reporting of progress against predetermined milestones • number of planning applications re-submitted • average cost of land being financed • budgeted fee share income to be earned on completion • details of any 	<p>A credit review database has been developed to formally record credit reviews on commercial loans. This went live in December 2004.</p> <p>The Credit review database is continually updated as loans are reviewed and all relevant information is recorded on the system and also in hard copy on credit review files</p> <p>The database will be enhanced further to include performance indicators such as those outlined.</p>	<p>June 2005</p>	<p>A more structured approach to the ongoing monitoring of Commercial Loans has been implemented</p> <p>The Credit Review Officer will ensure that the database is further enhanced to include performance indicators such as those outlined by year end.</p>

	deviations expected from original loan agreement terms <ul style="list-style-type: none"> • reports on site inspections with adverse findings, notes of site visits by INBS staff and minuting of INBS discussions with borrowers • ... 			
--	---	--	--	--

Letter from Joyce Sharkey, Banking Supervision Department of the Financial Regulator, to Ita Rogers, Compliance Manager of INBS, dated 2 December 2005⁶¹

12.71 This letter from the banking supervision department requested further clarification on the update provided by INBS on 21 November 2005. It stated:

“Point 1: I note that stress testing of the book has not taken place. Management response states that going forward the commercial book would be stress tested half yearly along the lines suggested. Can you please confirm when this recommendation will be implemented?”

Point 2: Has the Credit Review Officer begun the process of monitoring and implementing any recommendations made by the Credit Committee following the Credit Review report?”

Point 3: I note that the Credit Review Officer will enhance the database further by year-end. Kindly confirm once this has been finalised”.

The letter concluded:

“Finally, I should be obliged if you would kindly provide an update on the status of prior year recommendations, as contained in the appendix to the 2004 Management Letter”.

⁶¹ Letter from Joyce Sharkey, Banking Supervision Department, Financial Regulator, to Ita Rogers, Compliance Manager, INBS, dated 2 December 2005 (Doc ID: 0.7.120.135173).

Letter from Ita Rogers, Compliance Manager of INBS, to Joyce Sharkey, Banking Supervision Department of IFSRA, dated 22 December 2005⁶²

12.72 This letter provided the update as requested from the banking supervision department. In respect of items relevant to the SPC's under consideration in this Findings Report, the update stated:

"1. Update: it is hoped to complete stress testing on the large exposures by end of January 2006 as indicated in the due date.

...

2. Update: The credit review officer has commenced following up on queries raised by the Credit Committee.

...

8. The management response has been implemented".

Chain of emails between Ita Rogers, Compliance Manager of INBS, and Joyce Sharkey, Banking Supervision Department of the Financial Regulator, which were forwarded to Stan Purcell, dated between 15 December 2005 and 12 January 2006⁶³

12.73 This chain of emails began with a series of questions to INBS from Joyce Sharkey requesting information in relation to how compliance was documented and monitored in INBS. There was then an email referring back to the INBS response of 22 December 2005. This email stated

"In relation to item number 1 – stress testing, I note that the management response states "Going forward the commercial book will be stress tested half yearly along the line suggested." I further note that the status update requested in December '05 states "It is hoped to complete stress testing on the large exposures by the end of January 2006 as indicated in the due date." Can you please clarify when the remainder of the commercial book (i.e. exposures outside the large exposures) will be stressed".

⁶² Letter from Ita Rogers, Compliance Manager, INBS, to Joyce Sharkey, Banking Supervision Department of IFSRA, dated 22 December 2005 (Doc ID: 0.7.120.872863).

⁶³ Chain of emails between Ita Rogers, Compliance Manager, INBS, and Joyce Sharkey, Banking Supervision Department, Financial Regulator, forwarded to Stan Purcell, Director and Secretary, INBS, dated 12 January 2006 (Doc ID: 0.7.120.266927).

12.74 Ita Rogers of INBS responded on 1 February 2006, saying that INBS had hoped to get the exercise completed in January 2006 but that it was now unlikely to be completed before March 2006.⁶⁴ This response crossed with a reminder email from Joyce Sharkey of the banking supervision department dated 3 February 2006.⁶⁵

Letter from Paul Moran, Inspection Unit, Banking Supervision Department of IFSRA, to Stan Purcell, Director and Secretary of INBS, dated 12 May 2006⁶⁶

12.75 This letter informed INBS of a forthcoming inspection commencing on 6 June 2006. It stated that the inspection would focus on a review of corporate governance, internal audit, outstanding issues raised in the 2003 and 2004 KPMG Management Letters and outstanding issues raised by Deloitte in their reviews of treasury and IT in 2005. It also proposed to examine the operation of the loan review function within commercial lending.

12.76 A schedule of information requirements⁶⁷ that was attached to this letter sought details about committees and subcommittees in operation in INBS and the minutes of these committees. It also sought a list of all reviews of commercial lending performed in 2005 and 2006, as well as minutes and board packs for all meetings for the previous 12 months.

Email from Yvonne Madden, Senior Regulator Banking Supervision Department of the Financial Regulator, to Killian McMahon, Internal Auditor of INBS, dated 5 July 2006, and response from Killian McMahon to Yvonne Madden, dated 5 July 2006⁶⁸

12.77 This was an email from the Financial Regulator requesting the status of the final 2006 Deloitte Audit Report which was to be presented to the Audit Committee on 14 June 2006. Mr McMahon responded that the report had to be first approved by the Audit Committee.

⁶⁴ Email from Ita Rogers, Compliance Manager, INBS, to Lisa O'Rourke, Financial Regulator, dated 1 February 2006 (Doc ID: 0.7.120.136293).

⁶⁵ Email from Joyce Sharkey, Banking Supervision Department, Financial Regulator, to Ita Rogers Compliance Manager, INBS, dated 3 February 2006 (Doc ID: 0.7.120.134222).

⁶⁶ Letter from Paul Moran, Inspection Unit, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 12 May 2006 (Doc ID: 0.7.120.317526-000001).

⁶⁷ Schedule of Information Requirements, attached to Doc ID: 0.7.120.317526-000001 (Doc ID: 0.7.120.317526-000002).

⁶⁸ Email from Yvonne Madden, Senior Regulator Banking Supervision Department, Financial Regulator, to Killian McMahon, Internal Auditor, INBS, dated 5 July 2006, and response from Killian McMahon to Yvonne Madden, dated 5 July 2006 (Doc ID: 0.7.120.862857).

Letter from Mary Burke Head of Banking Supervision of the Financial Regulator, to Stan Purcell Director and Secretary of INBS, dated 6 July 2006⁶⁹

12.78 This letter imposed the “Part 1 Requirements” of the regulatory document entitled “Impairment Provisions for Credit Exposures” as conditions of the authorisation of INBS.

The letter stated:

“The Financial Regulator requests that by Friday, 1 September 2006 societies:

- Confirm compliance with Part 1 of the document on “Credit Risk Management Policies and Procedures” giving assurance that requirements contained therein have been implemented and are effective; and*
- Submitted their Impairment Provisioning Policy in light of the new requirements”.*

Letter from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 31 August 2006⁷⁰

12.79 This letter arose from the final 2005 KPMG Management Letter submitted to the Financial Regulator by KPMG on 25 August 2006 and also from a review of the 2006 Deloitte Audit Report.

12.80 One of the issues identified by the 2005 KPMG Management Letter, was the plan to appoint additional personnel for the Belfast and London branches. Appendix 1 of the letter stated:

“It is our understanding that the appointment of administration staff will not fully address the business risk referred to. As recommended by KPMG, “the Society should encourage key people to share control and influence by introducing revolving roles, work shadowing and some level of cross training.” In this regard, please identify the key people referred to, and how the Society will implement this recommendation”.

⁶⁹ Letter from Mary Burke, Head of Banking Supervision, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 6 July 2006 (Doc ID: 0.7.120.135749).

⁷⁰ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 31 August 2006 (Doc ID: 0.7.120.449197).

The letter also referred to the establishment of the credit risk department and asked for details on how commercial arrangement fees would be reviewed. On the issue of stress testing, the letter stated:

*"I note that KPMG recommended that the Society stress test the commercial loan book on a bi-annual basis as part of the 2004 management letter and that the Society did not fully implement this recommendation. I note that the Society has conducted a stress test of the commercial loan book in April 2006 and that the ensuing report will be sent to the Board. Please confirm when this report was provided to the Board and provide a copy to the Financial Regulator. Furthermore, please confirm if the Society will stress test the commercial loan book on a bi-annual basis, when the next review is due to be conducted and if the resulting report will be provided to the Board?"*⁷¹

12.81 The letter stated that when a Management Letter indicated that a deadline for a recommendation was immediate, INBS should confirm the implementation date and whether this recommendation had been implemented fully. It also requested that INBS should explain why the recommendation had not been fully implemented and outline the alternative action taken.

12.82 Moving on to the 2006 Deloitte Audit Report, appendix 2 of the letter noted the priority 1 issue which was identified under the heading "Credit Committee".

*"I note that the Society will ensure that a quorum of the Credit Committee is present, in that at least [sic] three members of the Credit Committee are present at each meeting. Furthermore, I note that two members of the Commercial Lending section review and sign-off all amounts, and that any amounts exceeding €1m that are reviewed are forwarded to the Board"*⁷²

12.83 The letter noted that Deloitte had identified gaps in the quality of the information maintained on the loan files, missing loan/legal files and noted that money had been advanced without the required information retained on file. It asked if INBS had considered a retrospective review of files to ascertain the extent of the issue.⁷³

⁷¹ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 31 August 2006, page 5 (Doc ID: 0.7.120.449197).

⁷² Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 31 August 2006, page 6 (Doc ID: 0.7.120.449197).

⁷³ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 31 August 2006, page 7 (Doc ID: 0.7.120.449197).

12.84 The letter referred to an email dated 15 August 2005 in which INBS had stated that a full-time senior employee, Ms Melody van der Berg, would be assigned to commercial lending administration and two accountants recruited. The letter stated:

“Since this strengthening took place either in or prior to August 2005, please explain why Deloitte found such high priority issues that require urgent attention at a senior management or board level.

*Please demonstrate how the Society will ensure that the practice where certain individuals retain information without formally documenting it, as identified by Deloitte, has ceased”.*⁷⁴

12.85 Commercial loans reporting and management was identified as a priority 2 issue. In this regard the letter stated:

“I note that the Credit Risk function will implement all Deloitte’s recommendations and that a deadline of 31 December 2007 has been set. Please provide the Financial Regulator with the project timetable to achieve these recommendations to include key milestones, namely timeframes for the achievement of each recommendation, the steps to be taken to achieve these and their associated timelines, identify the individuals responsible and the project manager.

*In addition I refer to your email of 15 August 2005 to the Financial Regulator, where you noted that Mr Casey had extended his credit review beyond the top 50 exposures to 27 out of the next 50. In this regard please advise what Deloitte’s means by “Outside of the Top 50 clients there is no formal review or re-evaluation of the risk exposure from these loans”.*⁷⁵

12.86 The letter noted under the heading “*Validation of Loans – Supporting Documentation*”, that it was not fully clear that INBS had implemented in full Deloitte’s recommendations. It stated:

⁷⁴ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 31 August 2006, page 7 (Doc ID: 0.7.120.449197).

⁷⁵ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 31 August 2006, page 9 (Doc ID: 0.7.120.449197).

*“Please confirm that terms and conditions agreed at the Credit Committee cannot be superseded without the alterations in the conditions being re-presented to the Credit Committee”.*⁷⁶

Letter from Stan Purcell, Director and Secretary of INBS, to Mary Burke, Head of Banking Supervision of the Financial Regulator, dated 1 September 2006⁷⁷

12.87 This letter confirmed that the requirements contained in Part 1 of the *“Impairment Provisions for Credit Exposures”* had been implemented and were effective.

Letter from Stan Purcell, Director and Secretary of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 10 November 2006⁷⁸

12.88 This letter was a response to the Financial Regulator’s letter dated 31 August 2006 and it stated that INBS was hoping to recruit a senior commercial lender for its UK business.

12.89 With regard to loan information, the letter stated that a pre-populated loan pack had been introduced in June 2006. It also said that the credit risk department would, as it reviewed loans, identify gaps in the quality of the information and that information would be requested from borrowers. It further stated that INBS was not considering a retrospective review of files.

12.90 In relation to commercial lending approval, the letter stated that:

*“The Commercial Lending Application (CLA) is a standard loan proposal and contains all information required by the Board to make a decision on the loan. Supporting documentation to the loan is not submitted to the Board and is contained on the loan application file. All loans submitted to the Board and decisions related to same are minuted”.*⁷⁹

12.91 The letter stated that a schedule of all actions required in relation to Deloitte’s recommendations would be finalised by November 2006. It proposed that the top 30

⁷⁶ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 31 August 2006, page 9 (Doc ID: 0.7.120.449197).

⁷⁷ Letter from Stan Purcell, Director and Secretary, INBS, to Mary Burke, Head of Banking Supervision, Financial Regulator, dated 1 September 2006 (Doc ID: 0.7.120.136650).

⁷⁸ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 10 November 2006 (Doc ID: 0.7.120.13615).

⁷⁹ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 10 November 2006, page 5 (Doc ID: 0.7.120.13615).

exposures would be reported to the Board by November 2006, the top 50 exposures by February 2007 and the top 100 exposures by May 2007.

12.92 In relation to “*Validation of Loans – Supporting Documentation*”, the letter stated:

“No staff member is authorised to vary the conditions of a loan approved by the Board. The procedure followed is that any variation, including the term of the loan and any moratorium, must first be considered, approved and minuted by the Credit Committee and submitted to the Managing Director for approval.

...

*This recommendation was implemented in June 2006”.*⁸⁰

Letter from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Michael Fingleton, Managing Director of INBS, dated 20 November 2006⁸¹

12.93 This letter was written following an inspection of INBS conducted by the Financial Regulator between 6 and 14 June 2006. The purpose of the inspection was to conduct a review of the internal audit function, corporate governance procedures and, to a limited extent, the credit review function.

12.94 The letter set out its findings in a schedule that identified 30 medium priority findings and one finding designated as low priority.

12.95 Under the heading “*Corporate Governance*” the letter referred to the delegation of powers by the Board to the Managing Director and sought clarification as to the extent of these powers and the extent of Board oversight.

12.96 There were medium priority findings relevant to the SPCs under consideration in relation to the Credit Committee, in respect of which it was stated:

“M20 – Credit Risk Management role

1. *Bullet point 4 of page 4 of the Terms of Reference sets out the credit risk management role of the committee e.g reviewing relevant MIS reports, reviewing arrears and non-performing loans etc There is no*

⁸⁰ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 10 November 2006, page 7 (Doc ID: 0.7.120.13615).

⁸¹ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Michael Fingleton, Managing Director, INBS, dated 20 November 2006 (Doc ID: 0.7.120.519059).

evidence from a review of the minutes of the committee that it is performing this role

2. *There is no evidence from review of the minutes of the committee that it is reviewing reports produced by the Credit Review function*
3. *There is no reporting line from the Credit Committee to the Board in relation to the credit risk management role of the committee*

Recommendations

1. *The minutes of the Credit Committee should evidence that the committee is exercising its role in relation to credit risk management.*
2. *The minutes of the Credit Committee should evidence that the committee is reviewing reports produced by the Credit Review function.*
3. *The committee should formally report to the Board in relation to the exercise of the credit risk management and review role.*

M21 – Attendance at meetings

The inspectors are concerned at the following:

1. *The Managing Director, who is a member of the committee, did not attend any of the 27 meetings reviewed by the inspectors, covering the period 8 May 2005 to 11 May 2006.*
2. *Mr. Darragh Daly, Homeloans Manager, who is a member of the committee, attended only 2 of 27 Meetings.*
3. *The quorum of three members was only achieved for 2 of the 27 meetings.*
4. *For the four meetings of the committee in July 2005, only one member of the committee, Mr. John Roche, was present.*
5. *In July 2005, Mr. Tom McMenamin was listed as approving facilities on behalf of the Credit Committee, however he was not present at any of the four meetings in July 2005.*

Recommendations

1. *Membership of the Credit Committee should be reviewed to ensure that members are available to attend meetings.*
2. *Meetings should not be held in the absence of a quorum.*
3. *Only members present at the meeting of the committee should approve facilities or recommend their approval to the Board*
4. *What is the status of decisions taken in the absence of a quorum and are these decisions ratified in any way?”⁸²*

12.97 Under the heading “*Commercial Lending/Credit Review*”, the letter made a finding in relation to the application of credit grades. It stated:

“M22 – Application of Credit Grades

The inspectors noted that lenders assign sectoral classifications to exposures but do not assign credit grades. Rather credit grades are assigned as part of the loan review process The inspectors consider that credit grades should be assigned as part of the underwriting process

Recommendation

Credit grades should be assigned to exposures by lenders. The accuracy of such grades should then be reviewed as part of the loan review process”⁸³

12.98 In relation to the “*Commercial Lending Review Report*”, the letter recommended:

“The Commercial Lending Review report should include the following:

1. *A breakdown of the commercial lending book by credit grade (as approximately 83% of the book is currently graded, this breakdown will have to include an ungraded element until such time as the book is fully graded)*
2. *Details of loan reviews conducted in the quarter.*

⁸² Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Michael Fingleton, Managing Director, INBS, dated 20 November 2006, pages 11 and 12 (Doc ID: 0.7.120.519059).

⁸³ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Michael Fingleton, Managing Director, INBS, dated 20 November 2006, page 13 (Doc ID: 0.7.120.519059).

3. *In addition to the existing data detailed in the reports comparative data as at the same date in the previous year should also be provided*".⁸⁴

12.99 At Appendix 1, the letter set out the recommendations that still required implementation and requested an update. These included⁸⁵:

Area	Number of outstanding issues	Current Status
Board (Financial Regulator)	Strengthening of the Board and the appointment of an additional director	Please provide an update.
Commercial Lending (Financial Regulator)	Appointment of Head of Commercial Lending	Please provide an update
...		
Management Letters (KPMG) 2004 Half yearly stress testing of Commercial Loan book ...	When was this reported to the Board? Provide a copy of the Report to the Financial Regulator. ...
...		
Commercial Lending (KPMG)	Ten issues Item 2. Management obtain more current valuations of the security held for significant loans Item 3. Management may wish to consider preparing a report on individual loans analysing the commercial return being earned over the life of the loan which reflects margins and arrangement fees	...how many valuations have been obtained and when the Society expects to have completed the project ...Why has the Society not implemented this recommendation?

⁸⁴ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Michael Fingleton, Managing Director, INBS, dated 20 November 2006, page 13 (Doc ID: 0.7.120.519059).

⁸⁵ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Michael Fingleton, Managing Director, INBS, dated 20 November 2006, pages 20 to 25 (Doc ID: 0.7.120.519059).

	<p>Item 5. KPMG recommended that credit reviews performed by Frank Casey should be reported to the credit Committee.</p> <p>Item 6. ...In addition, all amendments to original facility agreements should result in a new facility agreement that should be signed by all parties.</p> <p>Item 7. KPMG included the following in the 31 December 2003 management letter:</p> <p>We recommend that the Society should formalise its processes pertaining to the granting and ongoing monitoring of commercial property loans. These procedures may include:</p> <ul style="list-style-type: none"> • Progress reports on all underlying commercial property developments. • Management may wish to consider further the liquidity risk that could arise due to a downturn in the property sector and the associated problems of delayed cash flows in order to repay liabilities as they fall due This may be done through stress testing techniques <p>...</p> <p>Item 10. Management should ensure a more detailed approximation of the fee share arrangement is documented and maintained on the loan file and should be updated on a regular basis (e.g. quarterly) following discussions with the borrower.</p>	<p>The Society advised that reviews are reported to the Credit Committee and the Board.</p> <p>Not to be implemented – The Society will discuss amendments with the client and send a letter confirming discussions. The Society advised that borrowers would not sign a new agreement. I note however from the Management Letter for 2005 that going forward the Society will request the borrower to sign and return the letter and this will be implemented by Sept 2006. Please clarify this matter.</p> <p>Summary of top 30 exposures provided to the Board on a quarterly basis.</p> <p>Stress testing implemented - first report to go to the Board As advised, please confirm date provided to board and provide a copy to the Financial Regulator</p> <p>...</p> <p>Reports produced by accounts are held on a separate file, not on the loan file. I note that consideration will be given to maintaining the information on the loan file. Please provide an update.</p>
--	---	--

	<p>Item 11. Management should keep an up to date central database of the level of personal guarantees as well as evidence of guarantees on individual files.</p> <p>...</p>	<p>I note that this will not be implemented. Please advise why no benefit to the Society would accrue in relation to maintaining a database of personal guarantees. Are personal guarantees relied upon?</p>
--	--	--

Letter from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 8 January 2007⁸⁶

12.100 This letter was written in respect of the 2005 KPMG Management Letter and the 2006 Deloitte Audit Report. It sought additional information in respect of some of the findings in these documents.

12.101 The letter identified, as a “*Grade 1*” issue, the business risk associated with the growth in the Belfast Branch and requested information as to the appointment of additional staff.

12.102 As a “*Grade 2*” issue, the Financial Regulator asked INBS to confirm whether KPMG was satisfied with the controls in place over the manual system of the recording of supplementary arrangement fees. It was recommended that internal audit should include in its plan for the year a review of the adequacy of the process.

12.103 The letter further sought copies of the stress test report to have been completed before the end of 2006.

12.104 This letter reiterated the Financial Regulator’s query arising from the email sent by INBS on 15 August 2005, where it was noted that Mr Frank Casey had extended his credit review beyond the top 50 exposures to 27 out of the next 50. The letter stated:

“...In this regard please advise what Deloitte’s [sic] mean by “Outside of the Top 50 clients there is no formal review or re-evaluation of the risk exposure from these loans”. Please advise why Deloitte made this comment in this regard.

⁸⁶ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 8 January 2007 (Doc ID: 0.7.120.132456).

However, I note that the Society has committed to reviewing the Top 30 exposures, with a Board Report to be provided by November 2006. Please confirm that this has been completed. Also when completed, confirm that the schedules outlined for the Top 50 exposures and Top 100 exposures have been completed and reported to the Board by February 2007 and May 2007 respectively".⁸⁷

Letter from Stan Purcell, Director and Secretary of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 19 January 2007⁸⁸

12.105 This letter was stated to be a response to the Financial Regulator's letter of 31 August 2006. It enclosed an update report as of December 2006. With regard to issues of concern to this Inquiry, under the heading "Management Letter for year ended 31 December 2005", this update stated:

Mgt Point		Mgt Response	Update	Responsibility	Status 31 Dec 2006
Grade 1 Issues					
1.1	Business Risk: Growth of Belfast Office	The Society plans to appoint additional personnel for the Belfast and London branch for administration work and to support and provide cover for the Belfast branch manager. The Society will store copies of key documents at more than one location.	The Society advertised for additional resources in the Belfast Telegraph in November 2006 and interviews are being conducted in January 2007. In addition the Belfast branch manager is in contact with recruitment agencies to identify	Belfast Branch Manager	Ongoing - the Society expects to have additional resources recruited by June 2007.

⁸⁷ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 8 January 2007, page 5 (Doc ID: 0.7.120.132456).

⁸⁸ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 19 January 2007 (Doc ID: 0.7.120.138147).

			<p>suitable candidates that could be headhunted if the interview process is not successful.</p> <p>The Society's contingency plan is to look at seconding a person from Dublin headoffice to work in Belfast should a suitable candidate not be found by June 2007.</p>		
--	--	--	---	--	--

Part 4: Status of prior year recommendation

4.1	Commercial lending: Stress testing	<p>A stress test was carried out in April 2006 and a report produced. The report will be sent to the Board.</p>	<p>A stress test was carried out in 2006 and a summary report was sent to the Board on 24 October 2006 and to the Financial Regulator on 10 November 2006. A stress test of the mortgage book was carried out in last quarter of 2006 and is due to go to the Board in February 2007.</p> <p>The Society will stress test its mortgage book on an annual basis.</p>	Credit Risk Manager	Outstanding To be fully implemented by February 2007
------------	---	---	--	---------------------	--

<p>4.2</p>	<p>Progress reports on commercial loans</p>	<p>The Society has made substantial improvements in the credit review process since the introduction of the review database in December 2004. To date, the value of facilities reviewed account for over 80% of the Society's commercial book and we expect to continue to improve the quality of our review mechanism.</p> <p>We are currently looking at software which will enhance our monitoring and reporting abilities. Additionally, steps have been taken to ensure that any material communication with or from the customer, including file reviews, site visits, engineers report on progress to date, planning issues etc are committed to file.</p> <p>We expect to make a decision on a software solution in the near future after reviewing a number of packages available.</p>	<p>A paper, together with a project plan and suggested software supplier was provided to the Board in November 2006 proposing the purchase of a new software system for credit risk monitoring and facilitating compliance with the requirements set out in Basel II.</p> <p>The Board agreed to proceed with the SAS solution.</p> <p>The Society hopes to have the new system operational by mid Q3, 2007.</p>	<p>Credit Risk Manager</p>	<p>Ongoing Expected implementation Q3 2007</p>
-------------------	--	---	--	----------------------------	--

		Introduction of this software will greatly enhance the Society's ability to successfully monitor and review all substantial exposures on a regular basis-this will be dependent on the time required to implement the software selected.			
--	--	--	--	--	--

Review of the Commercial Lending Function by Deloitte & Touche

2.1 Governance & Oversight					
2.1.1	Credit Committee	<p>The Committee will ensure that at least three members are present at each meeting.</p> <p>Two persons within the commercial lending section review and sign off all amounts. Any accounts exceeding €1 million that are reviewed are forwarded to the Board.</p>	<ul style="list-style-type: none"> • Meetings of the committee are scheduled to include at least three members of the committee. • The credit committee may sanction loans up to €1m and loans over this amount are either declined or recommended to the Board for their approval. Should the Board raise additional queries on loans these are 	Commercial department	Implemented

			addressed by credit committee members.		
2.1.2	Commercial lending approval	<p>The Credit Committee terms have been revised to reflect the size and nature of loans being issued</p> <p>The Commercial Loan Application for each loan requiring approval is presented to the Board The minutes of each Board meeting document all loan approvals</p>	<p>The credit committees' "Terms of Reference" were amended to include the new limits and were approved at a Board meeting on 19 July 2006</p> <p>All loans submitted to the Board and decisions related to same are minuted</p>	Commercial department	Implemented
2.1.3	Compliance with Basel II	<p>The Society has appointed a Credit Risk Manager. The Credit Risk Manager will have five staff reporting to him. Two of the staff are newly hired qualified accountants.</p> <p>The responsibilities of the Credit Risk Manager and his staff include the following:</p> <ol style="list-style-type: none"> 1. To enhance the Society's commercial lending 	<p>The Credit Risk Manager and his staff are aware of their responsibilities with regard to enhancing the Society's commercial lending administration function and improving the control environment within the Society.</p> <p>Credit reviews are performed on the Commercial Loan Book and a</p>	Credit Risk Manager	<p>Points 1 - 4 are implemented.</p> <p>Point 5 is ongoing until Basel II is live and updates on same will be included in the Basel II implementation plan update.</p>

		<p>administrati on function</p> <p>2. To continually improve the control environment within the Society.</p> <p>3. To perform credit reviews on the Commercial Loan Book.</p> <p>4. To prepare quarterly Commercial Lending Reviews for the Board.</p> <p>5. To manage the implementat ion of Basel II for credit risk.</p>	<p>quarterly report is provided to the Board.</p> <p>A Basel implementatio n plan was prepared in October 2006 and provided to the Financial Regulator in November 2006.</p> <p>KPMG will review and make recommendati ons, if necessary, on the Basel II implementatio n plan for credit risk as well as monitoring the plan's progress and effectiveness in meeting its objectiveness.</p>		
--	--	---	--	--	--

2.2 Operational Structure

2.2.3	Commercial Loans Reporting and Management	<p>The Commercial Lending Administrator assesses all top 50 loans on an ongoing basis.</p> <p>All loan terms and moratoria are examined prior to expiry and appropriate action is taken.</p> <p>A new credit risk function has been set up and will</p>	<p>The Credit Risk Department continues to review exposures on a regular basis and report to the Board.</p> <p>Loan terms and moratoria are examined and action taken where necessary.</p> <p>The remaining recommendati</p>	Credit Risk Manager	Implemented
--------------	--	---	--	---------------------	-------------

		implement the recommendations.	ons are captured in the Basel implementation plan.		
2.3 Process Control					
2.3.1	Validation of Loans to Terms - Supporting Documentation	<p>Commercial lending authorise all payments.</p> <p>The payout section of commercial lending completes the static sheet.</p> <p>An independent mortgage admin. official now checks the account setup on summit.</p>	<p>No staff member is authorised to vary the conditions of a loan approved by the Board. The procedure followed is that any variation, including the term of the loan and any moratorium, must first be considered, approved and minuted by the Credit Committee and submitted to the Managing Director for approval.</p> <p>The Society is satisfied that the Payout section of commercial lending completing the static sheet addresses Deloitte's concerns.</p>	Commercial Mortgage Admin	Implemented

Letter from Michael Fingleton, Managing Director of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 31 January 2007⁸⁹

12.106 This letter was a response to the letter from the Financial Regulator dated 20 November 2006. Mr Fingleton informed the Financial Regulator that INBS would not use external consultants for the 2006 review because it was in the internal audit department's best interests to increase knowledge and expertise by performing that function. He also stated that the three high priority issues noted in the 2006 Deloitte Audit Report had been dealt with before that report had been issued. He further stated that that report had only been completed in July 2006 and he did not think it was practical to employ external consultants some five months later.

12.107 The letter clarified a number of points raised by the Financial Regulator. In relation to the delegation by the Board to him, he stated this delegation referred to the day to day management of INBS. The letter continued:

“...

M20-Credit Risk Management Role

All reports submitted to and reviewed by the credit committee will be minuted in the minutes of the committee.

M21-Attendance at meetings

*Meetings of the credit committee are scheduled to ensure that members of the committee are available and the quorum is met... Decisions taken on loans under €1m in the absence of a quorum are brought to the attention of the Managing Director”.*⁹⁰

12.108 Under the heading “*Commercial Lending/Credit Review*”, the letter confirmed that credit grades assigned during the assessment of a loan were reviewed by the credit risk department. It also confirmed that the commercial lending review report would include an analysis of exposures by credit grade, details of loans reviewed in each quarter, as well as comparative data.

⁸⁹ Letter from Michael Fingleton, Managing Director, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 31 January 2007 (Doc ID: 0.7.120.443254).

⁹⁰ Letter from Michael Fingleton, Managing Director, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 31 January 2007, pages 4 to 6 (Doc ID: 0.7.120.443254).

12.109 The letter contained an appendix which set out an update report/action plan on the Management Letter that had been provided to the Financial Regulator on 19 January 2007. This appendix contained a number of items of relevance to the SPCs under consideration in this Findings Report.

12.110 Mr Fingleton informed the Financial Regulator that: *“The Society has not appointed an additional non-executive director or a Head of Commercial Lending. It is difficult to attract the right calibre of person as these appointments are perceived as short term in light of the Society’s plans to carry out a conversion/acquisition”*.⁹¹

12.111 Under the heading *“Commercial Lending”*, the letter dealt with the items raised by the 2005 KPMG Management Letter. With respect to supplementary arrangement fees, Mr Fingleton informed the Financial Regulator:

“The margin, arrangement fees and terms available on individual loans are considered and agreed at approval stage; by the underwriter, credit committee and/or Board. The Society does not see any significant added value calculating and reporting this information at individual loan level and we will continue to report this information on an overall basis”.⁹²

12.112 The letter confirmed that INBS would require borrowers to sign and return an amendment to the original facility agreement. It also confirmed that stress test reports had been provided to the Board on 24 October 2006 and that a further stress test had been conducted and a report would be provided to the Board in February 2007.

12.113 On the issue of personal guarantees the letter stated:

“If a loan goes into difficulty the loan file is reviewed as part of credit control and arrears arrangement. If guarantees are in place they are identified at this stage. A personal guarantee is a legal commitment and will be called on where necessary”.⁹³

⁹¹ Letter from Michael Fingleton, Managing Director, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 31 January 2007, page 8 (Doc ID: 0.7.120.443254).

⁹² Letter from Michael Fingleton, Managing Director, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 31 January 2007, page 9 (Doc ID: 0.7.120.443254).

⁹³ Letter from Michael Fingleton, Managing Director, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 31 January 2007, page 10 (Doc ID: 0.7.120.443254).

Letter from Stan Purcell, Director and Secretary of INBS to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 7 February 2007⁹⁴

12.114 This letter repeated much of what Mr Fingleton had stated in his letter of 31 January 2007. However, in this letter Mr Purcell was able to inform the Financial Regulator that whilst a suitable candidate had been offered the position of commercial lending administrator and had accepted it, INBS had not been able to appoint a senior commercial lender for the UK in light of INBS's plans carry out a conversion/acquisition.

12.115 Addressing the question raised by the Financial Regulator as to whether KPMG approved of INBS's fee share arrangement procedures, the letter stated that it would not receive the KPMG Management Letter until after the 2006 audit had been completed. The letter also noted that internal audit was conducting a separate review of the success fee transaction system as part of its commercial lending audit and that was expected to be completed by April 2007.

12.116 Mr Purcell informed the Financial Regulator that it was unclear why Deloitte had made the comment concerning commercial loans reporting and management (Deloitte Reference 2.2.3), as INBS's reviews did not extend beyond the top 50 exposures. The top 30 exposures review had been completed and submitted to the Board in November 2006 and the extended reporting on the top 50 exposures and the top 30 exposures was being undertaken by the credit risk department to be reported to the Board by February 2007 and May 2007 respectively.

Letter from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Michael Fingleton, Managing Director of INBS, dated 14 March 2007⁹⁵

12.117 This letter was written by the Financial Regulator in respect of the 2005 KPMG Management Letter; the 2006 Deloitte Audit Report; and the reply to the post inspection letter dated 20 November 2006. In relation to the latter, the Financial Regulator stated:

"I refer to correspondence dated 9 December 2004 and subsequent correspondence between Dr Liam O'Reilly, ex-Chief Executive Officer of the Financial Regulator and Mr Walsh, Chairman of the Society. In relation to

⁹⁴ Letter from Stan Purcell, Director and Secretary, INBS to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 7 February 2007 (Doc ID: 0.7.120.136192).

⁹⁵ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Michael Fingleton, Managing Director, INBS, dated 14 March 2007 (Doc ID: 0.7.120.133691).

Corporate Governance matters, I note that the Society has advised it is finding it difficult to attract the right calibre of person to the Board and to the position of Head of Commercial Lending in light of the perceived conversion/acquisition of the Society. However, the Financial Regulator's concerns regarding the level of resources at a senior/executive management level within the Society have not abated. In particular I would like to advise you that in this instance we continue to stress the need for an increase in the size of the Board and a strengthening of the executive management team. The Financial Regulator expects the Society to continue to try and fill these positions to address our original concerns and provide for circumstances should the Society not be acquired or demutualised in the short term. Please set out the Society's immediate plans in this regard.

*I should also be obliged if you would keep the Financial Regulator apprised of all developments noted in Appendix via the quarterly report including, inter alia, further stress testing report to the Board in February..."*⁹⁶

12.118 The letter noted INBS's comments regarding the upcoming review of commercial lending but said that the Financial Regulator would expect INBS to ensure that the review was overseen by an external consultant in light of the issues raised in the 2006 Deloitte Audit Report.

12.119 On the issue of the delegation of powers by the Board, the Financial Regulator stated that it would expect the Board of INBS:

"...

- *To monitor the powers delegated to the Managing Director on a periodic basis.*
- *To set risk tolerance levels. In particular, the Financial Regulator would expect the board set risk tolerance levels for the risks to which it is exposed"*⁹⁷

12.120 In relation to the "Credit Risk Management Role" of the Credit Committee the letter stated:

⁹⁶ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Michael Fingleton, Managing Director, INBS, dated 14 March 2007, page 2 (Doc ID: 0.7.120.133691).

⁹⁷ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Michael Fingleton, Managing Director, INBS, dated 14 March 2007, page 4 (Doc ID: 0.7.120.133691).

“ ...

- *Please advise from when the credit committee will minute that it has reviewed all reports submitted?*
- *I note that the recommendation made regarding the credit committee formally reporting to the Board in relation to the exercise of the credit risk management and review role has not been addressed and accordingly, I should be obliged if you could address this matter”.*⁹⁸

12.121 With regard to the attendance at Credit Committee meetings, the letter stated:

“ ...

- *I note the Society has advised that meetings of the credit committee are scheduled to ensure that members of the committee are available and the quorum is met. However, as reported by the Inspectors this was not achieved in a number of instances as set out in the post inspection letter. I would request again that the Society review membership of the Credit Committee or considered the scheduling of committee meetings to ensure that the level of attendance reported in the post inspection letter do not re-occur.*
- *I note that the recommendations of (i) meetings should not be held in the absence of a quorum and (ii) only members present at the meeting of the committee should approve facilities or recommend their approval to the Board, has not been addressed and accordingly, I should be obliged if you would consider the Financial Regulator’s recommendation, which it considers to be best practice”.*⁹⁹

12.122 The letter further noted that the recommendation with regard to credit grades had been implemented but that it was not clear if the implementation of the Financial Regulator’s recommendation regarding the provision to the Board of a breakdown of the loan book included the ungraded portion of the loan book.

⁹⁸ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Michael Fingleton, Managing Director, INBS, dated 14 March 2007, page 4 (Doc ID: 0.7.120.133691).

⁹⁹ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Michael Fingleton, Managing Director, INBS, dated 14 March 2007, page 4 (Doc ID: 0.7.120.133691).

Letter from Ita Rogers, Compliance Manager of INBS, to the Prudential Policy Unit, Banking Supervision Department of the Financial Regulator, dated 30 March 2007¹⁰⁰

12.123 This letter was written in relation to a review that had occurred of the “Sectoral Concentration Framework” within INBS. INBS informed the Financial Regulator that the present sectoral categorisations were too narrow and that accordingly it proposed introducing a further categorisation. It informed the Financial Regulator that INBS did not set internal limits to manage sectoral concentrations. It stated that the credit risk department monitored credit risk and assigned credit grades to reflect the risk associated with the loan. The letter stated that the credit risk department reported to the Credit Committee and produced a Quarterly Report to the Board. The letter concluded:

“The Society is a specialist lender and our extensive knowledge of both the markets we lend into and our customers enables us to identify good lending opportunities while adhering to prudent lending principles. We approach lending in a pragmatic manner based on our knowledge of the market rather than the use of internal limits. The specialist nature of our lending and extensive experience put us in a position of strength and permits us to focus on identifying and engaging in profitable lending opportunities”.

Letter from Stan Purcell, Director and Secretary of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 17 May 2007¹⁰¹

12.124 This letter provided an update on the 2005 KPMG Management Letter and also on the 2006 Deloitte Audit Report. The Financial Regulator was updated on the identified business risk associated with the growth in the Belfast Branch, as follows:

Mgt point	Mgt Response	Update	Responsibility	Status 31 Dec 2006	Status 31 March 2006 7?
Grade 1 issues					
1.1 Business	The Society	The Society	Belfast Branch	Ongoing - the	A suitable candidate has

¹⁰⁰ Letter from Ita Rogers, Compliance Manager, INBS, to the Prudential Policy Unit, Banking Supervision Department, Financial Regulator, dated 30 March 2007 (Doc ID: 0.7.120.450586).

¹⁰¹ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 17 May 2007 (Doc ID: 0.7.120.137445).

<p>Risk: Growth of Belfast Office</p>	<p>plans to appoint additional personnel for the Belfast and London branch for administrative work and to support and provide cover for the Belfast branch manager.</p> <p>The Society will store copies of key documents at more than one location.</p>	<p>advertised for additional resources in the Belfast Telegraph in November 2006 and interviews are being conducted in January 2007. In addition the Belfast branch manager is in contact with recruitment agencies to identify suitable candidates that could be headhunted if the interview process is not successful.</p> <p>The Society's contingency plan is to look at seconding a person from Dublin headoffice to work in Belfast should a suitable candidate not be found by June 2007.</p>	<p>Manager</p>	<p>Society expects to have additional resources recruited by June 2007.</p>	<p>been offered the position of commercial lending administrator and has accepted it.</p> <p>(Ref: Letter to FR dated 7/2/07)</p> <p>Implemented</p>
--	--	--	----------------	---	---

12.125 On the issue of stress testing, the update stated that a stress test had been carried out in April 2006 and a report sent to the Board in October 2006.

12.126 The letter also stated that the Credit Committee meetings would be scheduled to include at least three members of the committee.

12.127 The letter further stated that, in compliance with the obligations of INBS under Basel II, INBS had appointed a credit risk manager with five staff reporting to him. The responsibilities of this credit risk manager were stated to include enhancing INBS's commercial lending administration function and continually improving the control environment within INBS.

12.128 INBS stated that in relation to success fee transactions, it regarded an excel based system that was devised in the latter half of 2005 as providing sufficient information to allow INBS to support the management of success fee transactions.

12.129 Under the point "*Backup/Filing information*", the update stated:

2.3.4	Back up/Filing information	<p>A pre-populated loan pack was introduced in 2006. Every file has to have a Commercial Advances checklist fully completed and put on file.</p> <p>A new filing system for commercial files has been put in place.</p> <p>All the pertinent loan information is kept on the commercial loan application, which is retained on each individual file.</p> <p>The commercial lending approval process will be communicated to all relevant internal parties.</p>	<p>The Society's has amended its commercial advances checklist which lists information which is required for the loan file and the Society is satisfied it meets Deloitte's requirements.</p> <p>Deloitte's recommendation in relation to file owner is in place. Each commercial lender is responsible for a selection of customers and files relating to same.</p> <p>All commercial lending staff are requested to ensure all relevant customer information is committed to the</p>	Commercial Lending Manager	Implemented
-------	-----------------------------------	--	--	----------------------------	-------------

			appropriate section of the commercial lending file.		
--	--	--	---	--	--

12.130 The letter concluded by stating that INBS would continue to try to fill the positions for the Board and commercial lending appointments, but once again reiterated the difficulty in finding the right calibre of person in light of INBS’s plans to carry out a conversion/acquisition.

Letter from Michael Fingleton, Managing Director of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 17 May 2007¹⁰²

12.131 This letter was written in response to the letter dated 14 March 2007 from the Financial Regulator. Mr Fingleton addressed the Financial Regulator’s concerns regarding the resources at senior/executive management level. The letter stated:

“The Society notes the Financial Regulator’s concerns regarding the level of resources at a senior/executive management level within the Society and a need to increase the size of the Board and a strengthening of the executive management team. The Society will continue to try to fill these positions of an additional non-executive director and head of commercial lending however, it remains difficult to attract right calibre of person as these appointments are perceived as short term in the light of the Society’s plans to carry out a conversion/acquisition”.

12.132 The letter confirmed that the Board would monitor the powers delegated to the Managing Director and set risk tolerance levels.

¹⁰² Letter from Michael Fingleton, Managing Director, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 17 May 2007 (Doc ID: 0.7.120.443301).

12.133 In relation to the “*Credit Risk Management Role*” of the Credit Committee, the letter stated:

“ ...

- *The Credit Committee reviews all reports submitted to it and will minute it from June 2007.*
- *Both the commercial lending and credit risk departments are audited and the internal audit reports are issued to the audit committee. Any concerns in relation to the exercise of either function would be contained in such reports. In addition the credit committee report directly to the Board and the credit risk department report quarterly to the Board. Should any concerns arise in relation to a mortgage both the credit committee and the credit risk department have the ability to bring it to the attention of the Board given the present reporting lines”.*¹⁰³

12.134 Concerning “*Attendance at meetings*”, the letter stated:

*“The Society schedules credit committee meetings to meet the quorum, however unforeseen events could occur which result in a committee meeting not meeting the quorum. Only members present at a committee meeting will approve facilities”.*¹⁰⁴

12.135 Regarding the “*Commercial lending review report*”, the letter stated:

“ ...

- *The quarterly report for Q1 2007 will include a breakdown of the grading and the commercial book, including accounts ungraded.*
- *Details of loans reviewed will be provided to the Board in the Q1, 2007 report due to be submitted in May 2007”.*¹⁰⁵

12.136 The letter further undertook that INBS would take full cognisance of the particulars of individual loans, the principles and the circumstances in undertaking its review of loans.

¹⁰³ Letter from Michael Fingleton, Managing Director, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 17 May 2007, page 3 (Doc ID: 0.7.120.443301).

¹⁰⁴ Letter from Michael Fingleton, Managing Director, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 17 May 2007, page 3 (Doc ID: 0.7.120.443301).

¹⁰⁵ Letter from Michael Fingleton, Managing Director, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 17 May 2007, page 3 (Doc ID: 0.7.120.443301).

It stated that where necessary, updated financial statements would be sought and updated valuations required.

Letter from Joyce Sharkey, Banking Supervision Department of the Financial Regulator, to Ita Rogers, Compliance Manager of INBS, dated 17 May 2007¹⁰⁶

12.137 This letter referred to the letters dated 31 August 2006 and 14 March 2007 that had requested a quarterly report on developments in implementing recommendations made by KPMG, Deloitte and in the Financial Regulator's post inspection letter. The letter stated:

"I note that the quarterly report due on 18 April has not yet been received and accordingly, I should be obliged to receive same by return of post".

Letter from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 26 June 2007¹⁰⁷

12.138 This letter from the Financial Regulator referred to the two letters sent by INBS on 17 May 2007 and a letter from Mr Fingleton in relation to the post inspection letter dated 20 November 2006. It sought information from INBS in relation to credit grading of the loan book, perfecting loan security, and top 30 Large Exposures. It also sought copies of stress testing reports that had been submitted to the Board and requested an update on the implementation of outstanding recommendations arising from the 2006 Deloitte Audit Report. It requested continuing updates on the Board and commercial lending appointments and on the commercial lending review report.

12.139 In relation to the attendance at Credit Committee meetings, it stated:

"While it is noted that unforeseen events may occur which may result in a committee meeting not attaining its quorum, the Financial Regulator expects INBS to implement, in these exceptional circumstances, an alternative approach to ensure that unavailable committee members have pre-reviewed proposals and participate in the decisioning process".¹⁰⁸

¹⁰⁶ Letter from Joyce Sharkey, Banking Supervision Department, Financial Regulator, to Ita Rogers, Compliance Manager, INBS, dated 17 May 2007 (Doc ID: 0.7.120.862855).

¹⁰⁷ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 26 June 2007 (Doc ID: 0.7.120.138232).

¹⁰⁸ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 26 June 2007, page 3 (Doc ID: 0.7.120.138232).

Letter from Stan Purcell, Director and Secretary of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 18 July 2007¹⁰⁹

12.140 This letter enclosed the quarterly update report as at 13 July 2007, which provided an update on the implementation of recommendations outlined in the 2005 KPMG Management Letter; the 2006 Deloitte Audit Report; the post inspection letter dated 20 November 2006; and the 2006 KPMG Management Letter. Although this 18 page letter contained updates on a number of issues, only a handful relate to the SPCs under consideration in this Findings Report.

12.141 Under the heading “*Management Letter for year ended 31 December 2006*”, the update in relation to credit grades stated:

Mgt Point & KPMG recommendation		Mgt response	Update at 16 July 2007
1.2 Credit Grading of loan book	KPMG recommends that all loan facilities and exposures are graded as a priority and that these grades are monitored on a quarterly basis in conjunction with the credit loan book review.	Account grading is now incorporated into the review process and is monitored at each review. Exposure grading for the top 50 customers will be in place by end of Q3 2007. The Board will be provided with an analysis of accounts graded in the top 100 exposures and those awaiting grade under the review process.	Grading criteria have now been reviewed. The revised criteria and grades are currently being rolled out across the book as each review is undertaken. CLOSED

12.142 The 2006 KPMG Management Letter had recommended that INBS should adhere to documented loan approval procedures. In this regard the update stated:

Mgt Point & KPMG recommendation		Mgt response	Update at 16 July 2007
1.3 Loan Approval	KPMG recommends that the Society	All loans are approved by the Credit Committee	The decision to advance the loan was agreed by the Managing Director.

¹⁰⁹ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 18 July 2007 (Doc ID: 0.7.120.42268).

Process	adhere to the documented loan approval procedures.	and/or Managing Director. The Society will adhere to the documented loan approval procedures	The deposit element of the property was advanced, however this was returned to the Society as the facility did not proceed. Accordingly, formal sanction was not sought from the Credit Committee or Board CLOSED
1.4 Sector and loan classifications	<p>KPMG recommends that management provide a more detailed analysis of the loan classifications including the “commercial acquisition and development” and “not classified” categories, as this would provide more relevant management information to the Society and its directors when assessing the composition and profile of the current loan book</p> <p>All sector classifications as required by the Financial Regulator should be monitored on a quarterly basis and reviewed to ensure that the categories are appropriate and correctly reflects the profile of the loan book</p>	<p>Credit Risk department has been identifying, monitoring, updating and reporting on sectoral coding and classification coding since late 2006 as part of the ongoing review process</p> <p>Sectoral coding is being applied in accordance with the Financial Regulator guidelines. Classification coding has been reviewed to provide detailed analysis of the Society's commercial lending, in tandem with sectoral coding</p> <p>The first comprehensive update on the impact of these changes was reported in the Q1 2007 Board report on the Top 100 exposures</p>	<p>The previous unclassified loans, valued at €638M as at 31 December last, have now been reduced to under €71M at 30 June 2007. We will continue to work on this issue</p> <p>The Society is satisfied that the sectoral returns submitted meet the Financial Regulator's requirements</p>

12.143 Section 2 of this update related to the “*Status of prior year performance improvement observations*”. In relation to the issue of “*Business Risk: Growth of Belfast branch*”, the update stated:

Section 2: Status of prior year performance improvement observations			
Mgt point	Mgt Response Dec 2006	Status 31 March 2006	Update in the 2007 mgt letter.
2.1 Business risk: Growth of Belfast Branch	<p>The Society advertised for additional resources in the Belfast Telegraph in November 2006 and interviews were conducted in January 2007.</p> <p>In addition the Belfast branch manager is in contact with recruitment agencies to identify suitable candidates that could be headhunted if the interview process is not successful. The Society’s contingency plan is to look at seconding a person from Dublin head office to work in Belfast should a suitable candidate not be found by June 2007.</p>	<p>A suitable candidate has been offered the position of commercial lending administrator and has accepted it.</p> <p>(Ref: Letter to FR dated 7/2/07)</p> <p>Implemented</p>	<p>A suitable candidate has been offered the position of commercial lending administrator in the Belfast branch and has accepted it.</p>

12.144 Regarding the review of the commercial lending function by Deloitte, under the heading “*Governance & Oversight*”, the update dealt with the recommendations in relation to the Credit Committee. It stated:

Report item		Mgt Response	Dept.	Status 31 March 2006
2.1 Governance & Oversight				
2.1.1	<p>Credit Committee</p> <p>The Committee will ensure that at least three members are present at each meeting.</p> <p>Two persons within the commercial lending section review and sign off all amounts. Any accounts exceeding €1 million that are reviewed are forwarded to the Board.</p>	<ul style="list-style-type: none"> • Meetings of the committee are scheduled to include at least three members of the committee. • The credit committee may sanction loans up to €1m and loans over this amount are either declined or recommended to the Board for their approval. Should the Board raise additional queries on loans these are addressed by credit committee members. 	Commercial department	Implemented

12.145 The update also dealt with "*Process Control*" and it stated:

2.3.1	<p>Validation of Loans to Terms – Supporting Documentation</p> <p>Commercial lending authorise all payments.</p> <p>The payout section of commercial lending completes the static sheet.</p>	<p>No staff member is authorised to vary the conditions of a loan approved by the Board. The procedure followed is that any variation, including the term of the loan and any moratorium, must</p>	Commercial Mortgage Admin.	Implemented
--------------	---	--	----------------------------	--------------------

		An independent mortgage admin official now checks the account setup on submit.	<p>first be considered, approved and minuted by the Credit Committee and submitted to the Managing Director for approval.</p> <p>The Society is satisfied that the Payout section of commercial lending completing the static sheet addresses Deloitte's concerns.</p>		
--	--	--	--	--	--

2.3.4	Back up/Filing information	<p>A pre-populated loan pack was introduced in 2006. Every file has to have a Commercial Advances checklist fully completed and put on file. A new filing system for commercial files has been put in place.</p> <p>All the pertinent loan information is kept on the commercial loan application, which is retained on each individual file.</p> <p>The commercial lending approval process will be communicated to all relevant internal parties.</p>	<p>The Society's has amended its commercial advances checklist which lists information which is required for the loan file and the Society is satisfied it meets Deloitte's requirements.</p> <p>Deloitte's recommendation in relation to file owner is in place. Each commercial lender is responsible for a selection of customers and files relating to same.</p> <p>All commercial lending staff are requested to ensure all relevant customer information is committed to the appropriate section of the commercial lending file.</p>	Commercial Lending Manager	Implemented
--------------	-----------------------------------	---	--	----------------------------	--------------------

12.146 Once again, the issue of the Board and commercial lending appointments was addressed. The update stated:

Item	Update at 31 March 2007 - Appendix 1 Update at 31 January 2007- M3 M23 & M24	Update at 17 May 2007	Update at 13 July 2007
Appendix 1- Board Commercial Lending appointments	The Society will continue to try to fill these positions however, it remains difficult to attract the right calibre of person as these appointments are perceived as short term in the light of the Society's plans to carry out a conversion/acquisition.	The Society notes the Financial Regulator's concerns regarding the level of resources at a senior/executive management level within the Society and a need to increase the size of the Board and a strengthening of the executive management team. The Society will continue to try to fill these positions of an additional non-executive director and head of commercial lending however, it remains difficult to attract the right calibre of person as these appointments are perceived as short term in the light of the Society's plans to carry out a conversion/acquisition.	No update from the position at 17 May 2007.

Letter from Stan Purcell, Director and Secretary of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 18 July 2007¹¹⁰

12.147 This letter provided the Financial Regulator with the quarterly update report as at 13 July 2007 and it also enclosed a copy of the stress testing report provided to the Board in February 2007 that applied to the period as at 31 December 2005.

Letter from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 2 October 2007¹¹¹

12.148 This letter raised a number of queries in relation to the “*Commercial Lending Stress Test*”, as at 31 December 2005. The Financial Regulator recommended that future stress tests should take account of downward trends in residential and commercial property and should be expanded to include a wider set of variables and range of data in order to improve the quality of the overall results. The Financial Regulator welcomed the initiative taken by INBS in this regard. It requested continuing updates on the Board and commercial lending appointments and noted the position regarding papers being circulated to Credit Committee members where a quorum could not be reached.

Letter from Stan Purcell Director and Secretary of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 19 October 2007¹¹²

12.149 This letter was in response to the letter of 2 October 2007 from the Financial Regulator and it enclosed a quarterly update report as at 19 October 2007.

Letter from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 8 November 2007¹¹³

12.150 This letter referred to the previous letter dated 19 October 2007 from Mr Purcell to the Financial Regulator.

¹¹⁰ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 18 July 2007 (Doc ID: 0.7.120.42268).

¹¹¹ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 2 October 2007 (Doc ID: 0.7.120.131462).

¹¹² Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 19 October 2007, page 4 (Doc ID: 0.7.120.22049).

¹¹³ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell Director and Secretary, INBS, dated 8 November 2007 (Doc ID: 0.7.120.138052).

12.151 In relation to the commercial lending stress test the letter noted that the next stress test would be based on the loan book as at 30 June 2007 and would be submitted to the Board in quarter 4 2007. It further noted that a copy would be sent to the Financial Regulator thereafter and that the report would incorporate the Financial Regulator's recommendations.

12.152 The letter also requested an update on the Board and commercial lending appointments.

Letter from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 26 November 2007¹¹⁴

12.153 This letter confirmed a telephone conversation between Mr Purcell and a member of the banking supervision department concerning a review of "*Lending Procedures and Controls*" to be provided to the Financial Regulator by mid-December 2007 in relation to both commercial and residential lending. It also referred to a "*Review of Commercial Lending*" which was to be completed by the internal audit department by June 2007. The letter noted that the final report from the internal audit department was to have been reviewed by an independent external consultant. INBS was requested to confirm when this independent review had been conducted and to provide the Financial Regulator with copy of the ensuing report.

Letter from Stan Purcell, Director and Secretary of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 29 November 2007¹¹⁵

12.154 This letter enclosed email exchanges between Mr Purcell and Ms Madden, dated 27 and 28 November 2007, addressing the matters raised in Ms Madden's letter dated 26 November 2007.

12.155 In his email, Mr Purcell indicated that the commercial lending internal audit review would not commence until January 2008 with the report to be sent to the Financial Regulator by the end of March 2008.

¹¹⁴ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell Director and Secretary, INBS, dated 26 November 2007 (Doc ID: 0.7.120.133551).

¹¹⁵ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 29 November 2007 (Doc ID: 0.7.120.134104).

12.156 Ms Madden sought to clarify the comments in her previous letter, and stated that the Financial Regulator had received the internal audit from Mr McMahon but it was awaiting the external consultant's review which had been indicated by Mr Fingleton in a letter dated 17 May 2007. Ms Madden noted that Mr Fingleton had advised that when the Audit Committee had reviewed the final report, an external consultant would review the audit file to ensure the audit was conducted in accordance with best practices and make recommendations to enhance future audits.

12.157 Mr Purcell responded to this indicating that INBS's internal audit had not been presented to the Audit Committee until September 2007 and that Deloitte would review that and carry out a full audit of commercial lending which would commence the following week.

Letter from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 5 December 2007¹¹⁶

12.158 This letter set out the Financial Regulator's requirements in relation to the proposed commercial lending review. It required the review to:

"...

- *Cover lending including both commercial and residential lending;*
- *Assess whether INBS is adhering to its lending policies and procedures;*
and
- *Identify any weaknesses in INBS' lending policies and procedures for the management and control of lending".*

12.159 The letter also required the review of the commercial lending that was conducted by the internal audit department and presented to the Audit Committee in September.

¹¹⁶ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 5 December 2007 (Doc ID: 0.7.120.136838).

Letter from Stan Purcell, Director and Secretary of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 21 December 2007¹¹⁷

12.160 This letter confirmed that the requirements of the Financial Regulator set out in the letter of 5 December 2007 would be complied with.

Letter from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 8 January 2008¹¹⁸

12.161 This letter was a follow-up to the last letter from the Financial Regulator requiring the Deloitte reports and the Audit Committee's consideration of same to be forwarded to the Financial Regulator.

Letter from Stan Purcell, Director and Secretary of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 22 January 2008¹¹⁹

12.162 This letter provided an update on the 2005 and 2006 KPMG Management Letters. It also provided an update on the recommendations from the 2006 Deloitte Audit Report and the Financial Regulator's post inspection letter dated 20 November 2006.

12.163 On the issue of stress testing the update stated:

Section 2: Status of prior year performance improvement observations				
Mgt point	Status 31 March 2006	Update in the 2007 mgt letter.	Update at 15 October 2007	Update at 22 January 2008
Mgt Response Dec 2006				
2.2 Commercial Lending Stress Test				
A stress test was carried out in 2006 and a summary report was sent to the Board on 24 October 2006 and to the Financial Regulator on 10 November	The report was submitted to the Board in February 2008. The outcome	Credit Risk Department submitted a stress test of the entire mortgage	Specific queries raised were answered.	Stress tests will continue to be performed and results

¹¹⁷ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 21 December 2007 (Doc ID: 0.7.120.872862).

¹¹⁸ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 8 January 2008 (Doc ID: 0.7.120.130516).

¹¹⁹ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 22 January 2008 (Doc ID: 0.7.120.135317).

<p>2006. A stress test of the mortgage book was carried out in last quarter of 2006 and is due to 20 to the Board in February 2007.</p> <p>The Society will stress test its mortgage book on an annual basis</p>	<p>of future stress tests will also be submitted to the Board.</p> <p>Implemented</p>	<p>book to the Board in February 2007 based on the 31st December 2005 data for the mortgage book (copy enclosed). This exercise will be repeated on the 31st December 2006 data and is due for completion by end of Q3, 2007.</p>		<p>of same will be submitted to the Board.</p>
--	--	---	--	--

12.164 On the issue of Board and commercial lending appointments, the update stated:

<p>Update at 31 March 2007 - Appendix 1</p> <p>Update at 31 January 2007 - M3, M23 & M24</p>	<p>Update at 17 May 2007</p>	<p>Update at 13 July 2007</p>	<p>Update at 15 October 2007</p>	<p>Update at 22 January 2008</p>
<p>Item</p> <p>Appendix 1- Board Commercial Lending appointments</p>				
<p>The Society will continue to try to fill these positions however, it remains difficult to attract the right calibre of person as these appointments are perceived as short term in the light of the Society's plans to carry out a conversion/acquisition.</p>	<p>The Society notes the Financial Regulator's concerns regarding the level of resources at a senior/executive management level within the Society and a need to increase the size of the</p>	<p>No update from the position at 17 May 2007.</p>	<p>No update from the position at 17 May 2007.</p>	<p>No update from the position at 15 October 2007.</p>

	<p>Board and a strengthening of the executive management team. The Society will continue to try to fill these positions of an additional non-executive director and head of commercial lending however, it remains difficult to attract the right calibre of person as these appointments are perceived as short term in the light of the Society's plans to carry out a conversion/acquisition.</p>			
--	--	--	--	--

Letter from Mary Burke, Head of Banking Supervision of the Financial Regulator, to Michael Walsh, Chairman of INBS, dated 8 February 2008¹²⁰

12.165 This letter referred to the “*Inspection of Commercial Property Lending Exposures*” conducted by the Financial Regulator between 4 and 14 December 2007. This inspection was across a number of credit institutions and it specifically focused on a sample of commercial property developers. In relation to INBS the letter stated:

“The findings of this inspection in INBS calls into question the adequacy of controls and risk management in place in INBS for large commercial property loans and suggest that a significant degree of approval authority rests with a single individual, Mr Fingleton, who also appears to be the only source of

¹²⁰ Letter from Mary Burke, Head of Banking Supervision, Financial Regulator, to Michael Walsh, Chairman, INBS, dated 8 February 2008 (Doc ID: 0.7.120.526582).

information on some of these large clients. It is also a matter of concern that findings continue to arise in relation to the operation of the credit committee and it is clear that the operation of this committee needs to be strengthened.

It was also reported by inspection team that INBS declined to provide copies of certain material when requested. In this regard I would draw your attention to Section 41 of the Building Societies Act, 1989 and ask you to confirm that such requests will be complied with on future inspections".¹²¹

12.166 In relation to INBS, the Financial Regulator made specific findings, two of which were designated "High Priority". The first of these related to "Credit Reviews". The finding was:

"Based on the sample of exposure is included in the inspection, it appears that there is no comprehensive review of exposures to a group of connected borrowers conducted on an annual basis. Rather, reviews consist of an ongoing high-level review of individual projects. In addition, credit reviews do not appear to involve a review of documentation such as Audited Financial Statements, Cash Flow Statements etc.

The inspectors were advised that although the results of "credit reviews" should be provided to the Credit Committee, this has not been taking place. In this regard, the Terms of Reference of the Credit Committee state that the Credit Committee will review and consider any loans submitted to it as part of the credit review process".¹²²

12.167 The Financial Regulator designated a "Medium Priority" to its finding in relation to the Credit Committee and it made the following recommendations:

"1. The minutes of the Credit Committee should be signed by all members in attendance.

2. Credit Committee minutes should distinguish between members of the Committee and those attending meetings who are not members.

¹²¹ Letter from Mary Burke, Head of Banking Supervision, Financial Regulator, to Michael Walsh, Chairman, INBS, dated 8 February 2008, page 1 (Doc ID: 0.7.120.526582).

¹²² Letter from Mary Burke, Head of Banking Supervision, Financial Regulator, to Michael Walsh, Chairman, INBS, dated 8 February 2008, pages 3 and 4 (Doc ID: 0.7.120.526582).

3. *Credit Loan Application Forms submitted to the Credit Committee should not anticipate the Committee's decision.*

4. *INBS to advise why the majority of Credit Application Forms provided to the inspectors contained only one or no signatures*".¹²³

Letter from Con Horan, Head of Banking Supervision of the Financial Regulator, to Michael Walsh, Chairman of INBS, dated 7 March 2008¹²⁴

12.168 This letter referred to the "*Inspection of Commercial Property Lending Exposures*" referred to in the previous letter above. It stated:

"I refer to our meeting of 6 February at which we discussed a number of issues in relation to INBS, which are of serious concern to the Financial Regulator. I have outlined these concerns below together with the supervisory measures the Financial Regulator requires to be taken to address them.

1. Corporate Governance

As you are aware, on previous occasions the Financial Regulator has expressed its concerns in relation to aspects of the corporate governance arrangements in the Society. In particular these concerns relate to the need to:

- *Increase the size of the Board of the Society with suitably experienced individuals;*
- *Increase the resources and expertise at senior management level;*
- *Address the key person risk arising from the broad range of responsibilities undertaken by the Chief Executive; and*
- *Put in place appropriate succession arrangements in the Society.*

While I am aware that the efforts to address these matters have been hampered by the understanding in the market that the Society would be demutualised and sold, the Financial Regulator considers that the current situation cannot be allowed to persist and must be addressed as a matter of urgency.

¹²³ Letter from Mary Burke, Head of Banking Supervision, Financial Regulator, to Michael Walsh, Chairman, INBS, dated 8 February 2008, page 6 (Doc ID: 0.7.120.526582).

¹²⁴ Letter from Con Horan, Head of Banking Supervision, Financial Regulator, to Michael Walsh, Chairman, INBS, dated 7 March 2008 (Doc ID: 0.7.120.20703).

Action Required

The Financial Regulator considers that the following measures are required to align the corporate governance arrangements in the Society with the nature and complexity of the business:

- a) Three additional directors, of which at least two should be experienced non-executive directors, should be appointed to the Board of the Society;*
- b) A Chief Operating Officer should be appointed. The mandate of this person should include a requirement to enhance the systems and internal controls operating in the Society; and*
- c) A Head of Commercial Lending should be appointed.*

To reflect the problems of governance outlined above the Financial Regulator is considering capital measures under Pillar 2 as part of our Supervisory Review and Evaluation Process. In the interim period, an additional capital requirement equivalent to an increase in INBS's solvency ratio from 10% to 11% is imposed. This matter will be reviewed when these items have been addressed.

...

2. Credit Risk Management

The Financial Regulator has raised issues relating to INBS' risk profile and credit risk management over a number of years. Our letter of 9 December 2004 set out our concerns regarding the significant shift in the nature and risk profile of INBS' business towards commercial property lending. Concerns raised related to the growth in the commercial loan book, its concentration in a small number of borrowers, the increased size of commercial loans and the increased significance of the UK market. Issues regarding the adequacy of policies, procedures, resources, internal controls and reporting structures were also raised.

As you are aware, reviews and inspections conducted by Deloitte and the Financial Regulator, respectively, in 2006 identified continuing credit risk management weaknesses. Preliminary analysis of the circumstances surrounding exposures to [REDACTED] and [REDACTED] and issues raised in the legal

action being taken by Mr Fitzgibbon, INBS' Homeloans Manager, would indicate that similar credit risk management issues remain despite assurances received from INBS that these issues have been addressed. Furthermore, our December 2007 inspection of large commercial property exposures identified further issues surrounding the credit risk management process as set out in a letter to you of 8 February 2008.

Action Required

The internal audit of lending currently being conducted by Deloitte is to be submitted to the Financial Regulator by the end of March 2008. Details of the Audit Committee's consideration of this report and follow-up action are also to be provided once complete. INBS should also ensure that Deloitte conduct a further review of the operation of appropriate credit processes at end September 2008 and the resultant report should be submitted to the Financial Regulator. The Financial Regulator will consider the extent to which further external reviews may be necessary based on the findings of Deloitte's September review".

Letter from KPMG, auditor of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 26 March 2008¹²⁵

12.169 This letter was written in accordance with the statutory obligations of the auditor of INBS, KPMG. In it KPMG raised a number of matters of concern to it. In respect of the issues under consideration in this Findings Report, the significant statement made in this letter was: *"The aggregate exposure to real estate ("K") exceeded 200% of own funds limit during the period from January 2007 to December 2007. We understand that the Society has corresponded with you on this matter and this may continue to be an issue in 2008".*¹²⁶

Letter from Stan Purcell, Director and Secretary of INBS, to Yvonne Madden Banking Supervision Department, dated 21 April 2008¹²⁷

12.170 This letter enclosed the quarterly update report as at 21 April 2008. The update provided with this letter stated that the stress test that was due to go to the Board in

¹²⁵ Letter from KPMG, auditor of INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 26 March 2008 (Doc ID: 0.7.120.550597).

¹²⁶ Letter from KPMG, auditor of INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 26 March 2008, page 2 (Doc ID: 0.7.120.550597).

¹²⁷ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department, dated 21 April 2008 (Doc ID: 0.7.120.132576).

February 2007, and which was identified in the updates in the letters of 22 January 2008 and 14 March 2008 as still being due for completion, was still not finalised.

12.171 The issue of Board and commercial lending appointments had remained unresolved from the previous number of quarterly updates. The update provided by INBS in 14 March 2008 had noted the initiatives that would be taken in relation to this matter would be dealt by INBS's Chairman in his response to the letter from Mr Horan dated 7 March 2008. The further update as of 21 April 2008 recorded no change in that position.

Letter from Michael Walsh, Chairman of INBS, to Mary Burke Head of Banking Supervision of the Financial Regulator, dated 21 April 2008¹²⁸

12.172 This letter addressed the findings of the Financial Regulator following the inspection of credit institutions in December 2007. These findings were set out in the letter from the Financial Regulator dated 8 February 2008 which is outlined at paragraph 12.165 et seq. above.

In relation to Mr Fingleton, the letter of response from INBS stated:

"Mr Fingleton is closely involved with the U.K. and Ireland commercial lending managers in assessing large commercial loan applications and in ongoing reviews and discussions with large borrowers. The Chief Executive is ultimately responsible for all lending and it is essential that he is involved in all material loans being approved by the Society".

12.173 With regard to the Credit Committee the letter stated that the Credit Committee's terms of reference had been reviewed in December 2007 and its membership was increased. The letter also confirmed the implementation of the Financial Regulator's recommendations outlined in its letter of 8 February 2008.

12.174 The letter disagreed with the Financial Regulator's assertion that "*INBS declined to provide certain copies of material when requested*". It stated that any information sought by the inspectors was provided and that this matter had not been brought up at the closing meeting following the inspection where any misunderstanding could have been resolved.

¹²⁸ Letter from Michael Walsh, Chairman, INBS, to Mary Burke Head of Banking Supervision, Financial Regulator, dated 21 April 2008 (Doc ID: 0.7.120.290839-000001).

12.175 In relation to the slowdown in financial markets, the letter stated:

“Many of the Society’s large developers are well established and long-standing customers of the Society. They have a proven track record within the markets they operate and the Society has a very strong relationship with them. While independently verified financial information is not available for some clients the Society’s experience of these clients to date would indicate that they possess a robust financial capacity”.

12.176 Regarding the INBS specific recommendations made by the Financial Regulator, the high priority recommendation that INBS should conduct and document a comprehensive review of exposures to a group of connected borrowers on at least an annual basis and obtain up to date information, was responded to by INBS by stating that up to date valuations would be sought in addition to accounts and project appraisals. This was to be completed in April 2008.

12.177 INBS further indicated that details of all credit reviews performed would be forwarded to the Credit Committee from May 2008 and that the Financial Regulator’s recommendations in relation to the Credit Committee had all been implemented from 14 March 2008.

Letter from Killian McMahon, Internal Auditor of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 9 May 2008¹²⁹

12.178 This letter indicated that the reasons for the differences between the ratings in the internal audit reports and the May 2008 Deloitte Review were due to the samples chosen and the different scopes of the two reports.

Letter from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 26 May 2008¹³⁰

12.179 This letter was a reminder from the Financial Regulator to forward the details of the Audit Committee’s consideration of the draft May 2008 Deloitte Review, following the committee’s meeting at the end of May 2008.

¹²⁹ Letter from Killian McMahon, Internal Auditor, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 9 May 2008 (Doc ID: 0.7.120.135748).

¹³⁰ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 26 May 2008 (Doc ID: 0.7.120.135778).

Email from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Killian McMahon, Internal Auditor of INBS, dated 28 May 2008¹³¹

12.180 This email requested an analysis of why the samples chosen led to differences in the findings of the internal audit reports in 2007 and the May 2008 Deloitte Review. The email stated that the letter of 9 May 2008 was not clear on that point.

Letter from Michael Walsh, Chairman of INBS, to Con Horan, Prudential Director of the Financial Regulator, dated 29 May 2008¹³²

12.181 This letter is written in response to Mr Horan's letter of 7 March 2008, outlined at paragraph 12.168 above. The letter stated:

"1. Proposals for the implementation of corporate governance issues

- a) *The Society intends to increase the Board by the addition of three non executive directors. We expect, subject to Regulatory approval, to be in a position to appoint the first two of these in early July. The proposed appointments are Mr. Liam Barron, former Director General of the Central Bank, and Mr. Sean Carey, former Deputy City Manager of Dublin, who has a planning and finance background. Both individuals are preparing the fit and proper questionnaires for submission to the Regulator. We are continuing to seek an appropriate third person, in light of the varied experience of the expanded group of non-executive directors".*

12.182 The letter went on to say that a risk evaluation executive had also been appointed, who would bring experience to the primary focus of INBS, which was now managing its existing book rather than seeking to do new lending.

12.183 The letter stated that the May 2008 Deloitte Review had been submitted to the Financial Regulator on 23 April 2008 and a further review of the operation of appropriate credit processes would be conducted by Deloitte at the end of September 2008.

¹³¹ Email from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Killian McMahon Internal Auditor, INBS, dated 28 May 2008 (Doc ID: 0.7.120.130028).

¹³² Letter from Michael Walsh, Chairman, INBS, to Con Horan, Prudential Director, Financial Regulator, dated 29 May 2008 (Doc ID: 0.7.120.449448).

12.184 The letter concluded by saying that whilst a trade sale was unlikely in the short term it was still the preferred option of the Board.

Letter from Killian McMahon, Internal Auditor of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 4 June 2008¹³³

12.185 This letter was a response to Ms Madden's email request of 28 May 2008, and it enclosed a comparison of the May 2008 Deloitte Review and internal audit report samples used for the commercial and residential process testing.

Letter from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 23 June 2008¹³⁴

12.186 This letter referred to Ms Madden's previous letter of 26 May 2008 and to the Audit Committee review of the May 2008 Deloitte Review which was due to have been submitted to the Financial Regulator by 16 June 2008. The letter requested a date for when the Audit Committee's findings would be submitted to the Financial Regulator.

Letter from Stan Purcell, Director and Secretary of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 25 June 2008¹³⁵

12.187 This letter was a response to Ms Madden's letter of 23 June 2008. It informed the Financial Regulator that the Audit Committee had discussed in detail the May 2008 Deloitte Review at its meeting held on 26 May 2008. The letter stated:

"The committee's view was that the recommendations must be implemented now. In addition a process will be introduced to ensure that the findings have been properly implemented and remain in force on a continuing basis.

The committee noted that the report indicated the recommendations arising from the seven "priority one" findings have been implemented.

These critical issues which are classified as important matters requiring urgent attention at a senior management or Board level are:

¹³³ Letter from Killian McMahon, Internal Auditor, INBS, to Yvonne Madden Banking Supervision Department, Financial Regulator, dated 4 June 2008 (Doc ID: 0.7.120.134592).

¹³⁴ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 23 June 2008 (Doc ID: 0.7.120.130702).

¹³⁵ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden Banking Supervision Department, Financial Regulator, dated 25 June 2008 (Doc ID: 0.7.120.131950).

1. *Adherence to Credit Committee Terms of Reference.*
2. *Board approval not on file.*
3. *Amendments to approved loans do not follow best practice.*
4. *The loans approved procedures are not performed in the correct sequence.*
5. *Documentation supporting loan approval is not complete.*
6. *LTV for related parties.*
7. *Documentation supporting residential lending is incomplete”.*

12.188 The letter went on to say that the Audit Committee required the internal auditor to report at the end of July 2008 and again at the end of January 2009 on the quality of the initial and continuing implementation of all 14 of Deloitte’s recommendations. The letter stated that, in addition, the internal auditor’s report would contain a review of the operation of the Credit Committee in the previous six months especially with regard to frequency of and attendance at meetings, documentation, details recorded in the minutes and a view on the quality of its operations measured against industry standards with recommendations for improvement.

12.189 The letter reiterated Mr McMahon’s explanation for the differences between the findings in the May 2008 Deloitte Review and INBS’s internal audit reports.

Email exchanges between Yvonne Madden, Banking Supervision Department of the Financial Regulator, and Stan Purcell, Director and Secretary of INBS, dated 11 July 2008¹³⁶

12.190 The first email in this chain was from Mr Purcell to Ms Madden setting out the various negative scenarios that would be tested in the forthcoming stress test. He stated that these would include:

“1. The impact of the downturn in the property market resulting in a drop in property prices/valuations and increasing Loan to Values. This analysis is being performed on the Irish Residential property market and both the UK and Irish Commercial property market.

¹³⁶ Email exchanges between Yvonne Madden, Banking Supervision Department, Financial Regulator, and Stan Purcell, Director and Secretary, INBS, dated 11 July 2008 (Doc ID: 0.7.120.294027).

2. *The impact of an increase in interest rates, resulting in increased loan repayments and a potential increase in loan arrears. This analysis is being performed on both Commercial and Residential books by account type e.g. annuity, interest only etc*

3. *The impact of fluctuations in Euro/Sterling exchange rates on the Society's Supplemental Arrangement Fees. This analysis is being performed on fees expected to be received from UK Top 50 Commercial Large Exposures".*

12.191 In response Ms Madden asked that the stress testing include: scenarios that were severe enough to display what would push INBS into a stressed position as well as moderate shocks; the impact of falling house prices (20% to 30%) in Ireland and the UK; the inability of developers to sell property as originally scheduled in the UK and Ireland for one year and for two years; and the impact of changes to fundamental macro-economic factors such as rising unemployment, inflation and euro appreciation.

Finally, Ms Madden stated that the stress test should consider the scenario of the inability of development finance customers to refinance loans post development phase and the elongation of the term of commercial mortgages subject to interest roll-up, and any other specifics that INBS saw as relevant.

Email from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 11 July 2008¹³⁷

12.192 In this email, Ms Madden asked Mr Purcell to confirm when the commercial lending stress test of December 2007, which was to be completed by April 2008, would be completed and submitted to the Financial Regulator.

Letter from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 17 July 2008¹³⁸

12.193 This letter referred to the further review of credit processes to be conducted by Deloitte in September 2008 and it asked Mr Purcell to confirm when the resultant report would be submitted to the Financial Regulator.

¹³⁷ Email from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 11 July 2008 (Doc ID: 0.7.120.294041).

¹³⁸ Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 17 July 2008 (Doc ID: 0.7.120.133089).

Letter from Stan Purcell, Director and Secretary of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 21 July 2008¹³⁹

12.194 This letter enclosed the quarterly update report as at 21 July 2008, which provided updates on the implementation of recommendations outlined in all of the reports received since the 2005 KPMG Management Letter.

12.195 Regarding the commercial lending stress test, the update provided by INBS as at 14 March 2008 was that the stress test was due to have been completed in quarter 4 2007 but had not been completed due to increased workloads. The update of 21 April 2008 recorded that the stress test had not been finalised and this update as of 21 July 2008 stated that the stress test was being expanded to include the additional requirements set out by the Financial Regulator on 11 July 2008. The update further stated that these requirements would be incorporated into the stress test which was based on 31 December 2007 data. The estimated time to complete this was one month.

The issue of Board and commercial lending appointments was updated to state that a risk evaluation executive had commenced work in the commercial lending department and that another person was being recruited with a view to strengthening that area.

Letter from Con Horan, Head of Banking Supervision of the Financial Regulator, to Michael Walsh, Chairman of INBS, dated 30 July 2008¹⁴⁰

12.196 This letter was in response to Mr Walsh's letter of 29 May concerning corporate governance and other issues raised by the Financial Regulator. It noted the recent appointment to the Board as well as the appointment of a risk evaluation executive. It further stated:

"I note that the Society continues to seek an appointment at Chief Operating Officer level. It is disappointing that the Board has not recruited for this position. The Financial Regulator believes that this is a key appointment and I would ask for an update on the approach being adopted to this matter by 18 August".

12.197 In relation to the May 2008 Deloitte Review and 2007 KPMG Management Letter and the presentations to the Audit Committee, Mr Horan noted that the internal auditor was

¹³⁹ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 21 July 2008 (Doc ID: 0.7.120.130126).

¹⁴⁰ Letter from Con Horan, Head of Banking Supervision, Financial Regulator, to Michael Walsh, Chairman, INBS, dated 30 July 2008 (Doc ID: 0.7.120.140262).

going to report to the Audit Committee in July 2008 and January 2009 on the implementation of the recommendations. The letter stated:

“Notwithstanding these initiatives, given the number of high priority issues identified by both Deloitte and KPMG it is important that the board of INBS is involved in ensuring the implementation of the recommendations. In this regard, I would request that the Board of the Society provide monthly updates to the Financial Regulator on its progress in addressing the matters identified”.

12.198 On the issue of the trade sale of INBS, the Financial Regulator noted that the ability to effect a sale, while dependent on market conditions, was also dependent on the adequacy of loan documentation and third party valuations. The letter noted that Mr Fingleton had indicated that INBS was treating that issue as a matter of significant importance and asked that the Financial Regulator be provided with a progress report at the end of August 2008.

Letter from Michael Walsh, Chairman of INBS, to Mr Con Horan, Head of Banking Supervision of the Financial Regulator, dated 18 August 2008¹⁴¹

12.199 This letter was in response to Mr Horan’s letter of 30 July 2008 and it promised a fuller reply following the Board meeting at the end of the month. It confirmed that the Board was looking to make some additional appointments including a chief operating officer.

Letter from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 26 August 2008¹⁴²

12.200 This letter referred to the Financial Regulator’s letter of 17 July 2008 which sought confirmation as to when the report from the Deloitte review, which was to be completed in September 2008, would be submitted. It also referred to the email of 11 July 2008 concerning stress testing for the commercial and residential loan book and noted that the stress testing report had not been submitted by early August, as agreed. The letter requested that both of these reports be submitted to the Financial Regulator immediately on receipt.

¹⁴¹ Letter from Michael Walsh, Chairman, INBS, to Mr Con Horan, Head of Banking Supervision, Financial Regulator, dated 18 August 2008 (Doc ID: 0.7.120.448458).

¹⁴² Letter from Yvonne Madden, Banking Supervision Department, Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 26 August 2008 (Doc ID: 0.7.120.136948).

Letter from Stan Purcell, Director and Secretary of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 27 August 2008¹⁴³

12.201 In this letter Mr Purcell replied to Ms Madden's request in her letter of 26 August 2008 and stated that Deloitte was currently preparing their audit scope and plan and once that was agreed it would be possible to provide an expected completion date for their further review.

Letter from Stan Purcell, Director and Secretary of INBS, to Yvonne Madden, Banking Supervision Department of the Financial Regulator, dated 1 September 2008¹⁴⁴

12.202 In this letter Mr Purcell informed Ms Madden that the September 2008 Deloitte Review would be finalised on 10 October 2008 and would be submitted to the Financial Regulator on 17 October 2008.

Letter from Michael Walsh, Chairman of INBS, to Mr Con Horan, Prudential Director of the Financial Regulator, dated 5 September 2008¹⁴⁵

12.203 This letter was sent in response to Mr Horan's letter of 30 July 2008. It confirmed that INBS would continue to seek a head of commercial lending and a chief operating officer. It confirmed that the Board would provide monthly updates to the Financial Regulator on the implementation of recommendations from the Deloitte Review and KPMG Management Letter. On the issue of the Goldman Sachs analysis of the loan book, Mr Walsh stated that this process was ongoing.

Email from Yvonne Madden, Banking Supervision Department of the Financial Regulator, to Stan Purcell, Director and Secretary of INBS, dated 25 September 2008¹⁴⁶

12.204 This email from Ms Madden noted that the stress testing of the commercial loan book was to have been submitted to the Financial Regulator by 19 September 2008 and sought an update on when it might be provided.

¹⁴³ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 27 August 2008 (Doc ID: 0.7.120.134257).

¹⁴⁴ Letter from Stan Purcell, Director and Secretary, INBS, to Yvonne Madden, Banking Supervision Department, Financial Regulator, dated 1 September 2008 (Doc ID: 0.7.120.129628).

¹⁴⁵ Letter from Michael Walsh, Chairman, INBS, to Mr Con Horan, Prudential Director, Financial Regulator, dated 5 September 2008, pages 2 to 4 (Doc ID: 0.7.120.136957).

¹⁴⁶ Email from Yvonne Madden, Banking Supervision Department Financial Regulator, to Stan Purcell, Director and Secretary, INBS, dated 25 September 2008 (Doc ID: 0.7.120.298060).

Letter from Stan Purcell, Director and Secretary of INBS, to Con Horan, Prudential Director of the Financial Regulator, dated 26 September 2008¹⁴⁷

12.205 This letter referred to a request from the Department of Finance for further information on INBS's commercial loan book arising from information provided to Goldman Sachs. The letter stated:

"An important area of the Society's commercial lending business which is not represented in certain specific loan book characteristics (like LTV for example) are Supplemental Arrangement Fees.

A substantial portion (€6,052,141,809.00 or 65%) of the Society's Commercial book provides financing for projects in which the Society has a contractual right to receive a defined percentage of each project's profit. In the Society's terminology such projects are called Supplemental Arrangement Fee projects and the loans that finance those projects are referred to as Supplemental Arrangement Fees loans. The Society is entitled to share in future profits and has no obligation to share in future losses should any occur.

The Society's profit share percentage is typically in the 25 – 50% range. As of 30/06/2008 the Society has forecast its share of the potential future cash flows generated by Supplemental Arrangement Fee projects at €920m. This is the nominal gross Euro forecast of amounts receivable over the next 4 – 5 years. Many future cash flows depend on build out and sale of the developments and will be impacted by market and macro-economic conditions. In addition the Society's customers may decide on alternative strategies such as the sale of development sites once enhanced value has been achieved. In such cases the return will be lower but the payback faster. The Supplemental Arrangement Fee forecast is affected by many factors and subject to ongoing revision, however it should be a significant source of profit and value in the future".

12.206 The stress test report addressed repeatedly in the correspondence above was finalised in November 2008.¹⁴⁸ It was conducted on INBS's loan book as at 31 December 2007.

¹⁴⁷ Letter from Stan Purcell, Director and Secretary, INBS, to Con Horan, Prudential Director, Financial Regulator, dated 26 September 2008 (Doc ID: 0.7.120.443275).

¹⁴⁸ Stress Test Report, dated November 2008 (Doc ID: AD-0.7.120.137022).

WITNESS EVIDENCE IN RELATION TO FINANCIAL REGULATOR

Liam O'Reilly

12.207 In his witness statement dated 23 November 2020¹⁴⁹, Dr O'Reilly referred to the meeting that took place with INBS on 3 December 2004 and the follow-up letter of 9 December 2004 which outlined the Financial Regulator's concerns in relation to commercial lending. These concerns have been fully documented in the correspondence set out above. Dr O'Reilly stated that INBS was advised at that meeting that the Financial Regulator's concerns were to be addressed immediately. He said a deadline of 31 January 2005 for a report from INBS was not met by INBS and a further deadline of 31 March 2005 was set. Dr O'Reilly indicated that a letter of response was eventually provided by INBS on 1 February 2005 but that "*a more considered response to the various concerns raised in our 9 December letter*" was required.¹⁵⁰

12.208 He stated that a further letter dated 31 March 2005 from INBS provided a commitment from the Board of INBS to fully implement the recommendations made in the KPMG 2004 Commercial Credit Review. There was also commitment to use KPMG to improve management information systems with regard to the control of commercial lending.¹⁵¹

12.209 Dr O'Reilly stated in his witness statement that the repeated problems in the area of commercial lending stemming from corporate governance issues gave concern.¹⁵² In his oral evidence to the Inquiry Dr O'Reilly was asked to explain his concerns more fully:

*"We had difficulties in — mainly in relation to corporate governance and controls within the institution, and they were ongoing. And from year to year, we raised issues. They were resolved. It took a while in each case to resolve them, and we moved on to the matters that are being discussed here today".*¹⁵³

12.210 Dr O'Reilly confirmed that the main concerns arose from the rapid growth in the portfolio in INBS and the lack of control mitigations to deal with the risk and the corporate governance related issues that led to that.¹⁵⁴ He said that of all the priorities

¹⁴⁹ Witness Statement of Liam O'Reilly dated, 23 November 2020 (Doc ID: RDU_REL538-000000001).

¹⁵⁰ Witness Statement of Liam O'Reilly, dated 23 November 2020, page 3 (Doc ID: RDU_REL538-000000001).

¹⁵¹ Witness Statement of Liam O'Reilly, dated 23 November 2020, page 3 (Doc ID: RDU_REL538-000000001).

¹⁵² Witness Statement of Liam O'Reilly, dated 23 November 2020, page 5 (Doc ID: RDU_REL538-000000001).

¹⁵³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 10 line 1 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

¹⁵⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 39 line 12 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

he had at the time as Financial Regulator, *“INBS would have been one of the institutions that had to be monitored closely”*.¹⁵⁵

12.211 Dr O’Reilly was asked particularly about the meeting with the representatives of INBS (Dr Walsh, Mr Power, Mr Fingleton and Mr Purcell) which he attended with the prudential director and the head of banking supervision of the Financial Regulator. The notes for that meeting¹⁵⁶ set out nine bullet points that listed the concerns of the Financial Regulator.¹⁵⁷ Bullet point four stated:

“Of particular concern is that while the level and nature of the Society’s activities have changed significantly, the control mitigants which would be necessary to manage, monitor and control those risks have not kept pace with this change”.¹⁵⁸

12.212 Dr O’Reilly stated that the speed of response to the concerns during the whole period was a constant concern to him. He said all of these concerns were expressed in the letter of 9 December 2004. He further said that there was an overall need to tackle these issues with some vigour.¹⁵⁹

12.213 Dr O’Reilly was then asked about the penultimate bullet point from the notes of the meeting on 3 December 2004, which stated:

“There is an over-reliance on the Managing Director and there is a need for the executive management team to be strengthened with a particular emphasis on oversight of the commercial lending function and succession planning for the Managing Director”.¹⁶⁰

12.214 Dr O’ Reilly said that control procedures should always have *“four eyes”* and *“the Managing Director of INBS was very much a person who was a dominating influence within the Society. And as one of the reasons why we felt that this was something that it is the responsibility of the Board to deal with”*.¹⁶¹

¹⁵⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 40 line 15 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

¹⁵⁶ FSR Record of meeting with INBS, dated 3 December 2004 (Doc ID: AD-0.7.120.1127973).

¹⁵⁷ See paragraph 12.31 above.

¹⁵⁸ FSR Record of meeting with INBS, dated 3 December 2004, page 2 (Doc ID: AD-0.7.120.1127973).

¹⁵⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 42, line 27 and page 43, line 2 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

¹⁶⁰ FSR Record of meeting with INBS, dated 3 December 2004, page 3 (Doc ID: AD-0.7.120.1127973).

¹⁶¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 43 line 17 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

12.215 The concerns expressed at the meeting with the INBS Board, were followed up by the letter of 9 December 2004. The second paragraph of this letter was unequivocal. It stated:

*“overall concern at this time is the significant shift in the risk profile of the loan INBS’s overall loan portfolio in a relatively short period of time. While it’s a matter for a credit institutions board and management to decide upon the business activities it engages in, it is essential there are appropriate policies, procedures, resources, internal controls and reporting structures in place commensurate with the risk arising from these activities which are sufficient to effectively manage, monitor and control that risk”.*¹⁶²

12.216 Dr O’Reilly confirmed that policies were important and that the Board would be the principal organ or instrument that would ensure that policies were observed.¹⁶³

12.217 In relation to the 9 December 2004 letter, Dr O’Reilly stated:

“...it’s important to say that it’s rarely that we would impose sanctions on credit institutions. There is always a worry, certainly around that time, of financial stability issues or issues in driving an institution into sort of market failure in some sense. So, it was important that we were introducing extra measures to deal with that.

...

...that was a concern of the Society which we felt was over-blown, but we did feel it was an important message that we needed to give to INBS, that we treated these matters very seriously.

Q. To the extent that you would impose sanctions?

*A. Exactly, yeah”.*¹⁶⁴

12.218 Dr O’Reilly went on to say that the increase in the capital ratio from 9% to 10% was seen by INBS as indicating that the issues the Financial Regulator was raising were to be taken very seriously.

¹⁶² Letter from IFSRA to Michael Walsh, Chairman, INBS, dated 9 December 2004, page 3 (Doc ID: 0.7.120.450640).

¹⁶³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, pages 46 to 47 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

¹⁶⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, pages 48 to 49 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

12.219 INBS delivered its response to the Financial Regulator's letter of 9 December 2004 on 1 February 2005 and it addressed issues raised by the Financial Regulator including an undertaking to enhance commercial lending administration in the light of KPMG's recommendations and the Financial Regulator's requirements. Dr O'Reilly was asked whether he was happy with that response. He stated:

*"Well, I was just disappointed in the degree of sanguineness, is that the word, on the part of the Board. They seemed to be very relaxed and was disappointed with the response. And it can be seen from my response in March... that we really weren't happy with the letter".*¹⁶⁵

12.220 Dr O'Reilly was referred in particular to the KPMG recommendations in relation to moratoria and restructured loans and the INBS comment that the issues raised by KPMG were not valid. Dr O'Reilly stated:

*"Yes, and as I said, we were, I suppose, disappointed, at the degree of seriousness in which they were taking matters. And there was a kickback or a pushback against KPMG recommendations".*¹⁶⁶

12.221 This concern was reflected in the follow-up letter from Dr O'Reilly on 22 March 2005.¹⁶⁷ It stated:

"The Financial Regulator remains concerned that the internal control environment of the Society has not kept pace with the changing nature of its business and activities.

*In this regard, I note you will submit a detailed consideration by your Board of these matters by 31 March 2005. The Financial Regulator expects that your report will incorporate all of the concerns raised in my letter of the 9 December 2004".*¹⁶⁸

12.222 The Board submitted its commercial lending strategy in a letter dated 31 March 2005. Dr O'Reilly said that in his view the strategy was a matter for the Board but that if it wished to follow that strategy it needed to implement the recommendations that had

¹⁶⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 53 line 3 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

¹⁶⁶ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 54 line 22 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

¹⁶⁷ Letter from Liam O'Reilly, Chief Executive, IFSRA, to Michael Walsh, Chairman, INBS, dated 22 March 2006 (Doc ID: 0.7.120.20126).

¹⁶⁸ Letter from Liam O'Reilly, Chief Executive, IFSRA, to Michael Walsh, Chairman, INBS, dated 22 March 2006, page 3 (Doc ID: 0.7.120.20126).

been made by KPMG. He said that the commercial lending review that had been conducted by the Board in response to the concerns raised by the Financial Regulator “*should have been a little bit more fulsome*”. The following exchange took place:

“A. But at that stage we were in the business of rolling a stone up a hill really, a boulder up a hill trying to get things done, and the major objective was to make sure that the risk mitigants were in place to whatever they were doing.

Q. Right. I mean you had been told that you would have a detailed consideration by the Board of the issues in relation to Commercial Lending by 31 March 2005?

A. Yes.

Q. But this two and a half page letter is it, I think, is it?

A. I am afraid so, I am afraid so. And, I suppose, in retrospect, it was weak.

Q. Yes, I mean, it's not just that it's short, it's at a level of generality, I think, Mr. O'Reilly, isn't that correct... that it doesn't really address any of the specific issues... I suggest in any way that could give comfort to the Regulator?

*A. Well, the major comfort we needed was on controls, control mitigants for what they were doing”.*¹⁶⁹

12.223 Dr O'Reilly agreed that there was no engagement with the specifics of the Financial Regulator's concerns although there was a statement within the response that stated “*KPMG's review issued in October made a number of recommendations. The Board of the Society is fully committed to implementing those recommendations and has made substantial progress to date*”. He said that because the INBS response had not outlined what progress had been made to date, the Financial Regulator had looked for a progress report which it got in June 2005. That progress report referred to INBS as being in the process of enhancing its commercial lending administration function so as to continually improve the control environment, but there was no engagement with any of the specifics. Dr O'Reilly said that the Financial Regulator was pinning its hopes on the expectation that the recommendations of KPMG would be implemented. He said that he was extremely disappointed that the recruitment of a senior executive director

¹⁶⁹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, pages 57 to 58 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

was not put into effect and it was one of his regrets that nothing was ever done about that.¹⁷⁰

12.224 The progress report of June 2005 contained a schedule outlining the progress that had been made by INBS in implementing the KPMG recommendations. While some of the recommendations had been partially implemented, the banking supervision department still had to follow up on a number of queries. For example, one of the queries related to amendments to CMOs. KPMG had recommended that where an amendment was made, a fresh CMO should be sent to the borrower and should be signed by them. In relation to this recommendation, INBS stated that written agreement was not sought from the customer and that it would obtain legal advice on the matter. Another KPMG recommendation was that a database of personal guarantees should be established. In the June 2005 update, INBS stated that this was hoped to be completed towards the end of the following year. Dr O'Reilly commented:

*"As I said, you know, in retrospect, I always felt that the responses of INBS were, to put it mildly, relaxed, and there was a question of what sanctions, other than the ones that we used, which were very small, would have taken any effect on the situation".*¹⁷¹

12.225 In September 2005, the banking supervision department provided an update to the Financial Regulator on issues relating to INBS. In relation to the KPMG recommendations, this update stated:

*"The implementation of the recommendations arising out of the KPMG Commercial Lending Report 2004 is proceeding satisfactorily".*¹⁷²

12.226 Dr O'Reilly confirmed that the impression at the time was that things were being implemented slowly. By the time he left his position as Financial Regulator in January 2006, he said there had been no resolution reached.¹⁷³ Indeed, an inspection conducted by the Financial Regulator between 6 and 14 June 2006, showed that the recommendation that amendments to CMOs should give rise to a fresh CMO to be signed by the borrower, was designated *"Not to be implemented"*. Similarly, the

¹⁷⁰ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, pages 59 to 61 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

¹⁷¹ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 71 line 10 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

¹⁷² INBS Update of Issues, Banking Supervision Department, ISFRA, dated 9 September 2005, page 3 (Doc ID: AD-0.7.120.134690).

¹⁷³ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 75 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

recommendation of a central database of personal guarantees was also designated as not to be implemented.¹⁷⁴

12.227 In conclusion, Dr O'Reilly was asked why there was so much reluctance by INBS to implement very straightforward recommendations. He said that he believed it was about control and a desire not to be dictated to.¹⁷⁵

Patrick Neary

12.228 Dr O'Reilly's successor as Financial Regulator was Mr Neary who held that position from 1 February 2006 until 30 September 2008. He had previously been prudential director of the Financial Regulator. Mr Neary indicated that by the time of his appointment, INBS issues in relation to compliance with policy were being handled by the banking supervision department.¹⁷⁶ The officer with responsibility for INBS was Ms Madden.

Yvonne Madden

12.229 Ms Madden joined the Financial Regulator in 2003 and, from 2006, had responsibility for several regulated institutions including INBS. Ms Madden gave evidence to the Inquiry in the SPC 7 module in relation to policies. She stated:

"So I think there would have been a number of regulatory requirements and standards in place in relation to having appropriate governance and risk management arrangements, so in relation to the identification, management, measurement, monitoring of risk, there would have been requirements at the European and domestic level in relation to ensuring appropriate policies, strategies and arrangements [were] in place. So, you would expect that as part of that, if you had a significant risk to manage, that there would be a policy in place for that. But it wasn't prescribed. It was up to the Board of the institution to determine whether or not a policy should be put in place for them to effectively discharge their duties and manage the risk in their books".¹⁷⁷

12.230 She said that in the "Principles-based" approach adopted by the Financial Regulator at that time, the Financial Regulator did not review the appropriateness of policies in

¹⁷⁴ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, pages 79 to 81 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

¹⁷⁵ Transcript SPCs 1-4 Remote Inquiry Hearing, dated 25 June 2021, page 86 (Doc ID: RDU_FT_SPC1-4_D26-000000001).

¹⁷⁶ Transcript SPC 5 Inquiry Hearing, dated 15 May 2018, page 11 (Doc ID: RDU_FT_D38-00000001).

¹⁷⁷ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 103 line 7 (Doc ID: RDU_SPC7FT_D2-000000001).

place: “That was the board’s responsibility and that was really what principles based regulation was more about”.¹⁷⁸

Ms Madden said that in 2006, a lot of the correspondence from the Financial Regulator was requesting INBS to enhance corporate governance and risk management, and the Financial Regulator would have accepted the assurances from the Board that it was committed to doing that.¹⁷⁹

12.231 Ms Madden referred to the Board’s responsibility in relation to implementing appropriate policies. She stated:

*“So, one of the key roles of the board is to kind of understand and determine the level of risk within the credit institution due to the nature and the scale of their activities. The role of the board then is to establish kind of frameworks and arrangements that need to be put in place, and they can include policies, strategies, processes, what not, and the purpose of those would be to kind of identify, measure, manage, monitor and report on the risks that an institution has in its business or that it’s exposed to through the macro environment...”*¹⁸⁰

OBSERVATIONS OF THE INQUIRY

12.232 The correspondence cited in this chapter shows that the Financial Regulator, dating back to 1999, had serious concerns about INBS, including concerns about commercial lending and governance.

12.233 By early 2004 the Financial Regulator’s concerns were such that it instructed KPMG, INBS’s auditors, to undertake a detailed review of commercial lending in INBS and to report the findings directly back to it.

12.234 This report raised serious high level concerns which the Financial Regulator expressed both at meetings and in correspondence with INBS. The Financial Regulator was particularly concerned about the scale of the increase in commercial lending, the scale of this activity in the UK, the large unit size of loans and the increase in Profit Share Loans. These loans, which entitled INBS to share in the profits arising from the purpose of the loan, had characteristics

¹⁷⁸ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 126 line 19 (Doc ID: RDU_SPC7FT_D2-000000001).

¹⁷⁹ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 136 line 26 (Doc ID: RDU_SPC7FT_D2-000000001).

¹⁸⁰ Transcript SPC 7 Inquiry Hearing, dated 10 July 2019, page 150 line 9 (Doc ID: RDU_SPC7FT_D2-000000001).

such as up to 100% LTV ratio, large unit size and lack of policy direction, which all increased the risk profile of the portfolio and exposed INBS to a downturn in the property market. The Financial Regulator also contended that control mitigants had not kept pace with the change of the business into commercial lending.

12.235 It is a measure of the scale of the Financial Regulator's concern in 2004 that it took the very serious step of changing INBS's minimum capital adequacy requirement from 9% to 10%, which had the effect of reducing INBS's capacity to lend. It is worth noting, as an indication, that during the Review Period its concerns were not assuaged and the Financial Regulator again increased INBS's minimum capital adequacy requirement in 2008 from 10% to 11% thereby further reducing INBS's capacity to lend.

12.236 In 2005, the Board of INBS responded to the Financial Regulator with a defence of its commercial lending strategy and its ability to execute it. This turned the focus onto the control mitigants.

12.237 The mitigant recommended by the Financial Regulator throughout the Review Period was for INBS to strengthen its management capability in commercial lending both at non-executive director level and at executive director level through the appointment of a head of commercial lending. Whilst the Board of INBS accepted these recommendations, the directors contended consistently throughout the Review Period that they were unable to recruit appropriate candidates because of the likely imminent sale of INBS.

12.238 In the absence of addressing the Financial Regulator's concerns by strengthening the commercial banking management, the other mitigant available to INBS would be to reduce its scale of commercial lending to more closely align it with its capacity to properly deal with it. Far from cutting back, the rate of commercial lending increased during the Review Period up to December 2007, when the Board finally decided to stop new commercial lending.

12.239 As a result, neither high level mitigant was put in place, while the commercial loan book grew apace.

12.240 An operational mitigant identified and recommended by KPMG as early as in the 2004 KPMG Management letter was stress testing of the commercial lending portfolio. This is a process of testing the ability of the portfolio to withstand a

range of adverse factors. This recommendation was taken up and vigorously followed up by the Financial Regulator. One stress test was carried out during the Review Period but a further test, under which a more comprehensive range of factors were applied, was only completed after the Review Period despite a number of undertakings as to completion being given by INBS to the Financial Regulator and the agreed deadlines then being missed. The issue of stress testing is dealt with in Chapter 10 of this Findings Report and the Inquiry is particularly struck by the evidence of Mr Darragh Daly, former credit risk manager in INBS, who told the Inquiry that he believed that INBS struggled to produce stress tests based on *“an absolute lack of portfolio level data or an appropriate IT platform upon which a stress test might be performed”*.¹⁸¹

12.241 Other issues raised by KPMG and Deloitte and picked up by the Financial Regulator included approval of term extensions, credit review reporting to the Credit Committee, non-quorate Credit Committee meetings and signing of minutes by non-attendees. In each case undertakings were given to the Financial Regulator by INBS, but, as outlined in the relevant SPC chapters of this Findings Report and in the correspondence outlined above, the issues were not dealt with.

12.242 The correspondence from 2006 onwards is marked by continuous requests from the Financial Regulator that reports be provided.

12.243 From 11 July 2007, more comprehensive replies were provided to the Financial Regulator, although the same issues remained unaddressed, as follows:

- (a) the number of Board members was not increased;
- (b) no senior executive was appointed to oversee commercial lending;
- (c) commercial lending, and in particular profit share lending, continued to increase exponentially without control mitigants being put in place;
- (d) only one stress test was conducted; and
- (e) Credit Committee meetings continued to fail to comply with the terms of reference.

¹⁸¹ See Chapter 10, paragraph 10.167.

By this time, market conditions had begun to emerge as a concern and INBS ceased all commercial lending from December 2007.

12.244 The “*Principles Based*” regulatory model followed by the Financial Regulator during the Review Period placed an onus on the Board of INBS to engage fully with the concerns raised by the Financial Regulator. The evidence from the above correspondence, the Financial Regulator evidence and the evidence heard throughout the Inquiry indicate that the Board of INBS did not meet this responsibility.

APPENDIX 1

TABLE OF MODULAR HEARINGS

MODULE 1 - SPC 5 HEARINGS

No	Hearing Date	Hearing Type/Witness Evidence	Public/Private	Doc ID
1	11 December 2017	Opening Statements	Public	RDU_FT_D1-00000002
2	12 December 2017	Opening Statements	Public	RDU_FT_D2-00000003
3	13 December 2017	Opening Statements	Public	RDU_FT_D3-00000002
4	8 January 2018	Application by Ita Rogers for her evidence to be heard in private	Private	RDU_FT_D4-00000002
5	30 January 2018	Application by Michael Fingleton for Adjournment	Private	RDU_FT_D5-000000001
6	14 February 2018	Application by Michael Fingleton for Adjournment	Private	RDU_FT_D6-000000001
7	20 February 2018	Darragh Daly	Public	RDU_FT_D7-000000001
8	21 February 2018	Darragh Daly	Public	RDU_FT_D8-000000001
9	22 February 2018	Darragh Daly	Public	RDU_FT_D9-000000001
10	23 February 2018	Darragh Daly and Vincent Holohan	Public	RDU_FT_D10-000000001
11	27 February 2018	Brian Fitzgibbon	Public	RDU_FT_D11-000000001
12	6 March 2018	John Murphy	Public	RDU_FT_D12-000000001
13(a)	7 March 2018	Michael Fingleton and Inquiry Schedule	Private	RDU_FT_D13-000000005

No	Hearing Date	Hearing Type/Witness Evidence	Public/Private	Doc ID
13(b)	7 March 2018	Frank Casey	Public	RDU_FT_D13-00000001
14(a)	8 March 2018	Michael Fingleton and Inquiry Schedule	Private	RDU_FT_D14-00000005
14(b)	8 March 2018	Frank Casey	Public	RDU_FT_D14-00000001
15(a)	9 March 2018	Mr Michael Fingleton and Inquiry Schedule	Private	RDU_FT_D15-00000005
15(b)	9 March 2018	Frank Casey	Public	RDU_FT_D15-00000001
16	13 March 2018	Melody van der Berg	Public	RDU_FT_D16-00000001
17	14 March 2018	Melody van der Berg and Martin Noonan	Public	RDU_FT_D17-00000001
18	15 March 2018	Martin Noonan	Public	RDU_FT_D18-00000001
19	16 March 2018	Daniel Dempsey	Public	RDU_FT_D19-00000001
20	20 March 2018	Killian McMahon	Public	RDU_FT_D20-00000003
21	21 March 2018	Killian McMahon and John Roche	Public	RDU_FT_D21-00000001
22	23 March 2018	Brian Mortimer	Public	RDU_FT_D22-00000001
23	9 April 2018	Darren D'Arcy and Feidhlimidh Wrafter	Public	RDU_FT_D23-00000003
24	10 April 2018	Con Power	Public	RDU_FT_D24-00000003
25	11 April 2018	Con Power	Public	RDU_FT_D25-00000001
26	12 April 2018	Alan Deering	Public	RDU_FT_D26-00000003
27	13 April 2018	Killian McMahon	Public	RDU_FT_D27-00000003

No	Hearing Date	Hearing Type/Witness Evidence	Public/Private	Doc ID
28	23 April 2018	Killian McMahon & Ita Rogers	Public	RDU_FT_D28-00000003
29	24 April 2018	Ita Rogers	Public	RDU_FT_D29-00000003
30(a)	25 April 2018	Michael Fingleton	Private	RDU_FT_D30-00000004
30(b)	25 April 2018	David Brophy	Public	RDU_FT_D30-00000003
31	26 April 2018	David Brophy Vincent Reilly	Public	RDU_FT_D31-00000001
32	27 April 2018	Vincent Reilly	Public	RDU_FT_D32-00000001
33(a)	30 April 2018	Michael Fingleton	Private	RDU_FT_D33-00000004
33(b)	30 April 2018	Adjournment of Inquiry Hearing on 30 April and 1 May 2018	Public	RDU_FT_D33-00000001
34	8 May 2018	Yvonne Madden	Public	RDU_FT_D34-00000001
35	9 May 2018	Yvonne Madden	Public	RDU_FT_D35-00000001
36	10 May 2018	Yvonne Madden	Public	RDU_FT_D36-00000001
37	14 May 2018	Con Horan (no attendance)	Public	RDU_FT_D37-00000001
38	15 May 2018	Patrick Neary	Public	RDU_FT_D38-00000001
39	16 May 2018	Patrick Neary	Public	RDU_FT_D39-00000001
40	21 May 2018	Michael Walsh	Public	RDU_FT_D40-00000001
41	22 May 2018	Michael Walsh	Public	RDU_FT_D41-00000001

No	Hearing Date	Hearing Type/Witness Evidence	Public/Private	Doc ID
42	23 May 2018	Con Horan	Public	RDU_FT_D42-00000001
43	28 May 2018	Colm McDonnell Vincent Reilly	Public	RDU_FT_D43-000000001
44	5 June 2018	Tom McMenamin	Public	RDU_FT_D44-00000001
45	6 June 2018	Tom McMenamin	Public	RDU_FT_D45-000000001
46	7 June 2018	Tom McMenamin	Public	RDU_FT_D46-00000001
47	8 June 2018	Tom McMenamin	Public	RDU_FT_D47-000000001
48	11 June 2018	John Stanley Purcell	Public	RDU_FT_D48-000000001
49	12 June 2018	John Stanley Purcell	Public	RDU_FT_D49-000000001
50	13 June 2018	John Stanley Purcell	Public	RDU_FT_D50-000000001
51	14 June 2018	John Stanley Purcell	Public	RDU_FT_D51-00000001
52	26 June 2018	Michael Fingleton	Public	RDU_FT_D52-00000001
53	27 June 2018	Michael Fingleton	Public	RDU_FT_D53-00000001
54	28 June 2018	Michael Fingleton	Public	RDU_FT_D54-00000001
55	29 June 2018	Michael Fingleton	Public	RDU_FT_D55-000000001

MODULE 2 - SPC 6 HEARINGS

No	Hearing Date	Hearing Type/Witness Evidence	Public/Private	Doc ID
1	27 March 2019	Submissions	Public	RDU_FT_20190327-00000001
2(a)	3 April 2019	Submissions and Opening Statements	Public and private	RDU_SPC6FT_D2-00000001
2(b)	3 April 2019	Yvonne Madden	Public	RDU_SPC6FT_D2-00000004
3	4 April 2019	Vincent Reilly	Public	RDU_SPC6FT_D3-00000001
4	5 April 2019	Yvonne Madden	Public	RDU_SPC6FT_D4-00000001
5	8 April 2019	Colm McDonnell	Public	RDU_SPC6FT_D5-00000001
6	9 April 2019	Michael Walsh	Public	RDU_SPC6FT_D6-00000001
7	10 April 2019	Darragh Daly	Public	RDU_SPC6FT_D7-00000001
8	11 April 2019	David Brophy	Public	RDU_SPC6FT_D8-00000001
9	12 April 2019	Stan Purcell	Public	RDU_SPC6FT_D9-00000001

MODULE 3 - SPC 7 HEARINGS

No	Hearing Date	Hearing Type/Witness Evidence	Public/Private	Doc ID
1	3 July 2019	Opening Statements	Public	RDU_SPC7FT_D1-000000001
2(a)	10 July 2019	Tom McMenamin and Yvonne Madden	Public	RDU_SPC7FT_D2-000000001
2(b)	10 July 2019	Tom McMenamin	Private	RDU_SPC7FT_D2-000000004

No	Hearing Date	Hearing Type/Witness Evidence	Public/Private	Doc ID
3	11 July 2019	Colm McDonnell, Darragh Daly and John Roche (no attendance)	Public	RDU_SPC7FT_D 3-000000001
4	16 July 2019	Declan Buckley and Karl O'Brien	Public	RDU_SPC7FT_D 4-000000001
5(a)	18 July 2019	Michael Fingleton Jr (no attendance) and Michael Walsh	Public	RDU_SPC7FT_D 5-000000001
5(b)	18 July 2019	Michael Walsh	Private	RDU_SPC7FT_D 5-000000004
6	19 July 2019	Liam O'Reilly and David Brophy	Public	RDU_SPC7FT_D 6-000000001
7	23 July 2019	Vincent Reilly and Alan Boyne	Public	RDU_SPC7FT_D 7-000000001
8	24 July 2019	Killian McMahon and Howard Kennedy representative (no attendance)	Public	RDU_SPC7FT_D 8-000000001
9(a)	18 September 2019	Gary McCollum	Public	RDU_SPC7FT_D 9-000000001
9(b)	18 September 2019	Gary McCollum	Private	RDU_SPC7FT_D 9-000000004
10	20 September 2019	Stan Purcell	Public	RDU_SPC7FT_D 10-000000001

MODULE 4 - SPC 1 to 4 HEARINGS

No	Hearing Date	Hearing Type/Witness Evidence	Public/Private	Doc ID
1	30 October 2020	Opening Statements	Public	RDU_FT_SPC1-4_D1-000000001
2(a)	3 November 2020	Opening Statements	Public	RDU_FT_SPC1-4_D2-000000001

No	Hearing Date	Hearing Type/Witness Evidence	Public/Private	Doc ID
2(b)	3 November 2020	Loan hearing	Private	RDU_FT_SPC1-4_D2-000000004
3	4 November 2020	Loan hearing	Private	RDU_FT_SPC1-4_D3-000000001
4	5 November 2020	Loan hearing	Private	RDU_FT_SPC1-4_D4-000000001
5	6 November 2020	Loan hearing	Private	RDU_FT_SPC1-4_D5-000000001
6	11 November 2020	Loan hearing	Private	RDU_FT_SPC1-4_D6-000000001
7	7 December 2020	Loan hearing	Private	RDU_FT_SPC1-4_D7-000000001
8	8 December 2020	Loan hearing	Private	RDU_FT_SPC1-4_D8-000000001
9	9 December 2020	Loan hearing	Private	RDU_FT_SPC1-4_D9-000000001
10	10 December 2020	Loan hearing	Private	RDU_FT_SPC1-4_D10-000000001
11	23 February 2021	Loan hearing	Private	RDU_FT_SPC1-4_D11-000000001
12	24 February 2021	Loan hearing	Private	RDU_FT_SPC1-4_D12-000000001
13	25 February 2021	Loan hearing	Private	RDU_FT_SPC1-4_D13-000000001
14	26 February 2021	Loan hearing	Private	RDU_FT_SPC1-4_D14-000000001
15	19 April 2021	Loan hearing	Private	RDU_FT_SPC1-4_D15-000000001
16	20 April 2021	Loan hearing	Private	RDU_FT_SPC1-4_D16-000000001
17	21 April 2021	Loan hearing	Private	RDU_FT_SPC1-4_D17-000000001
18	22 April 2021	Loan hearing	Private	RDU_FT_SPC1-4_D18-000000001

No	Hearing Date	Hearing Type/Witness Evidence	Public/Private	Doc ID
19 (a)	11 June 2021	Loan hearing	Private	RDU_FT_SPC1-4_D19-00000001
19 (b)	11 June 2021	Opening Statements and Brian Fitzgibbon	Public	RDU_FT_SPC1-4_D19-00000004
20	15 June 2021	Frank Casey	Public	RDU_FT_SPC1-4_D20-000000001
21	16 June 2021	Darragh Daly and Shane McGowan	Public	RDU_FT_SPC1-4_D21-000000001
22	17 June 2021	Martin Noonan and Michael Fingleton (Jnr) (no attendance)	Public	RDU_FT_SPC1-4_D22-000000001
23	22 June 2021	Patricia McChesney and John Roche (no attendance)	Public	RDU_FT_SPC1-4_D23-000000001
24	23 June 2021	Alan Deering	Public	RDU_FT_SPC1-4_D24-000000001
25	24 June 2021	Vincent Reilly	Public	RDU_FT_SPC1-4_D25-000000001
26	25 June 2021	Liam O'Reilly	Public	RDU_FT_SPC1-4_D26-000000001
27	29 June 2021	David Brophy	Public	RDU_FT_SPC1-4_D27-000000001
28	30 June 2021	Colm McDonnell	Public	RDU_FT_SPC1-4_D28-000000001
29	1 July 2021	Michael Walsh	Public	RDU_FT_SPC1-4_D29-000000001
30	2 July 2021	Killian McMahan	Public	RDU_FT_SPC1-4_D30-000000001
31	21 July 2021	Stan Purcell	Public	RDU_FT_SPC1-4_D31-000000001

APPENDIX 2

OUTLINE OF SPCs ADVANCED AGAINST INBS AND MR PURCELL

(EXTRACT FROM NOTICE OF INQUIRY)

STRICTLY CONFIDENTIAL

Outline of the suspected prescribed contraventions that Irish Nationwide Building Society ("INBS") is suspected of having committed

The Central Bank of Ireland has reasonable grounds to suspect, as set out in the Investigation Report titled "Investigation Report concerning Irish Nationwide Building Society 2014" and accompanying documents, that INBS has committed the prescribed contraventions as set out below and has decided to hold an Inquiry in accordance with Part IIIC of the Central Bank Act 1942 (as amended).

Outline of suspected prescribed contraventions¹

Suspected prescribed contravention 1 (a):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loan applications were processed in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions) Regulations 1992 (as amended) (S.I. 395/1992).

Suspected prescribed contravention 1 (b):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loan applications were processed in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the Building Societies Act, 1989 (as amended).

Suspected prescribed contravention 1 (c):

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that commercial loan applications were processed in accordance with INBS's internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Section 17 of the Building Societies Act, 1989 (as amended) (namely Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26 October 2005).

Suspected prescribed contravention 2 (a):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that INBS failed to ensure that CMOs complied with internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions) Regulations 1992 (as amended) (S.I. 395/1992).

¹ Defined terms referred to below are as per the investigation Report titled "Investigation Report concerning Irish Nationwide Building Society 2014"

Suspected prescribed contravention 2 (b):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that INBS failed to ensure that CMOs complied with internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the Building Societies Act, 1989 (as amended).

Suspected prescribed contravention 2 (c):

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that INBS failed to ensure that CMOs complied with internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Section 17 of the Building Societies Act, 1989 (as amended) (namely Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26 October 2005).

Suspected prescribed contravention 3 (a):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that loan to value ("LTV") limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions) Regulations 1992 (as amended) (S.I. 395/1992).

Suspected prescribed contravention 3 (b):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that loan to value (LTV) limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the Building Societies Act, 1989 (as amended).

Suspected prescribed contravention 3 (c):

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that loan to value (LTV) limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Section 17 of the Building Societies Act, 1989 (as amended) (namely Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26 October 2005).

Suspected prescribed contravention 4 (a):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed in contravention of Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions) Regulations 1992 (as amended) (S.I. 395/1992).

Suspected prescribed contravention 4 (b):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies, and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the Building Societies Act, 1989 (as amended).

Suspected prescribed contravention 4 (c):

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies, and thereby failed to comply with a condition on its authorisation imposed in accordance with Section 17 of the Building Societies Act, 1989 (as amended) (namely Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26 October 2005).

Suspected prescribed contravention 5 (a):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions) Regulations 1992 (as amended) (S.I. 395/1992).

Suspected prescribed contravention 5 (b):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the Building Societies Act, 1989 (as amended).

Suspected prescribed contravention 5 (c):

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS's internal policies, and thereby failed to comply with a condition of its authorisation imposed in accordance with Section 17 of the Building Societies Act, 1989 (as amended) (namely Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26 October 2005).

Suspected prescribed contravention 6 (a):

It is suspected that from 21 December 2005 to 30 September 2008, INBS failed to ensure that certain reports

relevant to commercial lending and credit risk management were provided to the Board of Directors in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions) Regulations 1992 (as amended) (S.I. 395/1992).

Suspected prescribed contravention 6 (b):

It is suspected that from 21 December 2005 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to the Board of Directors in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the Building Societies Act, 1989 (as amended).

Suspected prescribed contravention 6 (c):

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to the Board of Directors in accordance with INBS's internal policies, and thereby failed to comply with a condition of its authorisation imposed in accordance with Section 17 of the Building Societies Act, 1989 (as amended) (namely Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26 October 2005).

Suspected prescribed contravention 7 (a):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that the establishment of profit share agreements was the subject of any formal credit risk policy and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting agreements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions) Regulations 1992 (as amended) (S.I. 395/1992).

Suspected prescribed contravention 7 (b):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that the establishment of profit share agreements was the subject of any formal credit risk policy and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the Building Societies Act, 1989 (as amended).

Suspected prescribed contravention 7 (c):

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that the establishment of profit share agreements was the subject of any formal credit risk policy, and thereby failed to comply with a condition of its authorisation imposed in accordance with Section 17 of the Building Societies Act, 1989 (as amended) (namely Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26 October 2005).

STRICTLY CONFIDENTIAL

Outline of the suspected prescribed contraventions, the commission of which by INBS, John S. (Stan) Purcell is suspected of having participated in

The Central Bank of Ireland has reasonable grounds to suspect, as set out in the Investigation Report titled "Investigation Report concerning Irish Nationwide Building Society 2014" and accompanying documents, that Stan Purcell has participated in the commission by INBS of the prescribed contraventions set out below and has decided to hold an inquiry in accordance with Part IIC of the Central Bank Act 1942 (as amended).

Outline of suspected prescribed contraventions¹
<p>Suspected prescribed contravention 1 (a):</p> <p>It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loan applications were processed in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions) Regulations 1992 (as amended) (S.I. 395/1992). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.</p>
<p>Suspected prescribed contravention 1 (b):</p> <p>It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loan applications were processed in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the Building Societies Act, 1989 (as amended). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.</p>
<p>Suspected prescribed contravention 1 (c):</p> <p>It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that commercial loan applications were processed in accordance with INBS's internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Section 17 of the Building Societies Act, 1989 (as amended) (namely Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26 October 2005). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.</p>
<p>Suspected prescribed contravention 2 (a):</p> <p>It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that INBS</p>

¹ Defined terms referred to below are as per the Investigation Report titled "Investigation Report concerning Irish Nationwide Building Society 2014"

failed to ensure that CMOs complied with internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions) Regulations 1992 (as amended) (S.I. 395/1992). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 2 (b):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that INBS failed to ensure that CMOs complied with internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the Building Societies Act, 1989 (as amended). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 2 (c):

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that INBS failed to ensure that CMOs complied with internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Section 17 of the Building Societies Act, 1989 (as amended) (namely Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26 October 2005). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 3 (a):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that loan to value (LTV) limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions) Regulations 1992 (as amended) (S.I. 395/1992). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 3 (b):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that loan to value (LTV) limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the Building Societies Act, 1989 (as amended). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the

Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 3 (c):

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that loan to value (LTV) limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Section 17 of the Building Societies Act, 1989 (as amended) (namely Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26 October 2005). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 4 (a):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed in contravention of Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions) Regulations 1992 (as amended) (S.I. 395/1992). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 4 (b):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies, and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the Building Societies Act, 1989 (as amended). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 4 (c):

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies, and thereby failed to comply with a condition on its authorisation imposed in accordance with Section 17 of the Building Societies Act, 1989 (as amended) (namely Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26 October 2005). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 5 (a):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions)

Regulations 1992 (as amended) (S.I. 395/1992). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 5 (b):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the Building Societies Act, 1989 (as amended). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 5 (c):

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS's internal policies, and thereby failed to comply with a condition of its authorisation imposed in accordance with Section 17 of the Building Societies Act, 1989 (as amended) (namely Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26 October 2005). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 6 (a):

It is suspected that from 21 December 2005 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to the Board of Directors in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions) Regulations 1992 (as amended) (S.I. 395/1992). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 6 (b):

It is suspected that from 21 December 2005 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to the Board of Directors in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the Building Societies Act, 1989 (as amended). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 6 (c):

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to the Board of Directors in accordance with INBS's internal policies, and thereby failed to comply with a condition of its authorisation imposed in accordance with Section 17 of the Building Societies Act, 1989 (as amended) (namely Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26

October 2005). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 7 (a):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that the establishment of profit share agreements was the subject of any formal credit risk policy and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting agreements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions) Regulations 1992 (as amended) (S.I. 395/1992). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 7 (b):

It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that the establishment of profit share agreements was the subject of any formal credit risk policy and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the Building Societies Act, 1989 (as amended). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

Suspected prescribed contravention 7 (c):

It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that the establishment of profit share agreements was the subject of any formal credit risk policy, and thereby failed to comply with a condition of its authorisation imposed in accordance with Section 17 of the Building Societies Act, 1989 (as amended) (namely Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26 October 2005). It is also suspected that Stan Purcell, a person concerned in the management of INBS during the Review Period, participated in the commission of this suspected prescribed contravention.

APPENDIX 3

DOCUMENTS IDENTIFIED IN INVESTIGATION REPORT AS INBS POLICY DOCUMENTS WHICH FORM THE BASIS OF THE ALLEGATIONS OF NON- COMPLIANCE SET OUT IN SPCS 1 TO 7

No	Title	Doc ID	Relevant SPCs
1.	April 2003 Credit Risk Policy	0.7.120.478217 (Pages 8 to 28)	SPCs 1, 2, 3 and 4
2.	UK Version of the April 2003 Credit Risk Policy	0.7.120.622022	SPCs 2 and 3
3.	9 November 2004 Commercial Lending Criteria	0.7.120.450329	SPCs 1 and 3
4.	28 February 2007 Commercial Mortgage Lending Policy	0.7.120.27792	SPCs 1, 2, 3 and 4
5.	December 2007 Commercial Mortgage Lending Policy	0.7.120.450156	SPCs 1, 2, 3 and 4
6.	21 April 2008 Commercial Mortgage Lending Policy	0.7.120.448318	SPCs 1, 2, 3 and 4
7.	Moratoria Policy October 2003	0.7.120.27792 (Page 30)	SPC 2
8.	9 October 2006 Board Directive	0.7.120.719572 (Page 2)	SPC 2
9.	Board Resolution September 2002	0.7.120.431867	SPC 2
10.	16 October 2003 Commercial Credit Committee Terms of Reference	0.7.120.5896	SPCs 2, 3 and 5
11.	19 July 2006 Commercial Credit Committee Terms of Reference	0.7.120.13247	SPCs 2, 3 and 5
12.	December 2007 Credit Committee Terms of Reference	0.7.120.26675	SPCs 2, 3 and 5
13.	27 June 2007 Credit Risk Management Policy	0.7.120.431329	SPCs 1, 2, 3, 4, 6 and 7
14.	27 June 2007 Concentration Risk Policy	0.7.120.432154	SPC 6
15.	31 October 2006 Credit Risk Department Terms of Reference	0.7.120.13615 (Page 9)	SPC 6

16.	8 April 2003 Credit Grading System for Commercial Lending	0.7.120.478217 (Pages 1 to 2)	SPC 1
17.	2005 Impairment Provisioning Policy	0.7.120.25083	SPCs 1, 4 and 6
18.	2006 Impairment Provisioning Policy	0.7.120.449670	SPCs 1, 4 and 6
19.	2007 Impairment Provisioning Policy	0.7.120.449577	SPCs 1, 4 and 6
20.	2006 Notes on the Implementation of Impairment Provisioning Policy	0.7.120.449946	SPCs 1, 4 and 6
21.	2007 Notes on the Implementation of Impairment Provisioning Policy	0.7.120.449696	SPCs 1, 4 and 6
22.	Moratoria Policy December 2007	0.7.120.450156 (Page 30)	SPC 2
23.	Moratoria Policy 21 April 2008	0.7.120.448318 (Page 31)	SPC 2

**ADDITIONAL INBS POLICY DOCUMENTS IN OPERATION DURING THE
REVIEW PERIOD WHICH ARE REFERENCED IN THE INVESTIGATION REPORT
BUT WHERE NON-COMPLIANCE WITH POLICY PROVISIONS IS NOT ALLEGED
AS PART OF THE INVESTIGATION**

No	Title	Doc ID
1.	November 2004 Audit Committee Terms of Reference	0.7.120.432308
2.	March 2005 Audit Committee Terms of Reference	0.7.120.510171
3.	April 2006 Audit Committee Terms of Reference	0.7.120.28782
4.	August 2006 Audit Committee Terms of Reference	0.7.120.32287
5.	10 March 2005 INBS Internal Audit Charter	0.7.120.19710
6.	26 July 2007 INBS Internal Audit Charter	0.7.120.27744
7.	4 July 2008 INBS Internal Audit Charter	0.7.120.519071
8.	May 2006 Assurance Provider Committee Terms of Reference	0.7.120.431756
9.	2007 ICAAP Committee Terms of Reference	0.7.120.37505 (pages 1 to 2)
10.	June 2004 Provisions Committee Terms of Reference	0.7.120.18830

11.	26 October 2006 Provisions Committee Terms of Reference	0.7.120.8883
-----	---	--------------

APPENDIX 4

CATEGORIES OF EVIDENCE

- 4.1 The Inquiry was provided with the following categories of evidence relied upon by Enforcement in the Investigation Report.
- 4.2 Documents identified by Enforcement as relevant policy documents during the Review Period.¹
- 4.3 Loan Sample documentation, which consisted of:
 - (a) Loan Files.
 - (b) Scanned copy of Belfast Loan Files.
 - (c) Other loan sample documentation.
 - (d) Additional CLAs.
 - (e) Legal Due Diligence Reports.
 - (f) Security review material.
 - (g) Credit Review material.
 - (h) Summit transaction history reports.
 - (i) Consolidated Tables prepared by Enforcement detailing the loan specific allegations relating to SPCs 1 to 4.
- 4.4 Commercial administration documentation, including term reports that were request forms prepared for term extensions and also moratoria report forms that were prepared for variations to moratoria.
- 4.5 Information obtained from Summit, the electronic data system used by INBS to manage customer and account information and record loan transaction data.

¹ A table listing the documents identified by Enforcement as INBS policy documents which form the basis of the allegations of non-compliance set out in SPCs 1 to 7 is included at Appendix 3.

- 4.6 Contemporaneous Reports prepared by: INBS's auditor, KPMG; the Internal Audit Department of INBS; and Deloitte, prior to, during and after the Review Period, as part of the internal audit or annual statutory audit process, or for specific purposes.²
- 4.7 Regulatory correspondence between INBS and the Central Bank/Financial Regulator.
- 4.8 Electronic data obtained from INBS by Enforcement in the course of its Investigation.
- 4.9 Interview evidence from individuals interviewed by Enforcement as part of the Investigation.³
- 4.10 Corporate governance documentation comprising four distinct categories of evidence, namely:
- (a) minutes of Board meetings and packs of documents received by the Board;
 - (b) minutes of Audit Committee meetings and packs of documents received by the Audit Committee;
 - (c) minutes of Credit Committee meetings and packs of documents received by the Credit Committee; and
 - (d) minutes of Provisions Committee meetings and packs of documents received by the Provisions Committee.
- 4.11 Correspondence with INBS and the alleged participants in response to examination letters and investigation letters issued by the Central Bank.
- 4.12 Other documentation received by the Central Bank in response to Section 41A Notices sent to INBS/IBRC and witnesses.
- 4.13 Other documentation which has been relied upon in the Investigation Report, such as publicly available information and information received on a voluntary basis from witnesses.

² In total, 21 Contemporaneous Reports have been relied upon in SPCs 1 to 7 although not all reports are relied upon in each of the SPCs.

³ A total of 21 interviews were conducted by Authorised Officers of the Central Bank during the period February 2013 to January 2014 to assist with the investigation. Transcripts of these interviews were provided to the Inquiry.

APPENDIX 5

TABLE OF SPCs, SPC ALLEGATIONS AND FINDINGS

SPC Allegation¹	Finding in relation to SPC Allegation against INBS	Individual SPCs	Finding in relation to commission by INBS of Individual SPCs²	Finding in relation to Mr Purcell's participation³	Paragraph reference for Finding in relation to Mr Purcell's participation
SPC 1.1: No CLA prepared at all.	Proven	<p>SPC 1(a)</p> <p>It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loan applications were processed in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.</p> <p>SPC 1(b)</p> <p>It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loan applications were processed in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.</p> <p>SPC 1(c)</p> <p>It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that commercial loan applications were processed in accordance with INBS's internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.</p>	Commission by INBS of SPCs 1(a), 1(b) and 1(c) with regard to SPC 1.1	Not proven	5.27
SPC 1.2: CLA was not prepared in advance of funds being drawn down.	Proven		Commission by INBS of SPCs 1(a), 1(b) and 1(c) with regard to SPC 1.2	Not proven	5.98 et seq.
<p>SPC 1.3: Failure to acquire the following required information from borrowers to facilitate an assessment of borrowers' repayment capacity:</p> <ul style="list-style-type: none"> • Three years' audited accounts (Company); • Business plan/proposals (Company); • Forecast cash flow analysis (Company); • Statement of affairs (net worth) (Individual); • Income details (Individual); • Bank statements (six months' current accounts) (Individual); • Loan statements (personal & business) (Individual); and • Business plan/proposal (Individual). 	Proven		Commission by INBS of SPCs 1(a), 1(b) and 1(c) with regard to SPC 1.3	Proven	5.193 et seq.
			SPC 1.4: Credit grades were not assigned to commercial loans.	Proven	No commission by INBS of SPCs 1(a), 1(b) and 1(c) with regard to SPC 1.4

¹ The Individual SPCs are founded upon allegations of specific instances of non-compliance by INBS with its internal policies. These are referred to as the SPC Allegations.

² Where the Inquiry makes a finding against INBS in respect of a SPC Allegation, the Inquiry then has to determine whether that amounts to commission by INBS of the corresponding Individual SPCs.

³ It is alleged that Mr Purcell participated in the SPC Allegations and in the commission by INBS of the corresponding Individual SPCs. This alleged participation is based on specific instances of participation by Mr Purcell as well as general participation by Mr Purcell by virtue of his role as a Board member. Where a finding is made against INBS in respect of a SPC Allegation and the corresponding Individual SPCs, the Inquiry then has to determine whether Mr Purcell participated in the SPC Allegation and in the commission by INBS of the corresponding Individual SPCs.

SPC Allegation ¹	Finding in relation to SPC Allegation against INBS	Individual SPCs	Finding in relation to commission by INBS of Individual SPCs ²	Finding in relation to Mr Purcell's participation ³	Paragraph reference for Finding in relation to Mr Purcell's participation	
SPC 2.1: Funds advanced without Credit Committee approval or recommendation and not in compliance with urgent credit decision approval procedures.	Proven	SPC 2(a) It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.	Commission by INBS of SPCs 2(a), 2(b) and 2(c) with regard to SPC 2.1	Proven	6.377 et seq.	
SPC 2.2: Funds advanced without Credit Committee approval or recommendation and without Board approval and not in compliance with urgent credit decision approval procedures.	Proven		Commission by INBS of SPCs 2(a), 2(b) and 2(c) with regard to SPC 2.2	Proven	6.377 et seq.	
SPC 2.3: Funds advanced without Board approval and without compliance with INBS's urgent credit decision approval procedures.	Proven		SPC 2(b) It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that INBS failed to ensure that CMOs complied with internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.	Commission by INBS of SPCs 2(a), 2(b) and 2(c) with regard to SPC 2.3	Proven	6.377 et seq.
SPC 2.4: Credit Committee not quorate when loans were approved or recommended and loans not in compliance with urgent credit decision approval procedures.	No Finding ⁴		No Finding	No Finding	N/A	
SPC 2.5: Loans advanced prior to Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with urgent credit decision approval procedures.	Proven		SPC 2(c) It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that INBS failed to ensure that CMOs complied with internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.	Commission by INBS of SPCs 2(a), 2(b) and 2(c) with regard to SPC 2.5	Proven	6.377 et seq.
SPC 2.6: Funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures.	Proven		Commission by INBS of SPCs 2(a), 2(b) and 2(c) with regard to SPC 2.6	Proven	6.377 et seq.	
SPC 2.7: Funds advanced in excess of the loan amount and additional funds were not appropriately approved.	Proven		Commission by INBS of SPCs 2(a), 2(b) and 2(c) with regard to SPC 2.7	Not proven	6.422 et seq.	
SPC 2.8: Loan amount advanced per the CMO was in excess of the amount outlined in the CLA and approved by the Board and additional funds were not appropriately approved.	Proven		Commission by INBS of SPCs 2(a), 2(b) and 2(c) with regard to SPC 2.8	Proven	6.422 et seq.	

⁴ SPC 2.4 concerned INBS Only Allegations and on that basis was excluded by the Inquiry from its analysis.

SPC Allegation ¹	Finding in relation to SPC Allegation against INBS	Individual SPCs	Finding in relation to commission by INBS of Individual SPCs ²	Finding in relation to Mr Purcell's participation ³	Paragraph reference for Finding in relation to Mr Purcell's participation
SPC 2.9: Term of the loan extended without appropriate approval.	Proven		Commission by INBS of SPCs 2(a), 2(b) and 2(c) with regard to SPC 2.9	Proven	6.422 et seq.
SPC 2.10: Sales proceeds from property held as security was released to borrower without appropriate approval.	Proven		Commission by INBS of SPCs 2(a), 2(b) and 2(c) with regard to SPC 2.10	Not proven	6.422 et seq.
SPC 2.11: Loans changed from recourse to non-recourse without appropriate approval.	No Finding ⁵		No Finding	No Finding	N/A
SPC 2.12: Terms outlined in the CLA and approved by the Board differed to the terms outlined in the CMO.	Proven		Commission by INBS of SPCs 2(a), 2(b) and 2(c) with regard to SPC 2.12	Not proven	6.463 et seq.
SPC 2.13: CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures.	Proven		Commission by INBS of SPCs 2(a), 2(b) and 2(c) with regard to SPC 2.13	Not proven	6.463 et seq.
SPC 2.14: CMO did not reflect the basis of approval by the Credit Committee and/or Board.	Proven		Commission by INBS of SPCs 2(a), 2(b) and 2(c) with regard to SPC 2.14	Not proven	6.463 et seq.
SPC 2.15: Funds were advanced prior to CMO being signed and issued by INBS and signed by borrower.	No Finding ⁶		No Finding	No Finding	N/A
SPC 2.16: CMO not appropriately signed by INBS.	Proven		Commission by INBS of SPCs 2(a), 2(b) and 2(c) with regard to SPC 2.16	Not proven	6.463 et seq.
SPC 2.17 to 2.20: Term extensions and variations were not approved in accordance with INBS's policies.	No Finding ⁷		No Finding	No Finding	N/A
SPC 3.1: Loans were unsecured.	Proven	SPC 3(a) It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for	No commission by INBS of SPCs 3(a), 3(b) or 3(c) with regard to SPC 3.1	Participation allegation falls away	7.15

⁵ SPC 2.11 concerned INBS Only Allegations and on that basis was excluded by the Inquiry from its analysis.

⁶ SPC 2.15 concerned an INBS Only Allegation and on that basis was excluded by the Inquiry from its analysis.

⁷ SPCs 2.17 to 2.20 concerned INBS Only Allegations and on that basis were excluded by the Inquiry from its analysis.

SPC Allegation ¹	Finding in relation to SPC Allegation against INBS	Individual SPCs	Finding in relation to commission by INBS of Individual SPCs ²	Finding in relation to Mr Purcell's participation ³	Paragraph reference for Finding in relation to Mr Purcell's participation
SPC 3.2: Personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.	Proven	commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that LTV limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.	Commission by INBS of SPCs 3(a), 3(b) and 3(c) with regard to SPC 3.2	Proven	7.115 et seq.
SPC 3.3: A valuation report on the asset used as security was not received by INBS before all or part of the loan was advanced.	Not proven		No commission by INBS of SPCs 3(a), 3(b) or 3(c) with regard to SPC 3.3	Participation allegation falls away	7.123
SPC 3.4: The LTV was greater than the LTV set out in INBS's internal policies.	Not proven		No commission by INBS of SPCs 3(a), 3(b) or 3(c) with regard to SPC 3.4	Participation allegation falls away	7.148
SPC 3.5: For loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.	In light of finding in relation to SPC 3.4, the SPC 3.5 allegation falls away.	<p>SPC 3(b)</p> <p>It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that LTV limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.</p> <p>SPC 3(c)</p> <p>It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that LTV limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of the SPC.</p>	No commission of SPCs 3(a), 3(b) or 3(c) with regard to SPC 3.5, as the SPC 3.5 allegation falls away.	Participation allegation falls away	7.151

SPC Allegation ¹	Finding in relation to SPC Allegation against INBS	Individual SPCs	Finding in relation to commission by INBS of Individual SPCs ²	Finding in relation to Mr Purcell's participation ³	Paragraph reference for Finding in relation to Mr Purcell's participation
SPC 4.1: Commercial lenders did not monitor loans during the term of the loan to the end of the Review Period.	No Finding ⁸	<p>SPC 4(a)</p> <p>It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failing to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.</p> <p>SPC 4(b)</p> <p>It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies, and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.</p> <p>SPC 4(c)</p> <p>It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies, and thereby failed to comply with the condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.</p>	No Finding	No participation allegation	N/A
SPC 4.2: INBS did not review its top 100 loan exposures.	Not proven		No commission by INBS of SPCs 4(a), 4(b) or 4(c) with regard to SPC 4.2	Participation allegation falls away	8.77
SPC 4.3: INBS's credit review function did not effectively communicate the output of the credit reviews it did perform, or the issues to be addressed by lenders, to commercial lenders (either directly or via the Credit Committee).	No Finding ⁹		No finding	No participation allegation	N/A
SPC 4.4: The output of INBS's credit review function was not considered as part of INBS's provisioning process, in that it appears that the credit review function's findings were not taken into account by the Provisions Committee as part of its decision-making.	Not proven		No commission by INBS of SPCs 4(a), 4(b) or 4(c) with regard to SPC 4.4	Participation allegation falls away	8.120
SPC 5.1: INBS's Credit Committee did not review and consider commercial loans in large arrears and/or deemed non-performing.	Proven	<p>SPC 5(a)</p> <p>It is suspected that from the 1 August 2004 to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also</p>	Commission by INBS of SPCs 5(a), 5(b) and 5(c) with regard to SPC 5.1	Proven	9.281 et seq.
SPC 5.2: INBS's Credit Committee did not review and consider loans submitted as part of the Credit Review process (as no such loans were submitted to it).	Proven		Commission by INBS of SPCs 5(a), 5(b) and 5(c) with regard to SPC 5.2	Proven	9.288 et seq.

⁸ SPC 4.1 was not required to be considered by the Inquiry as there was no allegation of participation by Mr Purcell in respect of SPC 4.1.

⁹ SPC 4.3 was not required to be considered by the Inquiry as there was no allegation of participation by Mr Purcell in respect of SPC 4.3.

SPC Allegation ¹	Finding in relation to SPC Allegation against INBS	Individual SPCs	Finding in relation to commission by INBS of Individual SPCs ²	Finding in relation to Mr Purcell's participation ³	Paragraph reference for Finding in relation to Mr Purcell's participation
SPC 5.3: INBS's Credit Committee did not review and consider relevant Management Information System reports (for example, sectoral exposure, customer exposure/concentration).	Proven	<p>suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.</p> <p>SPC 5(b)</p> <p>It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.</p>	Commission by INBS of SPCs 5(a), 5(b) and 5(c) with regard to SPC 5.3	Not proven	9.297 et seq.
SPC 5.4: INBS's Credit Committee did not review and consider any issues raised by INBS's Internal Audit Department, and/or other advisors/regulators (KPMG/Central Bank).	Proven	<p>It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.</p> <p>SPC 5(c)</p> <p>It is suspected that from 10 July to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS's internal policies, and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.</p>	Commission by INBS of SPCs 5(a), 5(b) and 5(c) with regard to SPC 5.4	Not proven	9.301 et seq.
SPC 6.1: The Board did not receive reports on exceptions to commercial lending policies.	Not proven	<p>SPC 6(a)</p> <p>It is suspected that from 21 December 2005 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to INBS's Board in accordance with INBS's internal policies, and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commissions of this SPC.</p>	No commission by INBS of SPCs 6(a), 6(b) or 6(c) with regard to SPC 6.1	Participation allegation falls away	10.49
SPC 6.2: The Board did not receive the required quarterly commercial lending report (Quarterly Reports) for the following five quarters: June 2007; December 2007; March 2008; June 2008; and September 2008.	Proven	<p>It is suspected that from 21 December 2005 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to INBS's Board in accordance with INBS's internal policies, and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commissions of this SPC.</p>	No commission by INBS of SPCs 6(a), 6(b) or 6(c) with regard to SPC 6.2	Participation allegation falls away	10.119
SPC 6.3: The Board did not receive a report on the results of annual credit risk stress tests, which were to have been completed annually.	Proven	<p>SPC 6(b)</p> <p>It is suspected that from 21 December 2005 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to INBS's Board in accordance with INBS's internal policies, and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commissions of this SPC.</p>	Commission by INBS of SPCs 6(a), 5(b) and 5(c) with regard to SPC 6.3	Proven	10.205 et seq.
SPC 6.4: The Board did not receive reports on compliance with geographic concentration risk limits.	Proven	<p>It is suspected that from 21 December 2005 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to INBS's Board in accordance with INBS's internal policies, and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commissions of this SPC.</p>	No commission by INBS of SPC 6(a), (6(b), or 6(c) with regard to SPC 6.4	Participation allegation falls away	10.251

SPC Allegation ¹	Finding in relation to SPC Allegation against INBS	Individual SPCs	Finding in relation to commission by INBS of Individual SPCs ²	Finding in relation to Mr Purcell's participation ³	Paragraph reference for Finding in relation to Mr Purcell's participation
		<p>SPC 6(c)</p> <p>It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to INBS's Board in accordance with INBS's internal policies, and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commissions of this SPC.</p>			
<p>SPC 7: INBS failed to ensure that the establishment of profit share agreements was the subject of any formal credit risk policy.</p>	<p>Proven</p>	<p>SPC 7(a)</p> <p>It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that the establishment of Profit Share Agreements was the subject of any formal credit risk policy and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting agreements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.</p> <p>SPC 7(b)</p> <p>It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that the establishment of Profit Share Agreements was the subject of any formal credit risk policy and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.</p> <p>SPC 7(c)</p> <p>It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that the establishment of Profit Share Agreements was the subject of any formal credit risk policy, and thereby failed to comply with the condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.</p>	<p>Commission by INBS of SPCs 7(a), 7(b) and 7(c) with regard to SPC 7</p>	<p>Proven</p>	<p>11.344 et seq.</p>

APPENDIX 6

LEGISLATIVE PROVISIONS AND CONDITION ON INBS'S AUTHORISATION UNDERPINNING THE SPCS

REGULATION 16(1) OF THE 1992 REGULATIONS¹

6.1 As a Building Society², INBS was subject to the requirements of Regulation 16(1) of the 1992 Regulations, which provided as follows:

“Every credit institution authorised by the Bank shall manage its business in accordance with sound administrative and accounting principles and shall put in place and maintain internal control and reporting arrangements and procedures to ensure that the business is so managed”.

6.2 It is alleged that INBS did not comply with this Regulation because, by failing to comply with its own internal policies, it failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that its business was managed in accordance with sound administrative and accounting principles.

SECTION 76(1) OF THE 1989 ACT

6.3 Section 76 of the 1989 Act provides as follows:

“(1) A building society shall —

- (a) cause proper accounting records to be kept on a continuous and consistent basis, and*
- (b) establish and maintain systems of control of its business and records and systems of inspection and report thereon, in accordance with this section...”.*³

¹ The 1992 Regulations (Doc ID: RDU_REL2-000000402) were revoked by Regulation 161 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158/ 2014) (Doc ID: RDU_REL2-000000400) with effect from 31 March 2014. However, Regulation 162 of these Regulations specifically provides that the “*revocation of any enactment, or part of enactment, by these Regulations (a) does not affect any investigation undertaken, or disciplinary or enforcement action undertaken by the Bank of any other person, in respect of any matter in existence at, or before, the time of the revocation, and (b) does not preclude the taking of any legal proceedings, or the undertaking of any investigation, or disciplinary or enforcement action by the Bank or any other person, in respect of any contravention of an enactment (including anything revoked by these Regulations)*”.

² INBS was, throughout the Review Period, “*an undertaking, other than a credit union or friendly society, whose business it is to receive deposits or other repayable funds from the public and to grant credit on its own account...*”. Regulation 2(1) of the 1992 Regulations (Doc ID: RDU_REL2-000000402).

³ Section 76(2), (3) and (4) of the 1989 Act deal specifically with accounting records and are not relevant to the SPCs.

...

(5) The systems of control which are to be established and maintained by a society pursuant to subsection (1) are systems for the control of the conduct of its business as required by or under this Act and in accordance with the decisions of the board of directors and for the control of the accounting and other records of its business and no such systems shall be treated as established or maintained unless there is kept available to the board a detailed statement in writing of the systems as in operation for the time being.

(6) The systems of inspection and report which are to be established and maintained by a society pursuant to subsection (1) are systems of inspection on behalf of, and report to, the board of directors on the operation of the systems of control of the society's business and records as required by subsection (5).

(7) Without prejudice to the generality of subsection (1), the systems of control and of inspection and report must be such as to secure that the society's business is so conducted and its records so kept that—

(a) the information necessary to enable the directors and the society to discharge their duties and functions is sufficiently accurate, and is available with sufficient regularity or at need and with sufficient promptness for these purposes; and

(b) the information obtained by or furnished to the Central Bank is sufficiently accurate for the purposes for which it is obtained and is available as required by the Bank".

6.4 Part V of the 1989 Act sets out the governance structure for building societies and provides for the office of chief executive who "*either alone or jointly with one or more other officers of the society, shall be responsible, under the immediate authority of the board of directors, for the conduct of the business of the society*".⁴ The 1989 Act creates a structure whereby the Board is ultimately the decision-making body and has the function of conducting the business of the building society. As can be seen in the context of INBS, the Board sets policy and approves the structures for ensuring appropriate controls on the conduct of the business.

⁴ Section 49(1)(b) of the 1989 Act.

6.5 It is alleged that the suspected failures by INBS to comply with its own policies constitute a breach of section 76(1)(b) of the 1989 Act because it did not maintain systems of control of its business and records (or systems of inspection) and report thereon.

THE 2005 REGULATORY DOCUMENT

6.6 On 26 October 2005, the Financial Regulator published a document entitled “*Credit Institutions Regulatory Document, Impairment Provisions for Credit Exposures*”. The document was stated to apply to “*all credit institutions regulated by the Financial Regulator, comprising licensed banks and building societies (subsequently referred to as ‘credit institutions’)*”.⁵

6.7 The 2005 Regulatory Document provides that:

*“The credit risk management policies and procedures outlined in section 3 of this paper apply to all credit institutions regulated by the Financial Regulator. These credit risk management requirements are, imposed by the Financial Regulator, as conditions to which all credit institutions are subject pursuant to Section 10 of the Central Bank Act, 1971, and Section 17 of the Building Societies Act, 1989”.*⁶

6.8 Part 1 of the 2005 Regulatory Document was imposed as a condition on INBS’s authorisation under section 17 of the 1989 Act, which is a designated enactment within the meaning of Part IIIC of the Act. Thus, any contravention of this condition on INBS’s authorisation is a “*prescribed contravention*” for the purposes of Part IIIC of the 1942 Act.

6.9 Section 17(1) of the 1989 Act provides:

“Except to the extent permitted by subsection (3), a building society or a person acting or purporting to act on its behalf shall not raise funds, or advertise for or otherwise solicit deposits or subscriptions for shares unless there is in force an authorisation granted by the Central Bank or deemed to be granted under this section”.

⁵ The 2005 Regulatory Document, page 5 (Doc ID: RDU_REL2-000000398).

⁶ The 2005 Regulatory Document, page 6 (Doc ID: RDU_REL2-000000398).

6.10 Section 17(5) of the 1989 Act provides:

“The conditions of an authorisation may be revoked, amended or added to and conditions may be imposed by the Central Bank in relation to an authorisation granted or deemed to have been granted under this section where the Bank so thinks proper”.

6.11 Section 17(7) of the 1989 Act provides that: *“The provisions of the Third Schedule shall have effect for the purposes of this section”.*

6.12 Part 2 of the Third Schedule of the 1989 Act prescribes the manner in which conditions on an authorisation can be imposed, added to or amended, including the obligation to give notice to the building society and every officer of the building society.

APPENDIX 7

TABLE OF SPC 1 TO 4 LOAN SPECIFIC ALLEGATIONS AND FINDINGS

No.	Borrower Name & Loan Account	Loan Specific SPC Allegation	Finding in relation to INBS	Finding in relation to Mr Purcell ¹	Paragraph in Loan File Analysis (Chapter 4)
CUSTOMER 1:					
1.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.17
	[REDACTED]	SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.28
	[REDACTED]	SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.34
	[REDACTED]	SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.38

¹ In the Investigation Report a number of loan specific participation allegations were advanced against Mr Purcell, in addition to the more general allegations of participation by Mr Purcell in the SPCs. Where a loan specific participation allegation is advanced against Mr Purcell this is firstly addressed by the Inquiry under the relevant loan in Chapter 4 (Loan File Analysis) and then again in the relevant SPC 1 to 4 chapter, in the context of the broader participation allegations against Mr Purcell. This column details the findings made by the Inquiry in relation to the loan specific participation allegations against Mr Purcell. This column also notes 'N/A' where no loan specific participation allegation was advanced against Mr Purcell and 'Allegation falls away' where the loan specific participation allegation falls away as a result of the finding made in the corresponding Loan Specific Allegation against INBS.

		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.42
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	Not proven	Allegation falls away	4.45
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.48
2.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.49
		SPC 2.12 - terms outlined in CLA and approved by Board differed to terms outlined in CMO	Not proven	N/A	4.54
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.58
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	Not proven	N/A	4.61

		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.64
3.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Proven	N/A	4.68
		SPC 2.5 - loans advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.71
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.75
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.78
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.83
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.87

4.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Proven	N/A	4.90
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.93
5.	[REDACTED]	SPC 2.5 - loans advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.99
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.104
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.108
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.113

		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.117
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.119
6.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.126
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.130
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.134
7.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.144

		SPC 2.1 - no Credit Committee approval/recommendation and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.147
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.164
8.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.144
		SPC 2.1 - no Credit Committee approval/recommendation and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.147
		SPC 2.8 - loan amount advanced per the CMO was in excess of the amount outlined in CLA and approved by Board	Proven	N/A	4.155
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.164

9.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.144 4.145
		SPC 2.4 - Credit Committee not quorate and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.150
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.164
10.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.144 4.145 4.146
		SPC 2.4 - Credit Committee not quorate and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.150
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.151

		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.160
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.164
11.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.173
		SPC 2.1 - no Credit Committee approval/recommendation and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.174
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.178
		SPC 2.16 - CMO not appropriately signed by INBS	Proven	N/A	4.182

		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.185
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.189
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.191
12.	 	SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.198
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.202
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.205

		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.207
13.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.213
		SPC 2.5 - loans advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.215
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.218
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.222
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.226
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.230

		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.233
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.235
14.		SPC 1.1 - no CLA prepared at all	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.237
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.238
		SPC 1.4 - credit grades were not assigned to commercial loans	No finding (due to the Inquiry's decision regarding the requirement for credit grades)	N/A	4.239
		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	No finding (this allegation was not opened during the Loan Hearings in error)	N/A	4.241

		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.242
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.246
15.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.257
		SPC 2.14 - CMO did not reflect basis of approval by Credit Committee and/or Board	Proven	N/A	4.258
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.265
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.269

		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.271
16.	[REDACTED]	SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.277
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.280
17.	[REDACTED]	SPC 2.10 - sales proceeds from property held as security was released to borrower without appropriate approval	Proven	N/A	4.305
18.	[REDACTED]	SPC 1.1 - no CLA prepared at all	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.291
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.292

		SPC 1.4 - credit grades were not assigned to commercial loans	No finding (due to the Inquiry's decision regarding the requirement for credit grades)	N/A	4.293
		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.295
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.300
		SPC 2.10 - sales proceeds from property held as security was released to borrower without appropriate approval	Proven	N/A	4.305
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.313
19.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.322
		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.324

		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.328
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.333
		SPC 3.3 - failure to obtain a valuation report on an asset/security prior to loan being advanced	Not proven	N/A	4.336
20.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.340
		SPC 2.4 - Credit Committee not quorate and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.341
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.342
		SPC 2.14 - CMO did not reflect basis of approval by Credit Committee and/or Board	Not proven	N/A	4.346

		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.351
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.354
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.356
21.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.358
		SPC 2.5 - loans advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.364
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.367
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.370

		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.374
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.378
22.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.381
		SPC 2.5 - loans advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.387
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	No finding (this allegation was not opened during the Loan Hearings in error)	N/A	4.392
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.393
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	Not proven	N/A	4.396

		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	N/A	4.399
23.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.400
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.407
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.410
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	Not proven	N/A	4.413
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	N/A	4.417

CUSTOMER 2:					
24.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.427
		SPC 2.1 - no Credit Committee approval/recommendation and not in compliance with urgent credit decision approval procedures	Not proven	N/A	4.428
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.433
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.439
25.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.442
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.446
		SPC 2.12 - terms outlined in CLA and approved by Board differed to terms outlined in CMO	Not proven	N/A	4.452

		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.455
26.		SPC 1.2 - CLA not prepared in advance of funds being drawn down	No finding (due to Inquiry's decision on 2004 Commercial Lending Criteria document)	N/A	4.462
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.463
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.464
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.468
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.471

		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.474
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.476
27.		SPC 1.1 - no CLA prepared at all	Proven	N/A	4.483
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.489
		SPC 1.4 - credit grades were not assigned to commercial loans	No finding (due to the Inquiry's decision regarding the requirement for credit grades)	N/A	4.492
		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.494
		SPC 3.1 - loans were unsecured	Proven	N/A	4.497

		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.500
28.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.508
		SPC 2.4 - Credit Committee not quorate and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.509
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.510
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.513
29.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.520

		SPC 2.4 - Credit Committee not quorate and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.521
		SPC 2.8 - loan amount advanced per the CMO was in excess of the amount outlined in CLA and approved by Board	Proven	N/A	4.522
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.526
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.530
30.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.533
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.534
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.539

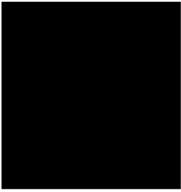
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.542
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.544
31.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.546
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.550
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.555
32.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.558

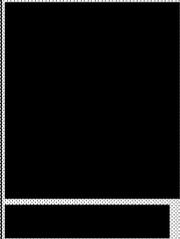
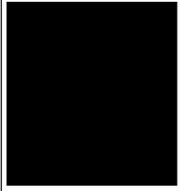
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.566
33.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.574
		SPC 2.1 - no Credit Committee approval/recommendation and not in compliance with urgent credit decision approval procedures	Not proven	N/A	4.575
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.578
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.583
34.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.592
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.593

		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.598
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.602
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.605
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.607
35.		SPC 1.1 - no CLA prepared at all	Proven	N/A	4.609
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Proven	N/A	4.613
		SPC 1.4 - credit grades were not assigned to commercial loans	No finding (due to the Inquiry's decision regarding the requirement for credit grades)	N/A	4.619

		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.621
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.624
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.628
36.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Proven	N/A	4.634
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.638
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.642
37.	██████████ ██████████	SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.648

		SPC 4.1 - commercial lenders did not monitor loans during the term of the loan to end of Review Period	Not proven	N/A	4.653
38.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Proven	N/A	4.663
		SPC 2.1 - no Credit Committee approval/recommendation and not in compliance with urgent credit decision approval procedures	Not proven	N/A	4.668
		SPC 2.8 - loan amount advanced per the CMO was in excess of the amount outlined in CLA and approved by Board	Not proven	N/A	4.671
		SPC 2.12 - terms outlined in CLA and approved by Board differed to terms outlined in CMO	Not proven	N/A	4.674
39.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.682
		SPC 2.1 - no Credit Committee approval/recommendation and not in compliance with urgent credit decision approval procedures	Not proven	N/A	4.686

		SPC 4.1 - commercial lenders did not monitor loans during the term of the loan to end of Review Period	Not proven	N/A	4.689
40.		SPC 1.1 - no CLA prepared at all	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.695
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.696
		SPC 1.4 - credit grades were not assigned to commercial loans	No finding (due to the Inquiry's decision regarding the requirement for credit grades)	N/A	4.697
		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.699
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.702
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.706

41.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.709
		SPC 2.5 - loans advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.710
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.713
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.716
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.719
42.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Proven	N/A	4.722
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.727

	██████████	SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.730
		SPC 4.1 - commercial lenders did not monitor loans during the term of the loan to end of Review Period	Not proven	N/A	4.733
43.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Proven	N/A	4.743
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.747
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.751
		SPC 3.1 - loans were unsecured	Proven	N/A	4.754
		SPC 4.1 - commercial lenders did not monitor loans during the term of the loan to end of Review Period	Not proven	N/A	4.757
44.	██████████████████ ██████████	SPC 1.2 - CLA not prepared in advance of funds being drawn down	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.765

		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.766
		SPC 2.4 - Credit Committee not quorate and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.767
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.768
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.772
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.775
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.778

		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.781
45.	██████████ ██████████	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.785
		SPC 2.5 - loans advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.790
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.793
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.797
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.801

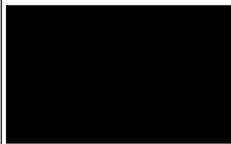
46.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.811
		SPC 2.5 - loans advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.818
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.822
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.826
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.830
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	Not proven	Allegation falls away	4.833
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.836

47.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.840
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.841
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.842
		SPC 4.1 - commercial lenders did not monitor loans during the term of the loan to end of Review Period	Not proven	N/A	4.844
48.	[REDACTED]	SPC 1.2 - CLA not prepared in advance of funds being drawn down	Proven	N/A	4.850
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Proven in relation to one or more, but not all, of the required pieces of information to be acquired from the borrower	N/A	4.853

		SPC 2.4 - Credit Committee not quorate and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.857
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.858
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.862
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.866
		SPC 4.1 - commercial lenders did not monitor loans during the term of the loan to end of Review Period	Not proven	N/A	4.869
49.		SPC 1.1 - no CLA prepared at all	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.875
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.876

		SPC 1.4 - credit grades were not assigned to commercial loans	No finding (due to the Inquiry's decision regarding the requirement for credit grades)	N/A	4.877
		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.879
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.883
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.887
50.		SPC 1.1 - no CLA prepared at all	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.894
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.896

		SPC 1.4 - credit grades were not assigned to commercial loans	No finding (due to the Inquiry's decision regarding the requirement for credit grades)	N/A	4.897
		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.899
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.903
		SPC 4.1 - commercial lenders did not monitor loans during the term of the loan to end of Review Period	Not proven	N/A	4.906
51.		SPC 1.1 - no CLA prepared at all	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.913
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.915

		SPC 1.4 - credit grades were not assigned to commercial loans	No finding (due to the Inquiry's decision regarding the requirement for credit grades)	N/A	4.916
		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.918
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.921
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.924
52.		SPC 1.1 - no CLA prepared at all	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.934
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.935

		SPC 1.4 - credit grades were not assigned to commercial loans	No finding (due to the Inquiry's decision regarding the requirement for credit grades)	N/A	4.936
		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.938
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.942
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.946
53.		SPC 1.1 - no CLA prepared at all	Proven	N/A	4.949
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.953
		SPC 1.4 - credit grades were not assigned to commercial loans	Proven	N/A	4.956
		SPC 2.1 - no Credit Committee approval/recommendation and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.959

		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.962
54.		SPC 2.12 - terms outlined in CLA and approved by Board differed to terms outlined in CMO	Proven	N/A	4.971
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.974
		SPC 4.1 - commercial lenders did not monitor loans during the term of the loan to end of Review Period	Proven	N/A	4.977
55.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.980
		SPC 2.12 - terms outlined in CLA and approved by Board differed to terms outlined in CMO	Not proven	N/A	4.983
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.986

56.	[REDACTED]	SPC 1.2 - CLA not prepared in advance of funds being drawn down	Proven	N/A	4.993
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.995
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.999
57.	[REDACTED]	SPC 2.5 - loans advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1006
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1009
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.1012
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1015

		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.1018
58.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.1025
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1028
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.1031
59.	[REDACTED]	SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.1038
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1041

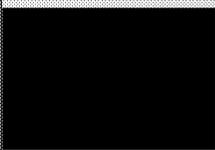
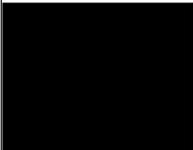
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.1044
60.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Proven	N/A	4.1052
		SPC 2.5 - loans advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedure	Proven	N/A	4.1055
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1058
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.1061
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1064
		SPC 3.1 - loans were unsecured	Proven	N/A	4.1067
		SPC 4.1 - commercial lenders did not monitor loans during the term of the loan to end of Review Period	Not proven	N/A	4.1070

61.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.1077
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.1080
62.		SPC 1.2 - CLA not prepared in advance of funds being drawn down	Proven	N/A	4.1087
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Proven in relation to one or more, but not all, of the required pieces of information to be acquired from the borrower	N/A	4.1090
		SPC 2.3 - No Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1094
		SPC 2.5 - loans advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1097
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1100

		SPC 2.15 - funds were advanced prior to CMO being signed and issued by INBS and signed by borrower	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1103
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.1104
63.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.1114
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1115
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.1118
64.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.1121

		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.1125
65.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.1128
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.1131
CUSTOMER 3:					
66.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Proven	N/A	4.1138
		SPC 1.4 - credit grades were not assigned to commercial loans	No finding (due to the Inquiry's decision regarding the requirement for credit grades)	Allegation falls away	4.1141
		SPC 2.9 - term of loan extended without appropriate approval	Proven	N/A	4.1144
		SPC 2.16 - CMO not appropriately signed by INBS	Proven	N/A	4.1148

		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.1152
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	Not proven	Allegation falls away	4.1155
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.1158
CUSTOMER 4:					
67.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.1163
68.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Proven in relation to one or more, but not all, of the required pieces of information to be acquired from the borrower	N/A	4.1169
		SPC 2.12 - terms outlined in CLA and approved by Board differed to terms outlined in CMO	Not proven	N/A	4.1172

69.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Proven in relation to one or more, but not all, of the required pieces of information to be acquired from the borrower	N/A	4.1178
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1181
70.		SPC 2.12 - terms outlined in CLA and approved by Board differed to terms outlined in CMO	Not proven	N/A	4.1189
71.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.1195
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1198
CUSTOMER 5:					
72.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1207

		SPC 2.4 - Credit Committee not quorate and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1207
		SPC 2.9 - term of loan extended without appropriate approval	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1207
		SPC 2.11 - loans changed from recourse to non-recourse without appropriate approval	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1207
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1208
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1208
73.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1207

		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1207
		SPC 2.11 - loans changed from recourse to non-recourse without appropriate approval	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1207
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1207
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1208
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1208
74.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1211

		SPC 2.11 - loans changed from recourse to non-recourse without appropriate approval	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1211
		SPC 2.12 - terms outlined in CLA and approved by Board differed to terms outlined in CMO	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1211
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1211
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1212
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1212
		SPC 4.1 - commercial lenders did not monitor loans during the term of the loan to end of Review Period	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1211

75.		SPC 1.1 - no CLA prepared at all	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation) ²	N/A	4.1218
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1218
		SPC 1.4 - credit grades were not assigned to commercial loans	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1218
		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1218
		SPC 2.7 - funds advanced in excess of the loan amount which were not approved	Proven	Not proven	4.1219
		SPC 2.9 - term of loan extended without appropriate approval	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1218
		SPC 2.11 - loans changed from recourse to non-recourse without appropriate approval	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1218

² This Loan Specific Allegation would have otherwise fallen away due to its reliance on the 9 November 2004 Commercial Lending Criteria. This Loan Specific Allegation was also relying on the 9 November 2004 Commercial Lending Criteria.

		SPC 3.3 - failure to obtain a valuation report on an asset/security prior to loan being advanced	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1218
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1218
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1218
76.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1225
		SPC 2.4 - Credit Committee not quorate and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1225
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1225

		SPC 2.7 - funds advanced in excess of the loan amount which were not approved	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1225
		SPC 2.11 - loans changed from recourse to non-recourse without appropriate approval	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1225
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1225
		SPC 3.3 - failure to obtain a valuation report on an asset/security prior to loan being advanced	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1225
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1226
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1226

77.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1229
		SPC 2.4 - Credit Committee not quorate and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1229
		SPC 2.7 - funds advanced in excess of the loan amount which were not approved	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1229
		SPC 2.11 - loans changed from recourse to non-recourse without appropriate approval	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1229
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1229
		SPC 3.3 - failure to obtain a valuation report on an asset/security prior to loan being advanced	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1229

		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1230
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1230
		SPC 4.1 - commercial lenders did not monitor loans during the term of the loan to end of Review Period	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1229
CUSTOMER 6:					
78.		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.1235
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1238

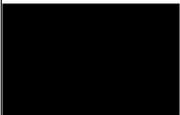
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.1240
79.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1244
		SPC 2.5 - loans advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1244
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1244
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1244
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Not proven	Allegation falls away	4.1248

		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1244
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1244
CUSTOMER 7:					
80.		SPC 2.1 - no Credit Committee approval/recommendation and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1255
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1260
81.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.1272
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Not Proven	Allegation falls away	4.1273

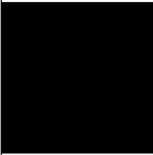
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1277
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation falls away as a result of finding made in respect of SPC 3.4 Allegation)	Allegation falls away	4.1279
82.		SPC 1.2 - CLA not prepared in advance of funds being drawn down	Proven	N/A	4.1281
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.1284
		SPC 2.5 - loans advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1288
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1291
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1294

		SPC 2.16 - CMO not appropriately signed by INBS	Proven	N/A	4.1297
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.1300
83.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.1319
		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	Not proven	N/A	4.1320
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.1324
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1326

84.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.1327
		SPC 2.4 - Credit Committee not quorate and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1328
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1329
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1332
85.		SPC 1.1 - no CLA prepared at all	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.1335
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.1336

		SPC 1.4 - credit grades were not assigned to commercial loans	No finding (due to the Inquiry's decision regarding the requirement for credit grades)	N/A	4.1337
		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1339
		SPC 2.16 - CMO not appropriately signed by INBS	Proven	N/A	4.1342
86.		SPC 1.2 - CLA not prepared in advance of funds being drawn down	Proven	N/A	4.1345
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	Not proven	N/A	4.1348
		SPC 2.5 - loans advanced prior to Credit Committee meeting and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1351
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1354
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1357

		SPC 2.16 - CMO not appropriately signed by INBS	Proven	N/A	4.1360
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	Proven	4.1363
87.		SPC 1.1 - no CLA prepared at all	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.1371
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.1372
		SPC 1.4 - credit grades were not assigned to commercial loans	No finding (due to the Inquiry's decision regarding the requirement for credit grades)	N/A	4.1373
		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1375

		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.1378
88.		SPC 1.1 - no CLA prepared at all	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.1385
		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	N/A	4.1386
		SPC 1.4 - credit grades were not assigned to commercial loans	No finding (due to the Inquiry's decision regarding the requirement for credit grades)	N/A	4.1387
		SPC 2.2 - no Credit Committee approval/recommendation and no Board approval and not in compliance with urgent credit decision approval procedures	Proven	N/A	4.1389
		SPC 3.2 - personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained	Proven	N/A	4.1392

CUSTOMER 8:

89.	[REDACTED]	SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1396
		SPC 2.4 - Credit Committee not quorate and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1396
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1396
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1397
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1397
		SPC 4.1 - commercial lenders did not monitor loans during the term of the loan to end of Review Period	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1396

90.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1400
		SPC 2.4 - Credit Committee not quorate and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1400
		SPC 2.6 - funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1400
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1400
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1401
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1401

		SPC 4.1 - commercial lenders did not monitor loans during the term of the loan to end of Review Period	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1400
91.		SPC 1.3 - failure to acquire required information from borrowers to facilitate an assessment of borrowers' repayment capacity	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1404
		SPC 2.13 - CMO issued prior to appropriate recommendation for approval and/or approval and not in compliance with urgent credit decision approval procedures	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1404
		SPC 3.4 - the LTV was greater than the LTV set out in INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1405
		SPC 3.5 - for loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies	No finding (due to Inquiry's decision in relation to the 9 November 2004 Commercial Lending Criteria)	Allegation falls away	4.1405
		SPC 4.1 - commercial lenders did not monitor loans during the term of the loan to end of Review Period	No finding (allegation not opened during the Loan Hearings as it is an INBS Only Allegation)	N/A	4.1404

APPENDIX 8

GLOSSARY OF ABBREVIATIONS, TERMS AND REPORTS

Table 1: Abbreviations and Terms

1942 Act	The Central Bank Act, 1942 (as amended).
1989 Act	The Building Societies Act, 1989 (as amended).
1995 Licencing and Supervision Requirements	The Central Bank of Ireland Licensing and Supervision Requirements, extracted from the Quarterly Bulletin, Winter 1995, published by the Central Bank.
1992 Regulations	The European Communities (Licencing and Supervision of Credit Institutions) Regulations 1992 (SI 395/1992).
1998 Basel Guidance	Basel Committee on Banking Supervision guidance document entitled " <i>Framework for Internal Control Systems in Banking Organisations</i> ", dated September 1998.
2000 Basel Guidance	Basel Committee on Banking Supervision guidance document entitled " <i>Principles for the Management of Credit Risk</i> ", dated September 2000.
2003 Combined Code	Financial Reporting Council Combined Code on Corporate Governance, July 2003, published by the UK Financial Reporting Council.
2005 Regulatory Document	The Credit Institutions Regulatory Document entitled " <i>Impairment Provisions for Credit Exposures</i> ", dated 26 October 2005.
2006 Basel Guidance	Basel Committee on Banking Supervision guidance document entitled " <i>Enhancing corporate governance for banking organisations</i> ", dated February 2006.
2007 INBS ICAAP Submission	INBS Internal Capital Adequacy Assessment Process Submission, dated 29 June 2007.
Administrative Sanctions Procedure/ASP	The Administrative Sanction Process of the Central Bank under Part IIIC of the 1942 Act, which provides the Central Bank with the power to administer sanctions in respect of the commission of prescribed contravention(s) by persons concerned in their management.

Anglo Irish Bank	Anglo Irish Bank Corporation.
Audit Committee	<p>The Audit Committee was established by the Board of INBS in September 1988. As outlined in the terms of reference of the Audit Committee, the committee consisted of non-executive directors who were independent of management, and the duties of the committee relevant to commercial lending and credit risk were:</p> <ul style="list-style-type: none"> • to specify INBS’s business objectives, from which the internal audit plan could be prepared; • to discuss problems and reservations arising from the audit and any matters the auditor may wish to discuss (in the absence of management where necessary); • to review INBS’s statement on internal control systems prior to endorsement by the Board; • to consider the major findings of internal investigations and management’s response; • to review the internal auditor’s work plan and quarterly reports including the follow up of internal audit recommendations; • to review INBS’s risk management profile; • to consider other topics, as defined by the Board; • to discuss the nature and scope of the annual audit; and • to review the external auditor’s management letter and management’s response.
Authorised Officer	<p>An Authorised Officer of the Central Bank appointed pursuant to section 57 of the Central Bank Reform Act 2010 (as amended). The 2010 Act was repealed by the Central Bank (Supervision and Enforcement) Act, 2013, which came into force on 11 July 2013. After this date, an Authorised Officer of the Central Bank is appointed pursuant to section 24 of the 2013 Act.</p>

The Basel Committee	The Basel Committee is a forum for cooperation between banking supervisors in respect of matters relating to the prudential supervision of banks. The Basel Committee issues guidance and recommendations. The recommendations of the Basel Committee commonly form the basis for the prudential regulation of credit institutions around the world, including the European Commission's various Capital Requirement Directives.
Belfast Branch	INBS's branch office located at Floor 7, Centrepoint Building, 24 Ormeau Avenue, Belfast, BT2 8HS.
Belfast Branch manager	Position held by Gary McCollum throughout the Review Period. Gary McCollum was also referred to as commercial lending manager (UK), UK branch manager and head of commercial lending UK (Belfast).
Board	Board of Directors of INBS.
Board pack	Pack of documents provided to the members of INBS's Board in advance of or at meetings of the Board.
borrower	The borrower is the contracting party (individual or company) to the loan facility (as set out in the CMO and indicated by the 'Title' field in Summit). Each borrower is linked to a customer. See the term customer below. Note the terms 'borrower' and 'customer' were used interchangeably or inconsistently in certain of the contemporaneous documentation relied on by the Inquiry.
CEBS	The Committee of European Banking Supervisors, which has now been replaced by the European Banking Authority, was an independent body established in 2004 to advise and coordinate on banking regulation and supervision in the European Union.
Central Bank	Central Bank of Ireland.
The Combined Code	The Combined Code on Corporate Governance is published by the UK Financial Reporting Council and sets down standards of corporate governance.
Commercial Advances Checklist	Checklist of steps/matters to be completed by commercial lenders prior to a payout being made on a loan.

Commercial Loan Application/CLA	The control document that was completed in respect of an application for a commercial loan and which was submitted for approval to the Credit Committee and/or Board during the credit decision making process in accordance with INBS's policies and procedures.
Commercial Mortgage Offer/CMO	The contractual agreement between INBS and the borrower which sets out the structure and terms and conditions of the loan.
Consolidated Tables	The Consolidated Tables were produced by Enforcement following a request from the Inquiry Members (during an Inquiry Management Meeting dated 6 March 2017) to incorporate the evidence from the Investigation Report and the Supplemental Investigation Report into one consolidated table.
Contemporaneous Reports	Reports prepared by INBS's auditor, KPMG; the internal audit department of INBS; and Deloitte, prior to, during and after the Review Period as part of the internal audit or annual statutory audit process or for specific purposes.
Context Hearings	Hearings conducted in public between 11 June 2021 and 21 July 2021 in the SPCs 1 to 4 module, addressing the non-loan specific evidence.
Credit Committee	<p>The Credit Committee of INBS was established in 2001. It had a role as an internal control in the commercial lending process. As outlined in its terms of reference, the purpose of the Credit Committee was:</p> <ul style="list-style-type: none"> • to apply the commercial lending credit policy of INBS (as approved by the Board from time to time) to new commercial loan applications; and • to consider, approve and recommend (as appropriate) commercial loan applications submitted to INBS.
credit review/credit review process	The review carried out by INBS's credit review function to assess the credit risk associated with individual loans that were considered large and material exposures to INBS.
Credit Review Pro-Forma/Credit Review Report	Documented output of the credit review process undertaken by INBS's credit review function in relation to individual loans.

customer	Each borrower (being the contracting party to the loan facility) is linked to a customer and customer number within Summit and a customer may comprise one or more inter-linked borrowers. There were nine commercial lending customers across the 98 loans in the Loan Sample. Note the terms ‘borrower’ and ‘customer’ were used interchangeably or inconsistently in certain of the contemporaneous documentation relied on by the Inquiry.
Debit Agreed Advance/DAA	DAA was a shorthand term commonly used in INBS when referring to loan amounts and fund advances (both original and additional). When a loan was set up, the loan amount against which funds could be drawn was entered as the DAA amount in Summit. In order for the advancement of funds to be processed in Summit, the total amount advanced had to be within the DAA amount. To advance funds in excess of the original loan amount, an additional DAA had to be entered in Summit.
Development Appraisal	An assessment of a property or property project to establish its estimated future value either on completion or as a cleared site for redevelopment with revised planning permissions.
Doc ID	Document reference from Relativity.
Enforcement	Enforcement Directorate of the Central Bank.
Equifax Report	The report created by Equifax, a credit bureau that collects information about a company or an individual’s credit history to create a credit report.
Evidence Protocol	The Inquiry adopted an Evidence Protocol, dated 20 February 2017, which outlined a particular approach to how documents and witness statements would be treated by the Inquiry.
Examination Letter/Notice of Examination	Notice of the commencement of examination under the ASP. An Examination Letter issued to the INBS on 22 December 2011 and Examination Letters issued to the alleged participants on 17 January 2012.
facility/loan/loan facility	These terms are used interchangeably throughout the Findings Report when referring to the commercial loans advanced by INBS to borrowers.

Financial Regulator	The Irish Financial Services Regulatory Authority was the regulator of all the financial institutions in Ireland from May 2003 to October 2010. With effect from 1 October 2010, pursuant to the Central Bank Reform Act 2010, the regulator became part of a single unitary organisation – the Central Bank of Ireland. The term Financial Regulator is used throughout the Findings Report to refer to the different iterations of the regulator both pre and post 2010.
Findings Report	The document comprising the Inquiry Members' written findings together with certain background information and supporting documentation.
Government Guarantee	The guarantee entered into by the Irish Government on 30 September 2008 in respect of the deposits and borrowings of six Irish-owned banks for the period of two years. The Credit Institutions (Financial Support) Act 2008 provided a legislative framework to underpin the guarantee arrangement. The banks covered by the guarantee were: Allied Irish Bank, Bank of Ireland, Anglo Irish Bank, Irish Life & Permanent, Irish Nationwide Building Society and EBS.
Goldman Sachs	Goldman Sachs Group Inc., is a global investment banking, securities and investment management firm.
HBOS	Halifax Bank of Scotland plc., was formed by the merger of Halifax plc and Bank of Scotland in 2001. In 2009, the group was acquired by Lloyds Banking Group.
Howard Kennedy	Howard Kennedy LLP is a London based law firm which acted as solicitors for INBS in certain transactions.
IBRC	Irish Bank Resolution Corporation Limited.
ICAAP	Internal Capital Adequacy Assessment Process.
IMM	Inquiry Management Meeting.
INBS	Irish Nationwide Building Society.
INBS Only Allegations	Loan allegations that were advanced against INBS only or against INBS and Persons Concerned who were no longer subject to the Inquiry.

Inquiry	Inquiry means the inquiry convened by the Notice of Inquiry.
Inquiry Guidelines	Inquiry Guidelines prescribed pursuant to section 33BD of the Central Bank Act 1942 (as amended) were published on 6 November 2013. Revised Inquiry Guidelines were published on 4 November 2014 to provide for the tasks and powers of the European Central Bank, under the Single Supervisory Mechanism, and as contained in Council Regulation (EU) No 1024/2013 of 15 October 2013, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions. The Inquiry Guidelines dated 4 November 2014 repeal and replace the previous Inquiry Guidelines published on 6 November 2013.
Inquiry Members	The Inquiry Members means the persons appointed by the Central Bank pursuant to section 33BE of the 1942 Act, namely Marian Shanley (solicitor), Ciara McGoldrick (barrister) and Geoffrey McEnery (banker). The term 'Inquiry' is used as the default term for the Inquiry Members throughout this Findings Report, unless the circumstances require otherwise.
Investigation	The Investigation conducted by the investigation team (Enforcement and Ernst & Young) into commercial lending practices in INBS from 1 August 2004 to 30 September 2008 in accordance with the Inquiry Guidelines.
Investigation Letter	Notice of the commencement of Investigation under the ASP. Investigation Letters were issued to INBS and the alleged participants on 12 December 2013.
Investigation Report	Report provided by Enforcement to RDU on referral of the Investigation which includes approximately 110,000 supporting documents relied on by Enforcement in preparing the Investigation Report. This term also includes the Supplemental and Revised Supplemental Investigation Reports.
KPMG	KPMG International Limited, were the external auditors of INBS.
Large Exposure	A large exposure is defined as the sum of all exposure values of a bank to a single counterparty or to a group of connected

	counterparties that are equal to or above 10% of its Tier 1 capital.
Legal Practitioner Team/LPT	The Inquiry Members appointed a Legal Practitioner Team, as provided for by section 33AY(3) of the 1942 Act, to provide legal assistance and advice to them, as required, during the Inquiry process.
Loan File Analysis	The Inquiry Members considered the Loan Sample documentation and the evidence from the Loan Hearings and carried out a loan by loan analysis to determine the Loan Specific Allegations against INBS and Mr Purcell. The Loan File Analysis is set out in Chapter 4 of this Findings Report.
Loan Hearings	These hearings were conducted between November 2020 and April 2021 and addressed the loan specific evidence in the SPCs 1 to 4 module.
Loan Sample	Loan sample comprising 98 loans across nine commercial lending customers and representing approximately 20% of INBS's commercial loan book as at 28 February 2011.
Loan Specific Allegations	The specific allegations of non-compliance by INBS with its internal policies, and participation in this non-compliance by Persons Concerned, in respect of specified commercial loans in the Loan Sample.
LTV	Loan to Value.
Management Letters	Letters addressed to the Board prepared by INBS's auditor, KPMG, as part of the annual statutory audit process, setting out their recommendations on certain matters which arose during the course of their audit in connection with the accounting systems and internal controls of INBS.
Management Response	INBS senior management responses to findings and recommendations made in the various Contemporaneous Reports.
Managing Director	Where the chief executive is also a director he may be referred to as the managing director (section 49 (7) of the 1989 Act). As Mr Fingleton was both a director and chief executive up to his retirement as a director on 26 January 2008 he was referred to as the Managing Director of INBS up to 26 January 2008.

MIS	Management Information System.
module	The Inquiry hearings were split into four separate modules. Module 1 concerned SPC 5, module 2 concerned SPC 6, module 3 concerned SPC 7 and module 4 concerned SPCs 1 to 4.
National Asset Management Agency/NAMA	An asset management company set up to acquire good and bad loans from participating institutions in return for government guaranteed securities and to manage those assets with the aim of achieving a return on the acquired loans and underlying assets. INBS was designated as a participating institution under the National Asset Management Agency Act 2009 and commenced transferring property related loans to NAMA from 27 March 2010.
NIB	National Irish Bank.
Notice of Inquiry	The Notice of Inquiry dated 9 July 2015 set out the suspected prescribed contraventions against INBS and the Persons Concerned and the grounds upon which the suspicions were based.
Outline of the Administrative Sanctions Procedure	This is the 2014 Outline of the Administrative Sanctions Procedure document, which provides a general overview of the Central Bank's ASP, but does not purport to represent a definitive legal interpretation of Part IIIC of the 1942 Act.
Outline Procedure for the conduct of the INBS Inquiry	The Inquiry Members adopted an Outline Procedure for the conduct of the INBS Inquiry, dated 20 October 2015, which was to be read in conjunction with the 1942 Act, the Inquiry Guidelines and the Outline of the Administrative Sanctions Procedure.
Person(s) Concerned	Persons being persons concerned in the management of INBS during the Review Period, which the Central Bank determined it had reasonable grounds to suspect that the Persons Concerned participated in the commission of some or all of the prescribed contraventions by INBS. The Inquiry initially proceeded against five Persons Concerned: Michael Fingleton, William Garfield (Gary) McCollum, Thomas (Tom) McMenamín, John S. (Stan) Purcell and Michael Walsh. Over the course of the Inquiry three of the Persons Concerned entered into settlement agreements with the Central Bank and the Inquiry Members permanently stayed the Inquiry against Mr Fingleton. The only Person

	Concerned who is still subject to this Inquiry is Mr Purcell.
policy/policies or internal policy/policies	References to policies or internal policies throughout this Findings Report include equivalent control documents such as committee terms of reference, Board resolutions, Board directives and other internal communications which prescribed procedures and processes relevant to INBS's credit risk and commercial lending.
prescribed contravention	A prescribed contravention is defined in section 33AN of the 1942 Act as being a contravention of " <i>(a) a provision of a designated enactment or designated statutory instrument, or (b) a code made, or a direction given, under such a provision, or (c) any condition or requirement imposed under a provision of a designated enactment, designated statutory instrument, code or direction, or (d) any obligation imposed on any person by this Part or imposed by the Bank pursuant to a power exercised under this part</i> ".
Profit Share Agreements	Profit share agreements (also referred to within INBS as 'supplementary arrangement fees', 'supplemental loan agreements', 'fee agreements' and 'fee share arrangements') entered into by INBS typically took the form of an agreement between INBS and a commercial borrower, ancillary to the commercial mortgage offer, such that on the sale of the asset being financed, the profits arising from the sale, after costs, would be shared between the borrower and INBS (e.g. on a 70% borrower/30% INBS basis).
Profit Share Loans	Loans which were subject to a Profit Share Agreement.
Project Harmony	Vendor due diligence review conducted by KPMG on the instructions of the directors of INBS and which resulted in the Project Harmony Report dated 20 June 2007.
Provisions Committee	The Provisions Committee of INBS was established in 2003. As outlined in its terms of reference, the role of the Provisions Committee was to: <ul style="list-style-type: none"> • review the current status of previous specific provisions raised and determine what changes, if any, should be made to these provisions;

	<ul style="list-style-type: none"> • consider the requirement for any additional specific provisions to be raised against newly identified problem cases; • review the status of repossessed properties and determine whether any additional provisions are required; • review arrears, non-performing loans and other relevant portfolio summary reports; • review the methodology for calculation of INBS's provisions for collective impairment; and • At least once a year, review INBS's policy and procedures for impairment provisioning.
PwC	PricewaterhouseCoopers.
Quarterly Reports	Quarterly commercial lending reports provided to the Board providing certain information on INBS's commercial lending portfolio.
regulated financial service provider	Has the meaning given to that term in section 2(1) of the 1942 Act. Also referred to as 'regulated entity' throughout this Findings Report.
Regulatory Correspondence/Financial Regulator Correspondence/Financial Regulatory Correspondence	Correspondence between INBS and the Central Bank/Financial Regulator during the Review Period.
Regulatory Decisions Unit/RDU	The Regulatory Decisions Unit of the Central Bank. Where a decision is made by the Central Bank to hold an inquiry, Enforcement will inform the RDU of the decision to hold an inquiry and will refer the matter to the RDU for the purposes of convening an inquiry/inquiries as per paragraph 2.2 and 2.3 of the Inquiry Guidelines.
Relativity	An online platform which was used to facilitate a paperless inquiry environment and to provide the Inquiry participants with easy access to the documentation in electronic form.
Review Period	The period between 1 August 2004 and 30 September 2008.
Section 41A Notice	Notice issued under section 41A of the 1989 Act, requiring the provision of information relating to the business activities of an entity.

Section 41A Response	Response to a notice issued under section 41A of the 1989 Act.
Society Advance Detail/SAD	An internal INBS document which contains numerous details regarding particular loan advances including: payment amounts; account name and number; sectoral code; whether commercial loan applications/valuations were complete; and total exposure of customer to date.
SPC	Suspected prescribed contravention.
SPC Allegations	The allegations of specific instances of non-compliance by INBS with its internal policies on which the SPCs are founded.
SPV	Special Purpose Vehicle.
Sterling Commercial Advance Static Sheet	The Advance Static Sheet records the status of the loan in relation to the loan amount, value, term, rate, property details and repayment details.
Summit	INBS's electronic loan system.
Supplemental Investigation Report and Revised Supplemental Investigation Report	Enforcement provided a Supplemental Investigation Report and a Revised Supplemental Investigation Report to the Inquiry (on 30 April 2015 and 19 June 2015 respectively) containing additional information relevant to the investigation, together with additional documentation. These supplemental reports were to be read in conjunction with the original Investigation Report.
Term Report	The Term Report was the request form prepared for a term extension. The form detailed loan account information, the true balance on the account, the term expiry date, the proposed term extension date and reasons for the extension. The form also recorded approval of the term extension.

Table 2: Reports referred to in Findings Report

2003 KPMG Management Letter	Irish Nationwide Building Society Management Letter year ended 31 December 2003, KPMG.
2004 KPMG Commercial Credit Review	Irish Nationwide Building Society Commercial Credit Review 28 October 2004, KPMG.

2004 Internal Audit Report	Commercial Lending Audit 2004, Internal Audit Department.
2004 Belfast Internal Audit Report	Belfast Branch Internal Audit November-December 2004, Internal Audit Department.
2004 KPMG Management Letter	Irish Nationwide Building Society Management Letter year ended 31 December 2004, KPMG.
February 2005 Commercial Lending Review	Commercial Lending Review at 31 December 2004, dated 22 February 2005.
March 2005 Commercial Lending Review	Commercial Lending Review at 31 December 2004, dated 8 March 2005.
June 2005 Commercial Lending Review	Commercial Lending Review for the quarter to 30 June 2005.
2005 Internal Audit Report	Commercial Administration Audit 2005, Internal Audit Department.
2005 KPMG Management Letter	Irish Nationwide Building Society Management Letter year ended 31 December 2005, KPMG.
2006 Deloitte Audit Report	Irish Nationwide Building Society Internal Audit Report, Commercial Lending Function July 2006, Deloitte.
2006 Belfast Internal Audit Report	Belfast Branch Audit 2006, Internal Audit Department Report.
2006 KPMG Management Letter	Irish Nationwide Building Society Management Letter year ended 31 December 2006, KPMG.
2007 Belfast Internal Audit Report	Belfast Audit 2007, Internal Audit Department Report.
2007 Commercial Lending Internal Audit Report	Commercial Lending Audit 2006-2007, Internal Audit Department Report.
2007 Commercial Administration Internal Audit Report	Commercial Administration Audit 2007, Internal Audit Department.
2007 KPMG Management Letter	Irish Nationwide Building Society Management Letter year ended 31 December 2007, KPMG.
May 2008 Deloitte Review	Irish Nationwide Building Society Commercial and Residential Lending Review May 2008, Deloitte.
2008 Belfast Internal Audit Report	Belfast Audit Internal Audit Report July 2008.
2008 Internal Audit Report	Credit Committee Operational Review, Internal Audit Report July 2008.

September 2008 Deloitte Review	Irish Nationwide Building Society Commercial and Residential Lending Review September 2008, Deloitte.
2009 Internal Audit Report	Credit Committee Operational Review, Internal Audit Report January 2009.
2009 Deloitte Review	Irish Nationwide Building Society, Follow-up Internal Audit Report February 2009, Deloitte.
Project Harmony Report	KPMG Vendor due diligence report, dated 20 June 2007.

APPENDIX 9

DRAMATIS PERSONAE

Persons Concerned		
No.	Name	Description
1.	Michael Fingleton Senior	<p>Mr Fingleton was the managing director of INBS from 1971. He retired as director in 2008, and retired as chief executive in April 2009.</p> <p>On 20 December 2019, the Inquiry Members permanently stayed the Inquiry in its totality against Mr Fingleton in circumstances where they were satisfied that Mr Fingleton was unable to effectively participate in the Inquiry due to ill-health.</p> <p>All references to “Michael Fingleton” or “Mr Fingleton” throughout the Findings Report relate to Michael Fingleton (Snr).</p>
2.	William Garfield (Gary) McCollum	<p>Mr McCollum was employed by INBS from in or around 1997 to April 2010, holding the positions of UK commercial lending manager and Belfast Branch manager during that time. He was a member of the Credit Committee from December 2007.</p> <p>Mr McCollum entered into a settlement agreement with the Central Bank on 10 June 2021 and agreed to a 15-year disqualification from being concerned in the management of a regulated financial service provider, a fine of €200,000 and a reprimand.</p>
3.	Thomas (Tom) McMenamin	<p>Mr McMenamin was employed by INBS from 1999 to March 2010. He held various roles during his tenure, including senior commercial lender and head of commercial lending. Mr McMenamin was a member of the Credit Committee and the Provisions Committee during the Review Period.</p> <p>Mr McMenamin entered into a settlement agreement with the Central Bank on 6 December 2018 and agreed to an 18-year disqualification from being concerned in the management of a regulated financial service provider, a fine of €23,000 and a reprimand.</p>
4.	John S. (Stan) Purcell	<p>Mr Purcell commenced employment in INBS in 1986 as INBS’s financial controller. In 1993 he became secretary of INBS, and in December 1994 was appointed executive director. He ceased both roles in 2010. Mr Purcell was a member of INBS’s Provisions Committee throughout the Review Period, and was an attendee at most Audit Committee meetings in his capacity as secretary.</p> <p>By the conclusion of the Inquiry Hearings, Mr Purcell was the only Person Concerned who was still subject to the Inquiry.</p>

5.	Michael Walsh	<p>Dr Walsh joined INBS in 1995. Dr Walsh was a non-executive director of INBS and was also the chairman of INBS's Board from May 2001 until he resigned from the Board in February 2009. Dr Walsh was a member of the Audit Committee from 2001 until June 2008.</p> <p>Dr Walsh entered into a settlement agreement with the Central Bank on 22 January 2018 and agreed to a three-year disqualification from being concerned in the management of a regulated financial service provider, a fine of €20,000 and a reprimand.</p>
Other Persons Referred to in the Findings Report		
No	Name	Description
6.	David Brophy	<p>Mr Brophy was co-opted onto INBS's Board as a non-executive director at a Board meeting held on 28 February 2006. Mr Brophy became a member of INBS's Audit Committee and Remuneration Committee in March 2006. Mr Brophy resigned from INBS's Board in April 2009.</p> <p>Mr Brophy gave oral evidence to the Inquiry on 25 and 26 April 2018, 11 April 2019, 19 July 2019 and 29 June 2021.</p>
7.	Alan Boyne	<p>Mr Boyne was a chartered accountant and partner in KPMG. Mr Boyne was the engagement partner responsible for the preparation of the Project Harmony Report.</p> <p>Mr Boyne gave oral evidence to the Inquiry on 23 July 2019.</p>
8.	Declan Buckley	<p>Mr Buckley commenced employment with INBS in 2009, and was appointed head of commercial lending.</p> <p>Mr Buckley gave oral evidence to the Inquiry on 16 July 2019.</p>
9.	Mary Burke	<p>Ms Burke was head of securities and exchange supervision in the Financial Regulator from 2004 to 2005. She was appointed head of the banking supervision department in 2006 until the end of the Review Period.</p>
10.	Frank Casey	<p>Mr Casey commenced employment with INBS in April 2003. During the Review Period, Mr Casey was involved in the credit review function of INBS. Mr Casey was a member of INBS's Provisions Committee from June 2004 to the end of the Review Period.</p> <p>Mr Casey gave oral evidence to the Inquiry on 7 to 9 March 2018 and on 15 June 2021.</p>

11.	Terrance Cooney	<p>Mr Cooney was co-opted onto INBS's Board as a non-executive director in 2001 and was elected at INBS's 2002 annual general meeting. Mr Cooney was a member of INBS's Audit Committee, chairing that committee from 7 March 2006 to 19 December 2008 and then acting as vice-chair up to 25 May 2009. Mr Cooney was also a member of INBS's Credit Committee from 30 September 2008 and was its chair from this date. Mr Cooney was also a member of INBS's Remuneration Committee from January 2002. Mr Cooney was acting chairman of INBS from mid-February to mid-June 2009. Mr Cooney resigned as a non-executive director of INBS on 15 June 2009.</p> <p>Mr Cooney provided a letter of response dated 23 May 2012¹, to Enforcement's Examination Letter, but he did not give oral evidence to the Inquiry due to ill-health.</p>
12.	Darragh Daly	<p>Mr Daly commenced employment with INBS in January 2002. Mr Daly was a home loans manager in INBS from 2002 to July 2006. From July 2006 to 2009 he was a credit risk manager in INBS. From 2003 to 2006, Mr Daly was a member of the Credit Committee. Mr Daly was also a member of INBS's Provisions Committee and INBS's ICAAP Committee from 2007 until the end of the Review Period.</p> <p>Mr Daly gave oral evidence to the Inquiry on 20 to 23 February 2018, 10 April 2019, 11 July 2019 and 16 June 2021.</p>
13.	Alan Deering	<p>Mr Deering joined INBS in February 2004 as an administrator/underwriter. From 2007, Mr Deering held the title of commercial lender. In November 2009, Mr Deering was appointed as commercial banking manager. Mr Deering was an attendee at meetings of INBS's Credit Committee from 2005, before becoming a member of the Credit Committee from late 2007 to November 2008.</p> <p>Mr Deering gave oral evidence to the Inquiry on 12 April 2018 and 23 June 2021.</p>
14.	Michael Fingleton Junior	<p>Mr Fingleton (Jnr) commenced employment with INBS in April 2000. He is the son of Michael Fingleton (Snr). He held roles in the UK and Ireland and ceased employment with INBS in May 2010.</p>

¹ Letter from Noel Smyth & Partners to Derville Rowland, Head of Enforcement One, dated 23 May 2012 (Doc ID: 0.7.120.425061).

15.	Brian Fitzgibbon	<p>Mr Fitzgibbon commenced employment with INBS in December 2000 as a systems development officer. From June to December 2001, he was seconded as the head of residential lending. From 2002 to 2006 he was employed as head of branch development, from October 2004 to April 2005 he was seconded as commercial review manager and from July 2006 to July 2008 he was head of residential lending. He was a member of the Credit Committee from July 2006 to November 2007. He ceased employment with INBS in June or July 2008.</p> <p>Mr Fitzgibbon gave oral evidence to the Inquiry on 27 February 2018 and 11 June 2021.</p>
16.	Maurice Harte	<p>Mr Harte commenced employment with INBS on 14 January 2002 as chief general manager and an executive director. In addition to Mr Fingleton and Mr Purcell, Mr Harte was the only other executive director between January 2002 and the end of the Review Period. Mr Harte was a member of INBS's Credit Committee from Q1 2002. Mr Harte resigned from INBS with effect from 3 January 2003.</p>
17.	Con Horan	<p>Mr Horan was head of the banking supervision department of the Financial Regulator from 2003 to January 2006. From February 2006 to September 2008, Mr Horan held the position of prudential director in the Financial Regulator.</p> <p>Mr Horan gave oral evidence to the Inquiry on 23 May 2018.</p>
18.	Yvonne Madden	<p>Ms Madden was employed in the banking supervision department of the Financial Regulator throughout the Review Period.</p> <p>Ms Madden gave oral evidence to the Inquiry on 8 to 10 May 2018, 3 April 2019, 5 April 2019 and 10 July 2019.</p>
19.	Colm McDonnell	<p>Mr McDonnell was a director and then partner in the risk advisory practise of Deloitte and was responsible for certain of the Contemporaneous Reports which issued from Deloitte to INBS.</p> <p>Mr McDonnell gave oral evidence to the Inquiry on 28 May 2018, 8 April 2019, 11 July 2019 and 30 June 2021.</p>
20.	Shane McGowan	<p>Mr McGowan commenced employment with INBS in November 2002. Mr McGowan worked as a branch cashier for three years before he relocated to INBS's commercial lending department in 2005 where he worked as an administrator before becoming a commercial lender in October 2008. In July 2010, he became a banking manager in INBS's commercial banking department.</p> <p>Mr McGowan gave oral evidence to Inquiry on 16 June 2021.</p>

21.	Killian McMahon	<p>Mr McMahon joined INBS's internal audit department as an auditor in November 2003. Mr McMahon worked in that position until November 2004 when he became INBS's acting internal auditor. Mr McMahon was appointed as INBS's internal auditor in March 2005. Mr McMahon's title changed on 24 August 2009 to head of internal audit. Mr McMahon was a member of INBS's Assurance Providers Committee from February 2005 to July 2010. Mr McMahon attended meetings of INBS's Audit Committee from November 2004 to July 2011, the Risk Management Committee from December 2010 to July 2011 and a number of ICAAP Committee meetings held in 2009 and 2010.</p> <p>Mr McMahon gave oral evidence to the Inquiry on 20 and 21 March 2018, 13 April 2018, 23 April 2018, 24 July 2019 and 2 July 2021.</p>
22.	Patrick Neary	<p>Mr Neary held the position of prudential director of the Financial Regulator from May 2003 to January 2006. He held the position of chief executive of the Financial Regulator from February 2006 to January 2009.</p> <p>Mr Neary gave oral evidence to the Inquiry on 15 and 16 May 2018.</p>
23.	Martin Noonan	<p>From 2002 to 2005, Mr Noonan worked with INBS as a mortgage administration manager in charge of residential mortgage administration activities. From mid-2005, Mr Noonan took on responsibility for commercial mortgage administration activities in INBS. From mid-2006 until the end of 2008, Mr Noonan was a member of INBS's Credit Committee. Mr Noonan was also a member of INBS's Provisions Committee from 2004 until the end of the Review Period. Mr Noonan terminated the professional services agreement he had in place with INBS with effect from April 2011.</p> <p>Mr Noonan gave oral evidence to the Inquiry on 14 and 15 March 2018 and on 17 June 2021.</p>
24.	Liam O'Reilly	<p>Dr O'Reilly was the chief executive of the Financial Regulator from 2003 until the end of January 2006.</p> <p>Dr O'Reilly gave oral evidence to the Inquiry on 19 July 2019 and 25 June 2021.</p>

25.	Cornelius (Con) Power	<p>Dr Power was co-opted onto INBS's Board as a non-executive director on 23 March 2000 and held the position of vice-chairman of INBS's Board from late 2003. Dr Power became a member of INBS's Audit Committee on 23 March 2000 and was chairman of that committee from October 2003 until early 2006. Dr Power was a member of INBS's Remuneration Committee from its establishment on 30 January 2002. Dr Power resigned as a non-executive director of INBS with effect from 23 February 2006.</p> <p>Dr Power gave oral evidence to the Inquiry on 10 and 11 April 2018.</p>
26.	Vincent Reilly	<p>Mr Reilly was an audit partner in KPMG and was the engagement partner in KPMG responsible for the audit of the financial statements of INBS during the Review Period.</p> <p>Mr Reilly gave oral evidence to the Inquiry on 26 and 27 April 2018, 28 May 2018, 4 April 2019, 23 July 2019 and 24 June 2021.</p>
27.	John Roche	<p>Mr Roche was employed by INBS from March 1999 to January 2007. During that time Mr Roche held various titles including commercial lender, senior commercial lender, assistant lender, assistant lending manager and lending manager in INBS's commercial lending department. Mr Roche was a member of INBS's Credit Committee since its establishment in January 2001. Mr Roche ceased employment with INBS on 10 January 2007.</p> <p>Mr Roche gave oral evidence to the Inquiry on 21 March 2018.</p>
28.	Anne (Ita) Rogers	<p>Ms Rogers commenced employment with INBS in December 1998 in the accounts/finance section. From 2003 to 2011 she held the position of compliance manager. She was also company secretary of INBS from September 2010 to January 2012.</p> <p>Ms Rogers gave oral evidence to the Inquiry on 23 and 24 April 2018.</p>
29.	Joyce Sharkey	<p>Ms Sharkey was employed in the banking supervision department of the Financial Regulator throughout the Review Period.</p>
30.	Bernard Sheridan	<p>Mr Sheridan was the head of the banking supervision department of the Financial Regulator, and corresponded with INBS after the Review Period.</p>

31.	Melody van der Berg	<p>Ms van der Berg commenced employment with INBS in 2002. From 2003 to 2006 she worked as Mr Fingleton's personal assistant and from 2005 to 2006 as a commercial lending administrator which later merged into the credit risk, credit and Summit data function.</p> <p>Ms van der Berg gave oral evidence to the Inquiry on 13 and 14 March 2018.</p>
-----	---------------------	--

APPENDIX 10

REASONS FOR INQUIRY'S DECISION REGARDING 9 NOVEMBER 2004 COMMERCIAL LENDING CRITERIA

THE INQUIRY MEMBERS' REASONING FOR THEIR DECISION THAT THE 9 NOVEMBER 2004 COMMERCIAL LENDING CRITERIA (NOVEMBER 2004 CRITERIA) DOES NOT CONSTITUTE AN INTERNAL INBS POLICY AND THEREFORE COULD NOT BE THE BASIS FOR ANY ALLEGATION OF FAILURE TO ADHERE TO POLICY EITHER ON THE PART OF INBS OR MR PURCELL:

- 10.1 We accept that not all documents setting controls within a regulated institution require approval by the Board and that this is not a requirement of the relevant regulatory provisions.
- 10.2 The content of the November 2004 Criteria relates to the management of credit risk and purports to mandate criteria in relation to commercial lending.
- 10.3 The management of credit risk, including the formulation of policy, is a function specifically reserved for the Board.
- 10.4 The November 2004 Criteria was not approved by the Board, formally or otherwise. There was no reference to this document in any Board meeting minutes during the Review Period.
- 10.5 No evidence was presented to show that the document was known about or applied in the context of the operations of the Belfast Branch of INBS.
- 10.6 There is limited evidence that the members of the Credit Committee, charged with recommending facilities to the Board for approval, were aware of the document or were applying the principles contained therein when dealing with commercial loans.
- 10.7 There is no evidence that Mr Fingleton, who presented all loans at the Board meetings, received a copy of the document.
- 10.8 The evidence presented in the Investigation Report that the document was applicable was that of Mr McMahon and Ms Rogers. But each of these accepted under examination or at interview that credit policy was a matter for the Board. The fact that the document was provided to Moody's by Mr Purcell is not sufficient to establish that the document was approved by the Board or was operative within the organisation or otherwise operated as a control on commercial lending decisions made by the Board.

- 10.9 Further to his meeting with Moody's, it does appear that Mr Purcell was involved in enhancing the November 2004 Criteria into its final form. This appears to have been in response to a request from Moody's for additional information as part of its rating review process. There is no evidence that it made further progress within INBS by being approved by either the Credit Committee or by the Board and no evidence it was presented to the Board as an applicable control document in the loan approval process.
- 10.10 There is evidence that an LTV of 75% was considered as an appropriate LTV during internal audits. While this is the LTV specified in the November 2004 Criteria, it can also be regarded as a prudent LTV in respect of property lending in any event.
- 10.11 The report findings of both Deloitte and KPMG are silent on the question of a lack of information in respect of loan assessment or in relation to LTV or other sectoral criteria during the relevant period.
- 10.12 There is some evidence of awareness of the November 2004 Criteria within the organisation at commercial lending departmental level within Dublin albeit not in Belfast. The evidence of the directors, Dr Walsh and Mr Brophy, is mixed. On the one hand, they seemed clear that only policies approved by the Board applied to their lending decisions. On the other hand, they showed familiarity with the clauses such as those relating to the information required, personal guarantees and LTVs contained in the document. This might well be due to contemporaneous recollection or may be due to familiarity with the February 2007, December 2007 and April 2008 Commercial Mortgage Lending Policies. All of these documents contained the same clauses and were all formally approved by the Board. Their recollection could also reflect familiarity with the clauses themselves, all of which (except that relating to LTVs) were a feature of the April 2003 Credit Risk Policy. Whatever the reason, we believe it would be unsafe to rely on such evidence as proof that the November 2004 Criteria was an applicable control document in circumstances in which non-adherence to such a document could lead to regulatory sanction
- 10.13 We therefore conclude that allegations based solely on the November 2004 Criteria are unproven.

APPENDIX 11

SPC 1 – RELEVANT POLICY PROVISIONS

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 1.1	No CLA was prepared at all.	28 February 2007 Commercial Mortgage Lending Policy	0.7.120.27792	Page 13: “Approval Process <i>All Commercial Loan Applications (CLA) must be prepared and supporting documentation in place prior to all loans being presented to the Credit Committee. The CLA must also contain loan classifications, details on fee/profit shares (if applicable), LTV and other information on the loan”.</i>
SPC 1.2	CLA was not prepared in advance of funds being drawn down.	21 April 2008 Commercial Mortgage Lending Policy	0.7.120.448318	
SPC 1.3	Failure to acquire required information from borrowers to facilitate an assessment of borrowers’ repayment capacity.	28 February 2007 Commercial Mortgage Lending Policy December 2007 Commercial Mortgage Lending Policy 21 April 2008 Commercial	0.7.120.27792 0.7.120.450156 0.7.120.448318	Page 5: “General Basic Criteria Commercial Lending to a Company <ul style="list-style-type: none"> ▪ <i>Memo & Articles of Association</i> ▪ <i>Certification/Certificate of Incorporation</i> ▪ <i>Three years Audited Accounts</i> ▪ <i>Personal Guarantees of Directors</i> ▪ <i>Business Plan/Proposal</i> ▪ <i>Forecast Cash Flow Analysis</i> Commercial Lending to a [sic] Individual (non company)

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
		Mortgage Lending Policy		<ul style="list-style-type: none"> ▪ <i>Statement of Affairs (Net Worth)</i> ▪ <i>Income Details</i> ▪ <i>Bank Statements (6 months current accounts)</i> ▪ <i>Loan Statements (personal & business)</i> ▪ <i>Business Plan/Proposals</i>". <p>Page 13: "Approval Process <i>All Commercial Loan Applications (CLA) must be prepared and supporting documentation in place prior to all loans being presented to the Credit Committee. The CLA must also contain loan classifications, details on fee/profit shares (if applicable), LTV and other information on the loan".</i></p>
SPC 1.4	Credit grades were not assigned to commercial loans.	8 April 2003 Credit Grading System for Commercial Lending	0.7.120.478217	<p>Page 1: <i>"From June 2002 a classification / grading system was implemented and all commercial applications paid out now include the code of 3. This is the intended starting position and depending on their repayment performance over time they would move one way or the other.</i></p> <p><i>The grading system separately grades loan to value and repayment capacity. Loan to value would be graded A-D and repayment capacity graded 1-6".</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 1.4	Credit grades were not assigned to commercial loans.	<p>2005 Impairment Provisioning Policy</p> <p>2006 Impairment Provisioning Policy</p>	<p>0.7.120.25083</p> <p>0.7.120.449670</p>	<p>Page 2:</p> <p><u>“2. Credit risk management</u></p> <p><i>Loan grading</i></p> <p><i>Each loan is graded as follows:</i></p> <p><u><i>Credit risk grading</i></u></p> <p><i>Land or property is credit graded depending on whether it is zoned, pre-sold, pre-let or pre-leased and by the type of property or development such as commercial development, retail development and residential development.</i></p> <p><u><i>Sectoral coding</i></u></p> <p><i>These codes are used to classify loans into particular activities. The nature of the activity is identified and the sectoral code classification is based on the activity.</i></p> <p><u><i>Credit grading</i></u></p> <p><i>Loans are graded based on the loan to value ratio and the repayment capacity. A rating of 1 to 6 is assigned depending on factors such as the security the experience and net worth of the customer.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><u>Credit review</u></p> <p><i>The credit review is focused on the Top 100 Large Exposures. The reviewer examines the relevant lending files and completes a credit review form. This form provides a summary of the exposure and includes such information as the overall facility, amount, purpose, term, repayment arrangements, security, valuation and credit grade and quality of the loan. The review highlights issues to be addressed by lenders and corrective action to be taken”.</i></p> <p>Page 1 (2006 & 2007 Impairment Provisioning Policy only):</p> <p><i>“This policy document should be read in conjunction with ‘Notes on the implementation of the impairment provisioning policy’ which amplifies and expands on the impairment provisioning policy”.</i></p>
SPC 1.4	Credit grades were not assigned to commercial loans.	2006 Notes on the Implementation of Impairment Provisioning Policy	0.7.120.449946	<p>Page 8 (2006 Policy) & Page 9 (2007 Policy):</p> <p>“4. Credit Risk Management Practices</p> <p><i>The society practices to assess and control the level of credit risk in its lending are explained below:</i></p> <p>4.1 Credit Classifications</p> <p><i>Early in the credit decision making process, all accounts are assigned a credit classification. This code is made up of three elements:</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p>Classification code:</p> <ul style="list-style-type: none"> Classifies land or property, along with zoning, and pre-sold/let status. <p>Sectoral code:</p> <ul style="list-style-type: none"> Classifies loans into particular activities, based upon Central Bank reporting activity classifications. <p>Credit grade:</p> <ul style="list-style-type: none"> Classifies the loan on the basis of the LTV and repayment capacity. <p><i>These codes are used to assess the credit worthiness of the potential customer and to assist the Lenders in their decision on advancing funds. A detailed listing of the codes used is contained in appendices A-C of this document.</i></p> <p>Appendix C, Page 31 (2006 Policy) & Appendix C, Page 33 (2007 Policy):</p> <p>“Credit Grading</p> <p><i>Loan to value are graded W – Z and repayment capacity graded 1 – 6”, and proceeds to list what each rating in the “Loan To Value Categories” and “Repayment Capacity Categories” represents.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 1.4	Credit grades were not assigned to commercial loans.	27 June 2007 Credit Risk Management Policy	0.7.120.431329	<p>Page 12 to 14:</p> <p>“3.2.2 Classification of Credit risk</p> <p><i>Early in the credit decision making process, all accounts are assigned credit gradings. These codes are used to assess the credit worthiness of a potential customer and to assist the lenders in their decision on advancing funds. This code is made up of three elements:</i></p> <ul style="list-style-type: none"> • Sectoral code <p><i>These codes are used to classify loans into particular activities. The nature of the activity is identified and the sectoral code classification is based on said activity. (See Appendix A for list of sectoral codes). Sectoral coding is set out by the Financial Regulator to ensure that the Society is in a position to analyse its lending by industry sector.</i></p> <ul style="list-style-type: none"> • Classification code <p><i>This code classifies land or property, or portion thereof, depending on whether or not it is zoned, pre-sold, pre-let or pre-leased. (See Appendix B for list of classification codes). The Society applies classification codes to accounts as a means of providing greater definition and clarity than is available in the sectoral codes.</i></p> <p><i>Sectoral and classification coding is applied to each loan at approval, and if the facility is one which evolves during the life</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>of the loan, the sectoral classification coding is updated as new information regarding the status of the loan is received. New information is obtained through regular contact with the borrower and regular file reviews. The sectoral and classification coding applied to an account will impact directly on the capital requirement so it is essential to maintain the code accurately. For example, a speculative loan (being one without contractual sales or income) will attract a higher capital requirement, whereas a development with over 50% pre-sales is deemed to lower risk and therefore attracts a lower capital requirement.</i></p> <ul style="list-style-type: none"> • Credit grade <i>This code classifies a loan based on the LTV of the loan and the repayment capacity of the commercial facility (See Appendix C for list of credit grades). A rating of 1 to 6 is assigned depending on factors such as the experience, security, and net worth of the customer. The following criteria are applied in determining whether a loan would obtain a rating of 2;</i> <ul style="list-style-type: none"> - <i>Very strong case in every way.</i> - <i>Income from our security covers repayments, more than 1.5:1.</i> - <i>Strong tenant and long term lease.</i> - <i>Substantial income independent of our security.</i> - <i>Substantial net worth.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> - <i>Excellent record of repaying all loans.</i> - <i>Applicant has good reputation and is known to be of good character.</i> <p><i>The above coding gives an initial assessment of the credit risk attached to a loan early in the loan approval process”.</i></p>

APPENDIX 12

SPC 2 – RELEVANT POLICY PROVISIONS

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 2.2	Funds advanced without Credit Committee approval or recommendation and without Board approval and not in compliance with urgent credit decision approval procedures.	Board Resolution September 2002	0.7.120.431867	<p>Page 9:</p> <p><i>“Interim Approval of Large Loans: The Board discussed a situation whereby a loan approval would have to issue due to pressure of time before board approval had been given. The Board agreed that, if urgent, an interim approval could be given if the application was approved by the Credit Committee and signed by two Directors and later advised to the Board in the normal way”.</i></p>
SPC 2.3	Funds advanced without Board approval and without compliance with INBS’s urgent credit decision approval procedures.			
SPC 2.6	Funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures.			

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 2.7	Funds advanced in excess of the loan amount and additional funds were not appropriately approved.			
SPC 2.8	Loan amount advanced per the CMO was in excess of the amount outlined in the CLA and approved by the Board and additional funds were not appropriately approved.			
SPC 2.13	CMO issued prior to appropriate recommendation for approval and/or approval being received not in compliance with urgent credit decision approval procedures.			

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 2.5	Loans advanced prior to Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with urgent credit decision approval procedures.	April 2003 Credit Risk Policy	0.7.120.478217	Pages 27 to 28: <i>“COMMERCIAL LENDING GUIDELINES</i> <i>Control</i> <i>1. Board Submissions must be completed and approved by the Board prior to the preparation of commercial offer letters”.</i>
SPC 2.6	Funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures.			
SPC 2.7	Funds advanced in excess of the loan amount and additional funds were not appropriately approved.			
SPC 2.13	CMO issued prior to appropriate recommendation for approval and/or approval being received not in compliance with urgent credit decision approval procedures.			

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 2.14	CMO did not reflect the basis of approval by the Credit Committee and/or Board.			
SPC 2.1 SPC 2.2 SPC 2.5	<p>Funds advanced without Credit Committee approval or recommendation and not in compliance with urgent credit decision approval procedures.</p> <p>Funds advanced without Credit Committee approval or recommendation and without Board approval and not in compliance with urgent credit decision approval procedures.</p> <p>Loans advanced prior to Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with urgent credit decision approval procedures.</p>	UK Version of the April 2003 Credit Risk policy	0.7.120.622022	<p>Page 13: <i>“GENERAL POLICIES... DRAWDOWNS ... Before a draw-down takes place, the following must be satisfied.</i></p> <p>a) <i>All conditions of the loan approval must have been complied with</i></p> <p>... b) <i>c) The facility <u>must be within the approved term</u>”.</i></p> <p>Page 22: <i>“UK COMMERCIAL LENDING GUIDELINES ... 5. Commercial loan applications of £500,000 or less can be approved by the UK Branch Manager without reference to the Credit Committee”.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 2.6	Funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures.			
SPC 2.8	Loan amount advanced per the CMO was in excess of the amount outlined in the CLA and approved by the Board and additional funds were not appropriately approved.			
SPC 2.10	Sales proceeds from property held as security was released to borrower without appropriate approval.			
SPC 2.16	CMO not appropriately signed by INBS.			
SPC 2.9	Term of the loan extended without appropriate approval.	Moratoria Policy October 2003	0.7.120.27792	<p>Page 30: <i>“After Board approval terms and conditions of moratorium accounts can be amended with the written approval of either:</i></p> <ul style="list-style-type: none"> • <i>Mr. Michael Fingleton, Managing Director</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 2.2	Funds advanced without Credit Committee approval or recommendation and without Board approval and not in compliance with urgent credit decision approval procedures.			<p>Page 16:</p> <p><i>“Drawdown” section states: “Commercial administration will be responsible for ensuring the correct interest rates and other terms stated in the executed letters of offer are applied to each loan account upon draw-down”.</i></p> <p>The provisions for signing the CMO (also referred to as <i>“commercial loan offer”</i> or <i>“Offer Letter”</i>) are included under the last bullet point in the <i>“Approval Process”</i> section of the policies.</p>
SPC 2.3	Funds advanced without Board approval and without compliance with INBS’s urgent credit decision approval procedures.			
SPC 2.5	Loans advanced prior to Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with urgent credit decision approval procedures.			
SPC 2.6	Funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures.			

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 2.8	Loan amount advanced per the CMO was in excess of the amount outlined in the CLA and approved by the Board and additional funds were not appropriately approved.			
SPC 2.9	Term of the loan extended without appropriate approval.			
SPC 2.12	Terms outlined in the CLA and approved by the Board differed to the terms outlined in the CMO.			
SPC 2.13	CMO issued prior to appropriate recommendation for approval and/or approval being received not in compliance with urgent credit decision approval procedures.			

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 2.15	Funds were advanced prior to CMO being signed and issued by INBS and signed by borrower.			
SPC 2.16	CMO not appropriately signed by INBS.			
SPC 2.5	Loans advanced prior to Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with urgent credit decision approval procedures.	December 2007 Commercial Mortgage Lending Policy	0.7.120.450156	<p>Page 31: <i>“The Society’s policy with respect to the amendment, removal or creation of terms and conditions of moratoria is as follows:</i></p> <ul style="list-style-type: none"> ➤ <i>The commercial loan application (CLA) which are initially reviewed and approved by the Credit Committee will include all terms and conditions of moratorium accounts.</i> ➤ <i>After Credit Committee approval, terms and conditions of moratorium accounts can be amended with the written approval of either:</i> <ul style="list-style-type: none"> • <i>All members of the Credit Committee</i> • <i>Or any two of the following:</i> <ul style="list-style-type: none"> • <i>Mr Michael P. Fingleton – Managing Director/Chief Executive</i>
SPC 2.9	Term of the loan extended without appropriate approval.	21 April 2008 Commercial Mortgage Lending Policy	0.7.120.448318	
SPC 2.11	Loans changed from recourse to non-recourse without appropriate approval.			

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 2.4	Credit Committee not quorate when loans were approved or recommended and loans not in compliance with urgent credit decision approval procedures.			<p><i>The Credit Committee may decline credit applications for various reasons...".</i></p>
SPC 2.5	Loans advanced prior to Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with urgent credit decision approval procedures.			<p>Page 3:</p> <p><i>"In the event that a credit decision is required urgently and it is not possible to convene a meeting with the Credit Committee, at least two members of the Committee must support and approve the credit up to €500k [sic]. Any amounts in excess of this must be approved by the Managing Director and two members of the Credit Committee.</i></p> <p><i>Any loans so approved should be signed off by the Credit Committee and the Board as soon as practicable".</i></p>
SPC 2.6	Funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures.			
SPC 2.7	Funds advanced in excess of the loan amount and additional funds were not appropriately approved.			

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 2.2	Funds advanced without Credit Committee approval or recommendation and without Board approval and not in compliance with urgent credit decision approval procedures.			<p><i>All Commercial loan applications must be approved and / or recommended (where appropriate) by the Credit Committee</i></p> <p><i>The Credit Committee has authority to approve loan applications up to €1 million. Loan applications in excess of €1 million are subject to Board approval.</i></p> <p>...</p> <p><i>The Credit Committee may decline credit applications for various reasons”.</i></p>
SPC 2.3	Funds advanced without Board approval and without compliance with INBS’s urgent credit decision approval procedures.			<p>Page 3:</p> <p><i>“In the event that a credit decision is required urgently and it is not possible to convene a meeting with the Credit Committee, at least two members of the Committee must support and approve the credit up to €1 million. Any amounts in excess of this must be approved by the Managing Director and two members of the Credit Committee.</i></p>
SPC 2.4	Credit Committee not quorate when loans were approved or recommended and loans not in compliance with urgent credit decision approval procedures.			<p><i>Any loans so approved should be signed off by the Credit Committee and the Board as soon as practicable”.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 2.5	Loans advanced prior to Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with urgent credit decision approval procedures.			
SPC 2.6	Funds advanced prior to Board approval and not in compliance with urgent credit decision approval procedures.			
SPC 2.7	Funds advanced in excess of the loan amount and additional funds were not appropriately approved.			
SPC 2.8	Loan amount advanced per the CMO was in excess of the amount outlined in the CLA and approved by the Board and additional funds were not appropriately approved.			

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 2.13	CMO issued prior to appropriate recommendation for approval and/or approval being received not in compliance with urgent credit decision approval procedures.			
SPC 2.5 SPC 2.7 SPC 2.13	Loans advanced prior to Credit Committee meeting (at which the loans were approved or recommended) and not in compliance with urgent credit decision approval procedures. Funds advanced in excess of the loan amount and additional funds were not appropriately approved. CMO issued prior to appropriate recommendation for approval and/or approval being received not in compliance with urgent	December 2007 Credit Committee Terms of Reference	0.7.120.26675	<p>Page 3:</p> <p><i>“The Committee will meet regularly to consider and approve or decline all commercial loan applications and residential loan applications where a customer’s exposure to Society exceeds or may exceed €1 million</i></p> <p>...</p> <p><i>All Commercial loan applications must be approved or declined by the Credit Committee.</i></p> <p><i>The Credit Committee has authority to approve all commercial loan applications and any residential loan applications submitted to the Committee”.</i></p> <p>Pages 3 to 4:</p> <p><i>“In the event that a credit decision is required urgently and it is not possible to convene a meeting with the Credit Committee, the credit decision must be approved by the Managing Director and any two of the following Credit Committee members;</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
	credit decision approval procedures.			<ul style="list-style-type: none"> • <i>Tom McMenamin</i> • <i>Martin Noonan</i> • <i>Gary McCollum</i> <p><i>Any loans so approved should be signed off by the Credit Committee as soon as possible”.</i></p>
SPC 2.9 SPC 2.12	<p>Term of the loan extended without appropriate approval.</p> <p>Terms outlined in the CLA and approved by the Board differed to the terms outlined in the CMO.</p>	27 June 2007 Credit Risk Management Policy	0.7.120.431329	<p>Page 23:</p> <p><i>“...No individual member of staff is authorised to vary the conditions of a loan approved by the Board. Any variation, including term of the loan and moratorium, must first be considered, approved and minuted by the Credit Committee and submitted to the Managing Director for approval. This must then be recorded on the customer file”.</i></p>

APPENDIX 13

SPC 3 – RELEVANT POLICY PROVISIONS

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 3.1	Loans were unsecured.	28 February 2007 Commercial Mortgage Lending Policy	0.7.120.27792	<p>Page 7:</p> <p>“Security</p> <p><i>The Society’s policy is that all facilities are secured and that we take the maximum available security. The security is valued by a professional valuer and the valuations are completed and addressed to the Society. All loans in excess of €1m must be valued by external professional valuers”.</i></p> <p>Policy also contains specific criteria relating to security for the following types of lending: (1) Residential Property Investment; (2) Public House; (3) Hotels; (4) Development Finance; (5) Property Investment – Offices & Retail; and (6) Retail Distribution. The sector-specific criteria do not affect the basic requirements set out above.</p>
SPC 3.2	Personal guarantees from owners / controllers of borrower private companies and /or joint and several guarantees where there was more than	<p>April 2003 Credit Risk Policy</p> <p>UK Version of the April 2003 Credit Risk Policy</p>	<p>0.7.120.478217</p> <p>0.7.120.622022</p>	<p>Page 10 (April 2003 Credit Risk Policy) &</p> <p>Page 3 (UK Version of the April 2003 Credit Risk Policy):</p> <p>“Introduction</p> <p><i>The purpose of this credit policy is to provide a set of guidelines to ensure that all credits put forward meet minimum pre-agreed standards. In considering any proposition Irish Nationwide must have regard to the Borrower, the purpose,</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
	one director, were not obtained.			<p><i>the amount, the repayment period and capacity, the security and the profitability of the lending.</i></p> <p>...</p> <p><i>Although these are only guidelines, it remains critical to ensure that all risks are recognised and appropriate steps taken, as in considering a credit facility the Society is put at risk. The responsibility to ensure compliance with the credit policy lies with the underwriter and ultimately a Senior Commercial Lender, Home Loans Manager and the UK Branch Manager.</i></p> <p><i>The policy is not exhaustive and merely reflects our current position and prudence in a credit policy, which is understood by the Branch Manager and lending officers. There will be occasions when a proposal will not fit the criteria set out herein, however, under the circumstances the proposal will be prepared for submission to Senior Management by a Senior Commercial Lender or the Homes Loans Manager.</i></p> <p><i>With regard to underwriting the Society places a strong emphasis on its existing customers repayment capacity and every effort is made to maximise the security it receives. Where the customer has existing loan facilities, cross charging of securities as possible”.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p>Page 11 (April 2003 Credit Risk Policy) & Page 4 (UK Version of the April 2003 Credit Risk Policy): “Principles of Lending Borrower</p> <p><i>The first principle is that one should be satisfied as to the integrity of a borrower. An assessment is made from previous dealings, family connections and what the Society knows about the borrower in the community at large and from personal judgement of the lender. If the necessary trust level is not present, we should not offer mortgage facilities.</i></p> <p><i>In the case of a corporate entity, we consider the standing of the principals/directors. The Society cannot have recourse, in law, to the individual in a corporate lending unless he is a Guarantor. When lending to a corporate entity, the Society would therefore normally require that principles/directors guarantee the loan”.</i></p> <p>Pages 12 to 13 (April 2003 Credit Risk Policy) & Pages 5 to 6 (UK Version of the April 2003 Credit Risk Policy): “Security</p> <p><i>The Society’s policy is that all loans are secured and that we take the maximum available security. The security is valued by</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>a professional valuer, and the valuations are completed and addressed to the Society and paid for by the applicant.</i></p> <p>...</p> <p>Personal guarantees: <i>In all cases where the borrower is a private company, the security should include a personal guarantee from the individual who owns or controls the company. If there is more than one main director, joint and several guarantees should be taken”.</i></p>
SPC 3.2	Personal guarantees from owners / controllers of borrower private companies and /or joint and several guarantees where there was more than one director, were not obtained.	<p>28 February 2007 Commercial Mortgage Lending Policy</p> <p>December 2007 Commercial Mortgage Lending Policy</p> <p>21 April 2008 Commercial Mortgage Lending Policy</p>	<p>0.7.120.27792</p> <p>0.7.120.450156</p> <p>0.7.120.448318</p>	<p>Page 5 (All Policies):</p> <p><i>“Personal Guarantees of Directors”</i> are listed as a criteria under the <i>“General Basic Criteria”</i> for <i>“Commercial Lending to a Company”</i>.</p> <p>Page 9 (28 February 2007 Policy):</p> <p>“Personal Guarantees: <i>In all cases where the borrower is a private company, the security should include a personal guarantee from the individual who owns or controls the company. If there is more than one main director, joint and several guarantees should be taken”.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p>Page 10 (1 December 2007 Policy) & Page 10 (21 April 2008 Policy):</p> <p><i>“Personal Guarantees: In all cases where the borrower is a private company, the security should include a personal guarantee from the individual who owns or controls the company. If there is more than one main director, joint and several guarantees should be taken. The original guarantee agreement is required to be placed on the customer’s loan file”.</i></p>
SPC 3.2	Personal guarantees from owners / controllers of borrower private companies and /or joint and several guarantees where there was more than one director, were not obtained.	<p>2006 Notes on the Implementation of Impairment Provisioning Policy</p> <p>2007 Notes on the Implementation of Impairment Provisioning Policy</p>	<p>0.7.120.449946</p> <p>0.7.120.449696</p>	<p>Pages 8 to 9 (2006 Policy) & Pages 9 to 10 (2007 Policy):</p> <p>“4.2 Collateral and Guarantees</p> <p><i>It is the policy of the Society to ensure that all lending is secured on property located either in Ireland, the UK or the EU. Additionally, it is the policy of the Lenders to seek as much collateral and security for each loan as is possible in every instance. This added security is achieved through the use of the following:</i></p> <p>Ranking Charges:</p> <p><i>It is the Society’s policy to obtain a first legal charge over property financed.</i></p> <p>Cross Charges:</p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>Where appropriate, new advances maybe secured not only by the mortgaged property but also by cross charges against any other suitable properties already mortgaged by the customer with the Society.</i></p> <p>Guarantees:</p> <p><i>In the case of Limited Companies, separate and singular guarantees should be sought from the directors of such companies for the full amount of the loan”.</i></p>
SPC 3.2	Personal guarantees from owners / controllers of borrower private companies and /or joint and several guarantees where there was more than one director, were not obtained.	27 June 2007 Credit Risk Management Policy	0.7.120.431329	<p>Page 6:</p> <p>“1.2 Lending Strategy and Appetite for Credit Risk</p> <p>...</p> <p><i>The Society’s strategy seeks to exploit its built up experience in its chosen markets and focuses on identifying opportunities where there is repeat business with successful clients. In this regard, the Society is involved with quality clients e.g. long-established property developers, with expertise in purchasing and recognising value. It is this spread of expertise among its borrowers, which has given the Society an appreciation of the market in which it operates. The Society has developed a very strong niche market, particularly in the UK, by dealing with high net worth customers who have a proven record of success”.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p>Page 11:</p> <p>“Commercial Lending</p> <p><i>Commercial loan applications are assessed on a case by case basis”.</i></p> <p>Policy then goes on to list applicable appraisal criteria for commercial loan applications.</p> <p>Pages 29 to 30:</p> <p><i>“It is the policy of the Society to ensure that all lending is secured on property located either in Ireland, the U.K. or the E.U. Additionally, the Society seeks to take the maximum collateral and security for each loan as is possible in every instance. This added security is achieved through the use of the following:</i></p> <p>...</p> <p>Guarantees: <i>In all cases where the borrower is a private company, the security should include a personal guarantee from the individual who owns or controls the company. If there is more than on main director, join and several guarantees should be taken”.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 3.3	Failure to obtain a valuation report on an asset / security prior to loan being advanced.	<p>April 2003 Credit Risk Policy</p> <p>UK Version of the April 2003 Credit Risk Policy</p>	<p>0.7.120.478217</p> <p>0.7.120.622022</p>	<p>Page 12 (April 2003 Credit Risk Policy) & Page 5 (UK Version of the April 2003 Credit Risk Policy):</p> <p>“Security</p> <p><i>The Society’s policy is that all loans are secured and that we take the maximum available security. The security is valued by a professional valuer, and the valuations are completed and addressed to the Society and paid for by the applicant”.</i></p> <p>Page 28 (April 2003 Credit Risk Policy):</p> <p>“Draw-down</p> <p>...</p> <p><i>6. All the Society’s terms and conditions must be complied with in full before any draw-down or stage payment is made”.</i></p> <p>Page 13 (UK Version of the April 2003 Credit Risk Policy):</p> <p>“Drawdowns</p> <p>...</p> <p><i>Before a draw-down takes place, the following must be satisfied.</i></p> <p>a) <i>All conditions of the loan approval must have been complied with”.</i></p>
SPC 3.4	Commercial loans were advanced	28 February 2007 Commercial	0.7.120.27792	<p>Pages 18 to 28 (28 February 2007 Policy) & Pages 18 to 29 (1 December 2007 Policy) &</p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
	where the Loan to Value (LTV) was greater than the maximum applicable LTV percentage set out in INBS's internal policies.	Mortgage Lending Policy December 2007 Commercial Mortgage Lending Policy 21 April 2008 Commercial Mortgage Lending Policy	 0.7.120.450156 0.7.120.448318	Pages 18 to 29 (21 April 2008 Policy): Each of the policies set out " <i>Commercial Lending Sector Guide Criteria</i> " that included a sector by sector guide of the LTV limits to be applied to the different categories of lending including " <i>Residential Property Investment</i> ", " <i>Public House</i> ", " <i>Hotels</i> ", " <i>Development Finance</i> ", " <i>Property Investment – Offices & Retail</i> ", and " <i>Retail Distribution</i> ". In the case of " <i>Development Finance</i> ", the policies did not set down an LTV limit but stated that the loan amount and LTV was to be determined on a " <i>case by case basis</i> ".
SPC 3.5	For loans where the LTV was greater than the LTV set out in INBS's internal policies, those exceptions were not formally approved as exceptions in accordance with INBS's internal policies.			In light of the finding made in the Findings Report in respect of SPC 3.4, this SPC has fallen away and therefore no relevant policy provisions are listed.

APPENDIX 14

SPC 4 – RELEVANT POLICY PROVISIONS

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 4.1 ¹	Commercial lenders did not monitor loans during the term of the loan to the end of the Review Period.	April 2003 Credit Risk Policy 28 February 2007 Commercial Mortgage Lending Policy	0.7.120.478217 0.7.120.27792	<p>Page 27 (2003 Policy) & Page 17 (2007 Policy):</p> <p><i>“Commercial Lenders are responsible for the ongoing monitoring and control of loan facilities within their individual portfolios.</i></p> <p><i>Individual branch managers will remain responsible for the ongoing monitoring of applications that they source, and will be required to deal with any arrears or queries that may arise from time to time. Control of applications will however pass to a Commercial Lender upon draw-down of the facility”.</i></p>
SPC 4.1	Commercial lenders did not monitor loans during the term of the loan to the end of the Review Period.	December 2007 Commercial Mortgage Lending Policy 21 April 2008 Commercial	0.7.120.450156 0.7.120.448318	<p>Page 17 (Both Policies):</p> <p><i>“Individual branch managers will remain responsible for the ongoing monitoring of applications that they source, and will be required to deal with any arrears or queries that may arise from time to time. Control of the applications will however pass to a Commercial Lender upon draw-down of the facility”.</i></p>

¹ No allegation of participation was advanced against Mr Purcell in respect of SPC 4.1 and so this allegation was not ultimately required to be considered by the Inquiry. However, the Inquiry was required to address SPC 4.1 in the context of its Loan File Analysis (in Chapter 4 of this Findings Report) and so the policy provisions relevant to SPC 4.1 have been included in this table for completeness.

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
		Mortgage Lending Policy		
SPC 4.2	INBS did not review its Top 100 Large Exposures.	2005 Impairment Provisioning Policy 2006 Impairment Provisioning Policy 2007 Impairment Provisioning Policy	0.7.120.25083 0.7.120.449670 0.7.120.449577	<p>Pages 1 to 2:</p> <p><u>“1. Roles and responsibilities</u></p> <p><i>The Board established a provisions committee in 2003. The terms of reference of the provisions committee are set out in appendix (I).</i></p> <p><i>In summary; the provisions committee is responsible for ensuring that the Society makes adequate specific and collective impairment provisions. Impairment provisions are made in accordance with the requirements of FRS 26, Financial Instruments - Recognition and Measurement. The information considered by the provisions committee is set out in Appendix (II). The minutes of the provision committee are sufficiently detailed to report to the Board the committees’ discussions, its review of loans and the resultant provisions and write offs.</i></p> <p><u>2. Credit risk management</u></p> <p><i>The Society monitors and manages credit risk through:</i></p> <ul style="list-style-type: none"> • <i>The credit committee, the provisions committee and the assets and liabilities committee.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> • <i>The mortgage administration department to ensure that borrowers are making agreed repayments and that corrective active is taken when loans fall into arrears.</i> • <i>The internal audit risk assessment programme and regular reviews by internal audit of high risk areas identified by the risk assessment programme.</i> • <i>Regular reports to the management and the Board on:</i> <ul style="list-style-type: none"> - <i>Arrears and non performing loans.</i> - <i>Loan on moratoriums.</i> - <i>Exceptions to lending policies.</i> - <i>Concentration of the loan book by sector and geographically.</i> - <i>Significant credit exposures - Top 30 Exposures</i> - <i>Quarterly review of commercial lending.</i> <p><i>Loan grading</i> <i>Each loan is graded as follows:</i></p> <p><u><i>Credit risk grading</i></u> <i>Land or property is credit graded depending on whether it is zoned, pre-sold, pre-let or pre-leased and by the type of property or development such as commercial development, retail development and residential development.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><u>Sectoral coding</u></p> <p><i>These codes are used to classify loans into particular activities. The nature of the activity is identified and the sectoral code classification is based on the activity.</i></p> <p><u>Credit grading</u></p> <p><i>Loans are graded based on the loan to value ratio and the repayment capacity. A rating of 1 to 6 is assigned depending on factors such as the security the experience and net worth of the customer.</i></p> <p><u>Credit review</u></p> <p><i>The credit review is focused on the Top 100 Large Exposures. The reviewer examines the relevant lending files and completes a credit review form. This form provides a summary of the exposure and includes such information as the overall facility, amount, purpose, term, repayment arrangements, security, valuation and credit grade and quality of the loan. The review highlights issues to be addressed by lenders and corrective action to be taken”.</i></p> <p>Page 1 (2006 & 2007 Impairment Provisioning Policy only):</p> <p><i>“This policy document should be read in conjunction with ‘Notes on the implementation of the impairment provisioning</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<i>policy' which amplifies and expands on the impairment provisioning policy".</i>
SPC 4.2 SPC 4.4	INBS did not review its Top 100 Large Exposures. The output of INBS's credit review function was not considered as part of INBS's provisioning process, in that it appears that the credit review function's findings were not taken into account by the Provisions Committee as part of its decision-making.	2006 Notes on the Implementation of Impairment Provisioning Policy 2007 Notes on the Implementation of Impairment Provisioning Policy	0.7.120.449946 0.7.120.449696	<p>Page 9 to 10 (2006 Policy) & Page 10 to 11 (2007 Policy):</p> <p>"4.3 Credit Review</p> <p><i>The commercial and residential lending functions hold the primary role in the risk management process. In addition, the credit review function, which is staffed and managed independently of the lending function, serves to further augment and strengthen the Society's approach to risk assessment and the early identification of potential loan losses.</i></p> <p><i>The credit review function reviews on a periodic basis loan accounts which comprise the Society's top 100 large exposures. The review consists of an initial review on new facilities (loan advances) together with ongoing monitoring of existing exposures. A proforma report is completed for each account as it is reviewed and this is held on file by the credit reviewer.</i></p> <p><i>Consideration of the following factors is made when reviewing each account:</i></p> <ul style="list-style-type: none"> • <i>Repayment capacity</i> • <i>Track record</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> • <i>Loan to value ratio</i> • <i>Quality/timeliness of financial information</i> • <i>Compliance with terms and conditions</i> • <i>Repayment terms; i.e. any moratoria that may exist on the account</i> <p><i>Based on the assessment by the Credit Reviewer, a credit grading is attached to each account reviewed:</i></p> <ul style="list-style-type: none"> • <i>Grade 1 - good quality risk</i> • <i>Grade 2 - acceptable risk</i> • <i>Grade 3 - watch risk</i> • <i>Grade 4 - unacceptable risk</i> <p><i>The grade on an account has an impact on the management of that counterparty connection. Accounts given the grading 3 or 4 demand greater attention than those assigned grades 1 or 2. With regard to sanctioning additional facilities for accounts graded 3 or 4, the factors which have put an account into grade 3 or 4 status will need to be addressed before considering additional requests. See appendix D for more information on the criteria for each individual grade”.</i></p>
SPC 4.2	INBS did not review its Top 100 Large Exposures.	27 June 2007 Credit Risk	0.7.120.431329	Pages 26 to 28: “3.5.2 Credit Review

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
		Management Policy		<p><i>The Credit Review Function, a component of the Credit Risk Function, is staffed and managed independently of the lending function. It serves to further augment and strengthen the Society’s approach to risk assessment and the early identification of potential loan losses.</i></p> <p>...</p> <p><i>Reviews consist of identification of relevant accounts by reference to monthly Top 100 Large Exposures. The review consists of an initial review on new facilities (loan advances) together with ongoing monitoring of existing exposures. The Reviewer examines the relevant lending file and completes the Loan Review Template on the database. This template provides a picture of the exposure and includes such information as facility, amount, purpose, term, repayment arrangements, security, valuation and credit grade. It also highlights issues identified that must be addressed by lenders and corrective action that must be taken. Issues/concerns identified are raised with the lenders and if necessary, with the Managing Director. The template is also used to record any relevant information that becomes available throughout the term of the facility. All information is stored on the database”.</i></p> <p>Page 33: “4. Concentration Risk 4.1 Definition</p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>Concentration Risk can be defined as “any single (direct and/or indirect) exposure or group of exposures with the potential to produce losses large enough to threaten an institutions health or its ability to maintain its core business”. The Society’s concentration risk arises from the following:</i></p> <ul style="list-style-type: none"> <i>a) Large (connected) individual exposures (“Single Name”), and</i> <i>b) Significant exposures to a group or groups of counterparties whose likelihood of default is driven by common underlying factors e.g. sector, geographical location (“Other Concentration Risk”).</i> <p>4.2 Single Name Concentration Risk</p> <p>4.2.1 Definition of Large Exposure</p> <p><i>An exposure to a client or group of connected clients where its value is equal to or exceeds 10% of the Society’s Own Funds, is deemed to be a large exposure. For the purposes of this definition, exposures are deemed to be connected where two or more natural or legal persons constitute a single risk as one of them, directly or indirectly has control over the other or others. Control is defined as direct or indirect ownership, management control or financial dependencies.</i></p> <p><i>Examples of connected customers include:</i></p> <ul style="list-style-type: none"> • <i>Persons within the same legal group.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> • <i>Persons whose ultimate owner is the same individual/s.</i> • <i>Companies having common directors or management.</i> • <i>Persons linked by cross guarantees”.</i>
SPC 4.4	The output of INBS’s credit review function was not considered as part of INBS’s provisioning process, in that it appears that the credit review function’s findings were not taken into account by the Provisions Committee as part of its decision-making.	<p>2006 Notes on the Implementation of Impairment Provisioning Policy</p> <p>2007 Notes on the Implementation of Impairment Provisioning Policy</p>	<p>0.7.120.449946</p> <p>0.7.120.449696</p>	<p>Pages 4 to 5 (2006 Policy) & Pages 5 to 6 (2007 Policy):</p> <p>“2.5 Credit Risk</p> <p><i>It is the responsibility of the Credit Risk function to monitor the factors affecting the Society’s level of credit risk, and to advise the Board in the formulation and communication an effective Credit Risk Management Policy. Within the Credit Risk function. Credit Review is carried out to assess the quality of the lending undertaken by the Society, in order to assist in the identification of instances where an exposure ought to be assessed for impairment.</i></p> <p>2.6 Financial Reporting</p> <p><i>The Financial Reporting function is responsible for reporting the Society’s Impairment Provisions in the following:</i></p> <ul style="list-style-type: none"> • <i>The Society’s Financial Statements</i> • <i>Regulatory Reporting</i> • <i>Internal communications to the Board and Senior Management</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>The Financial Reporting function also assists in the identification of accounts for individual assessment and communicates with the Lenders / Arrears Controller to calculate the impairment loss. Additionally, the Financial Reporting function uses its reporting capabilities to support the calculation of the Society's Collective Impairment Provision".</i></p>
SPC 4.4	<p>The output of INBS's credit review function was not considered as part of INBS's provisioning process, in that it appears that the credit review function's findings were not taken into account by the Provisions Committee as part of its decision-making.</p>	<p>June 2004 Provisions Committee Terms of Reference</p>	0.7.120.18830	<p>Page 1:</p> <p><i>"The provisions committee assists in identifying loans and advances, which may require a provision, and to capture provisioning discussions.</i></p> <p>...</p> <p><i>The committee is to ensure that the Society has adequately made provisions against loans and advances, which are considered to be unrecoverable, and also against risks which, although not specifically identified are know from experience to be present in any portfolio of loans and advances.</i></p> <p>...</p> <p><i>The agenda is to include:</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> • <i>Review the current status of previous specific provisions raised and determine what changes, if any, should be made to these provisions;</i> • <i>Consider the requirement for any additional specific provisions to be raised against newly identified problem cases;</i> • <i>Review the status of repossessed properties and determine whether any additional provisions are required;</i> • <i>Review arrears, non-performing loans and other relevant portfolio summary reports.</i> • <i>Assessment of the adequacy of the general provision against the loan portfolio</i> • <i>Any other business.</i> <p><i>The minutes of each meeting will be taken by the Secretary of the Committee and should capture provisioning discussions and be available for inspection by Internal or External Auditors.</i></p> <p><i>A report should be issued to the Board shortly after each meeting of the provisions committee. The report is to include:</i></p> <ul style="list-style-type: none"> • <i>provisions no longer required</i> • <i>accounts which provisions are been booked against</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> • <i>recoveries of bad debts previously written off</i> • <i>details on the accounts, including property value, arrears information etc.</i> • <i>comments on the general provision</i> • <i>any other relevant information”.</i>
SPC 4.4	The output of INBS’s credit review function was not considered as part of INBS’s provisioning process, in that it appears that the credit review function’s findings were not taken into account by the Provisions Committee as part of its decision-making.	26 October 2006 Provisions Committee Terms of Reference	0.7.120.8883	<p>Pages 1 to 3:</p> <p><i>“The provisions committee assists in identifying loans and advances, which may require a provision, and to capture provisioning discussions.</i></p> <p>...</p> <p><i>The committee is to ensure that the Society has adequately made provisions against loans and advances, which are considered to be unrecoverable, and also against risks which, although not specifically identified are know from experience to be present in any portfolio of loans and advances.</i></p> <p><i>The committee is to establish the Society’s impairment provisioning policy for approval by the Board and to review this policy on an annual basis to ensure that it continues to be appropriate.</i></p> <p>...</p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>The agenda is to include:</i></p> <ul style="list-style-type: none"> • <i>Review the current status of previous specific provisions raised and determine what changes, if any, should be made to these provisions;</i> • <i>Consider the requirement for any additional specific provisions to be raised against newly identified problem cases;</i> • <i>Review the status of repossessed properties and determine whether any additional provisions are required;</i> • <i>Review arrears, non-performing loans and other relevant portfolio summary reports.</i> • <i>Review the methodology for calculation of the Society's provision for collective impairment</i> • <i>At least once a year, review the Society's policy and procedures for impairment provisioning</i> • <i>Any other business.</i> <p><i>The minutes of each meeting will be taken by the Secretary of the Committee and should capture provisioning discussions and be available for inspection by Internal or External Auditors.</i></p> <p><i>A report should be issued to the Board shortly after each meeting of the provisions committee. The report is to include:</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> • <i>provisions no longer required</i> • <i>accounts which provisions are been booked against</i> • <i>recoveries of bad debts previously written off</i> • <i>details on the accounts, including property value, arrears information etc.</i> • <i>comments on the collective impairment provision</i> • <i>any other relevant information”.</i> <p>...</p> <p><u>Reports reviewed by the provision committee.</u></p> <p><i>The following reports are circulated to the member of the committee in advance of meetings.</i></p> <ol style="list-style-type: none"> 1. <i>Bad debts provision movements.</i> 2. <i>Specific provisions list (at recent month end).</i> 3. <i>Redeemed accounts (summary).</i> 4. <i>Redeemed accounts with debit balances greater than €5,000.</i> 5. <i>Efflux accounts with balances greater than €100,000.</i> 6. <i>Negative equity cases.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> 7. <i>Report on commercial loans where arrears are greater than three months repayments and balance greater than €500k</i> 8. <i>Report on residential loans where arrears are greater than three months repayments and indexed LTV greater than 90%</i> 9. <i>Properties in possession.</i> 10. <i>Loans with arrears greater than three months (Not reported on other lists).</i> 11. <i>Collective impairment provision.</i> 12. <i>Non performing loans without a specific provision (current GAAP definition).</i> 13. <i>Legal cases provision.</i> 14. <i>Arrears and non performing reports.</i> 15. <i>Share and deposit accounts overdrawn.</i> 16. <i>Share and deposit account write offs.</i> 17. <i>Unsecured loans.</i> 18. <i>Report on loan with product type interest only and with arrears greater than three months”.</i>
SPC 4.4	The output of INBS’s credit review function was not considered as part of INBS’s provisioning process, in that it	27 June 2007 Credit Risk Management Policy	0.7.120.431329	<p>Pages 26 to 28: “3.5.2 Credit Review <i>The Credit Review Function, a component of the Credit Risk Function, is staffed and managed independently of the lending function. It serves to further augment and strengthen the</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
	<p>appears that the credit review function's findings were not taken into account by the Provisions Committee as part of its decision-making.</p>			<p><i>Society's approach to risk assessment and the early identification of potential loan losses.</i></p> <p><i>During the review process, each exposure is allocated a credit grade which is the reviewer's assessment of the risk attached to that particular credit. Factors currently taken into account when allocating a grade include:</i></p> <ul style="list-style-type: none"> • <i>Repayment capacity</i> • <i>Track record</i> • <i>Loan to Value Ratio</i> • <i>Quality/timeliness of financial information</i> • <i>Compliance with terms and conditions</i> • <i>Repayment terms: full repayments, interest only, capital/interest moratoria</i> <p><i>A schedule of the grades currently in use are set out in Appendix C. The grades allocated are numeric: 1 - 6 and summarised as follows:</i></p> <ul style="list-style-type: none"> • <i>Grade 1 - Minimal risk</i> • <i>Grade 2 - Good Quality risk</i> • <i>Grade 3 - Acceptable risk</i> • <i>Grade 4 - Watch risk</i> • <i>Grade 5 - Unacceptable risk</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> <li data-bbox="1218 336 1697 363">• <i>Grade 6 - Provision Required</i> <p data-bbox="1218 435 2033 767"><i>It should be pointed out that accounts have criteria that fall into different grades thereby requiring individual judgment as to the call on the grade. Individual grade criteria are a useful starting-off point in determining the risk attached to a particular exposure. The grade on an account has an impact on the management of that connection i.e. Grade 4 or lower demand greater attention. With regard to sanctioning additional facilities for grade 4 or lower, factors which have put an account into the lower grade will need to be addressed before considering additional requests.</i></p> <p data-bbox="1218 839 2033 1106"><i>Previously the review process was run with a database comprised mainly of free-text fields. While this covered the requirement to review the loans it did not allow reuse of the data. This database is no longer being used but is being retained during a transition period. There is a new database in place to support this process, which allows identification of accounts which require review for the current period and also ease of accessibility to data.</i></p> <p data-bbox="1218 1177 2033 1374"><i>Reviews consist of identification of relevant accounts by reference to monthly Top 100 Large Exposures. The review consists of an initial review on new facilities (loan advances) together with ongoing monitoring of existing exposures. The Reviewer examines the relevant lending file and completes the Loan Review Template on the database. This template</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>provides a picture of the exposure and includes such information as facility, amount, purpose, term, repayment arrangements, security, valuation and credit grade. It also highlights issues identified that must be addressed by lenders and corrective action that must be taken. Issues/concerns identified are raised with the lenders and if necessary, with the Managing Director. The template is also used to record any relevant information that becomes available throughout the term of the facility. All information is stored on the database.</i></p> <p><i>In addition, separate review files are maintained which will typically contain copies of the loan review template, credit loan application, valuation, facility letters, financial information and any other documentation useful to an understanding of the credit.</i></p> <p>3.5.3 Provisions Committee</p> <p><i>The Provisions Committee assists in identifying loans and advances, which may require a provision. The committee ensures that the Society has adequately made provisions against loans and advances, which are considered to be unrecoverable, and also against risks which, although not specifically identified are known from experience to be present in any portfolio of loans and advances. The committee reviews the Society's Impairment Provisioning Policy on an annual basis to ensure that it continues to be appropriate.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>The committee reports to the Board on a regular basis on:</i></p> <ul style="list-style-type: none"> • <i>Provisions no longer required;</i> • <i>Accounts which provisions are been booked against;</i> • <i>Recoveries of bad debts previously written off;</i> • <i>Details on the accounts, including property value, arrears information etc;</i> • <i>Comments on the collective impairment provision.</i> <p><i>The Provisions Committee is assisted by the Financial Reporting Function in identifying accounts for individual assessment. Financial Reporting communicates with the lenders / arrears controller to calculate the impairment loss. When an account has been identified as requiring assessment for impairment, the lenders or arrears controller directs the actions to be undertaken on the case from that point on. This process includes a full evaluation of the circumstances of the case and an assessment of the cash flows likely to arise. In this instance, the cash flows are based on the fair value of the likely receipts in the case, less any costs which might arise”.</i></p>
SPC 4.3	INBS’s credit review function did not effectively communicate the output of the credit reviews it did perform, or the issues to be			<p>No allegation of participation was advanced against Mr Purcell in respect of SPC 4.3, nor was SPC 4.3 required to be addressed by the Inquiry in the context of its Loan File Analysis (in Chapter 4 of this Findings Report). Accordingly, SPC 4.3 was not considered by the Inquiry and the policy provisions relevant to SPC 4.3 have therefore not been included in this table.</p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
	addressed by lenders, to commercial lenders (either directly or via the Credit Committee).			

APPENDIX 15

SPC 5 – RELEVANT POLICY PROVISIONS

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 5.1	INBS's Credit Committee did not review and consider commercial loans in large arrears and/or deemed non-performing.	16 October 2003 Commercial Credit Committee Terms of Reference	0.7.120.5896	<p>Pages 2 to 4:</p> <p><u>"Purpose / Background"</u></p> <p><i>The Society has established a Credit Committee to:</i></p> <p>a) <i>Apply the Commercial Lending Policy of the Society (as approved by the Board from time to time) to new commercial loan applications (Appendix A).</i></p> <p>b) <i>Consider, approve and recommend (as appropriate) commercial loan applications submitted to the Society.</i></p> <p><u>Membership</u></p> <p><i>The members of the Credit Committee are to include:</i></p> <ul style="list-style-type: none"> ❖ <i>Mr. Michael Fingleton, Managing Director</i> ❖ <i>Mr. Tom McMenamin. Commercial Manager</i> ❖ <i>Mr. John Roche, Senior Commercial Lender</i> ❖ <i>Mr. Darragh Daly, Residential Advances Manager</i> ❖ <i>Commercial underwriters also attend Credit Committee meetings where appropriate.</i>
SPC 5.2	INBS's Credit Committee did not review and consider loans submitted as part of the Credit Review process (as no such loans were submitted to it).			
SPC 5.3	INBS's Credit Committee did not review and consider relevant Management Information System (MIS) reports (for example, sectoral exposure, customer exposure/concentration).			

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 5.4	INBS's Credit Committee did not review and consider any issues raised by INBS's Internal Audit Department, and/or other advisors/regulators (KPMG/Central Bank).			<p><i>The minimum quorum of the Credit Committee meeting is 3 members.</i></p> <p><i>New members of the Credit Committee may be appointed from time to time but only with the approval of the Board of Directors.</i></p> <p><u>Meetings</u></p> <p><i>Committee will meet regularly, at least once a week to consider and approve commercial loan applications up to €500k and to review and recommend to the Board of the Society all loan applications in excess of €500k. More frequent meetings will be held when required.</i></p> <p><i>Committee Meetings should facilitate an open discussion on all credits presented and encourage the view points of committee members and underwriters. Decisions made should be communicated by the appropriate underwriter to the originator of the credit application and noted there on.</i></p> <p><i>Minutes of meetings should capture discussions and should be circulated to members of the Committee and be available for inspection by Internal or External Auditors and by Regulators.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p data-bbox="1261 333 1989 395"><i>Secretary of the Credit Committee will be the P. A of the Head of Commercial Lending.</i></p> <p data-bbox="1261 467 1507 496"><u>Authority / Duties</u></p> <ul data-bbox="1261 520 2029 1054" style="list-style-type: none"> <li data-bbox="1261 520 2029 612">• <i>All Commercial loan applications must be approved and / or recommended (where appropriate) by the Credit Committee.</i> <li data-bbox="1261 675 2029 767">• <i>The Credit Committee has authority to approve loan applications up to €500k. Loan applications in excess of €500k are subject to Board approval.</i> <li data-bbox="1261 829 2029 1054">• <i>In the event that a credit decision is required urgently and it is not possible to convene a meeting with the Credit Committee, at least two members of the Committee must support and approve the credit up to €500k. Any amounts in excess of this must be approved by the Managing Director and two members of the Credit Committee.</i> <p data-bbox="1357 1114 2018 1206"><i>Any loans so approved should be signed off by the Credit Committee and the Board as soon as practicable.</i></p> <ul data-bbox="1261 1252 2029 1378" style="list-style-type: none"> <li data-bbox="1261 1252 2029 1378">• <i>Exceptions to the Credit Policy and approval procedures must be signed off by two members of the Credit Committee and reported for approval to the Board.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> • <i>The Credit Committee will ensure that credit applications comply with the current Credit Policy of the Society, as may be amended from time to time.</i> • <i>The Credit Committee is responsible for ensuring that lenders / underwriters review all relevant documentation pertaining to a credit application e.g. accounts, valuations, security, guarantees, cash flow etc before and application is submitted to the Board. In addition, the history of the borrower should be reviewed together with the borrower's existing exposure limits.</i> • <i>The Credit Committee is responsible for ensuring that total exposure to a borrower or connected group of borrowers is reflected in the application.</i> • <i>The Credit Committee may decline credit applications for various reasons e.g. credit policy, inadequate cash flow and / or security cover etc. When a credit application is declined, the reasons are to be noted on the minutes of that meeting.</i> • <i>The Credit Committee will review and consider:</i> <ul style="list-style-type: none"> - <i>Commercial loans which have a capital and / or interest moratorium which needs extending.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> - Commercial loans that are in large arrears and / or deemed nonperforming. - Any loans submitted to it as part of the credit review process. - Relevant MIS reports e.g. sectoral exposure, customer exposure / concentration. - Any issues raised by internal audit and / or other advisors / regulators (KPMG / Central Bank). <p>[emphasis added]</p> <ul style="list-style-type: none"> • <i>The Credit Committee will ensure that members of the Credit Committee and commercial lenders are updated and informed of market conditions through internal and external research.</i> • <i>Any issues raised by the Board of Directors that refer to the Credit Committee should be communicated to the members of the Credit Committee by the Secretary of the Society.</i> • <i>The Credit Committee will undertake other duties as assigned to it form [sic] time to time by the Board”.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 5.1	INBS's Credit Committee did not review and consider commercial loans in large arrears and/or deemed non-performing.	19 July 2006 Commercial Credit Committee Terms of Reference	0.7.120.13247	Content of the 2006 Commercial Credit Committee Terms of Reference is the same as the 2003 Terms of Reference apart from the membership and approval threshold changes below.
SPC 5.2	INBS's Credit Committee did not review and consider loans submitted as part of the Credit Review process (as no such loans were submitted to it).			<p>Page 2:</p> <p><u>Membership</u></p> <p><i>The members of the Credit Committee are to include:</i></p> <ul style="list-style-type: none"> ❖ <i>Mr. Michael Fingleton, Managing Director</i> ❖ <i>Mr. Tom McMenamin, Commercial Manager</i> ❖ <i>Mr. John Roche, Senior Commercial Lender</i> ❖ <i>Mr. Brian Fitzgibbon, Residential Advances Manager</i> ❖ <i>Mr. Martin Noonan, Mortgage Administration Manager</i> ❖ <i>Commercial underwriters also attend Credit Committee meetings where appropriate".</i>
SPC 5.3	INBS's Credit Committee did not review and consider relevant Management Information System (MIS) reports (for example, sectoral exposure, customer exposure/concentration).			
SPC 5.4	INBS's Credit Committee did not review and consider any issues raised by INBS's Internal Audit			<p><u>Meetings</u></p> <p><i>Committee will meet regularly, at least once a week to consider and approve commercial loan applications up to €1 million and to review and recommend to the Board of the Society all loan applications in excess of €1 million. More frequent meetings will be held when required".</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
	Department, and/or other advisors/regulators (KPMG/Central Bank).			<p data-bbox="1258 379 1518 411"><u>“ Authority / Duties</u></p> <p data-bbox="1258 496 1290 512">...</p> <ul data-bbox="1258 584 2029 683" style="list-style-type: none"> <li data-bbox="1258 584 2029 683">• <i>The Credit Committee has authority to approve loan applications up to €1 million. Loan applications in excess of €1 million are subject to Board approval.</i> <p data-bbox="1258 767 1335 783">.....</p> <ul data-bbox="1258 855 2029 1289" style="list-style-type: none"> <li data-bbox="1258 855 2029 1289">• <i>The Credit Committee will review and consider:</i> <ul data-bbox="1357 903 2029 1289" style="list-style-type: none"> <li data-bbox="1357 903 2029 1002">- <i>Commercial loans which have a capital and / or interest moratorium which needs extending.</i> <li data-bbox="1357 1023 2029 1086">- <i>Commercial loans that are in large arrears and / or deemed nonperforming.</i> <li data-bbox="1357 1107 2029 1171">- <i>Any loans submitted to it as part of the credit review process.</i> <li data-bbox="1357 1192 2029 1289">- <i>Relevant MIS reports e.g. sectoral exposure, customer exposure / concentration.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p>- <i>Any issues raised by internal audit and / or other advisors / regulators (KPMG / Central Bank)</i>. [emphasis added]</p>
<p>SPC 5.1</p> <p>SPC 5.2</p> <p>SPC 5.3</p>	<p>INBS's Credit Committee did not review and consider commercial loans in large arrears and/or deemed non-performing.</p> <p>INBS's Credit Committee did not review and consider loans submitted as part of the Credit Review process (as no such loans were submitted to it).</p> <p>INBS's Credit Committee did not review and consider relevant Management Information System (MIS) reports (for example, sectoral exposure, customer exposure/concentration).</p>	<p>December 2007 Credit Committee Terms of Reference</p>	<p>0.7.120.26675</p>	<p>Pages 2 to 5: <u>"Purpose / Background"</u> <i>The Society has established a Credit Committee to:</i></p> <ul style="list-style-type: none"> a) <i>Apply the Commercial Mortgage Lending Policy of the Society (as approved by the Board from time to time) to new commercial loan applications</i> b) <i>Apply the Residential Mortgage Lending Policy of the Society (as approved by the Board from time to time) to new residential loan applications.</i> c) <i>Consider and approve or decline all commercial loan applications submitted to the Society.</i> d) <i>Consider and approve or decline residential loan applications submitted to the Society where a customers exposure to the Society exceeds or may exceed €1 million.</i> <p><u>Membership</u> <i>The members of the Credit Committee are to include:</i></p> <ul style="list-style-type: none"> ❖ <i>Mr. Michael Fingleton, Managing Director/Chief Executive</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 5.4	INBS's Credit Committee did not review and consider any issues raised by INBS's Internal Audit Department, and/or other advisors/regulators (KPMG/Central Bank).			<ul style="list-style-type: none"> ❖ <i>Mr. Tom McMenamin, Commercial Manager</i> ❖ <i>Mr. Martin Noonan, Mortgage Administration Manager</i> ❖ <i>Mr. Gary McCollum, Belfast Branch Manager</i> ❖ <i>Mr. Brian Fitzgibbon, Residential Advances Manager</i> ❖ <i>Mr. John Murphy, Commercial Administration QC</i> ❖ <i>Mr. Alan Deering, Commercial Lender</i> ❖ <i>Commercial underwriters also attend Credit Committee meetings where appropriate.</i> <p><i>The minimum quorum of the Credit Committee meeting is 3 members.</i></p> <p><i>Where a credit committee quorum cannot be reached, the papers will be circulated for views and comments prior to the meeting and all views and comments of absent members will be taken into account at the meeting.</i></p> <p><i>New members of the Credit Committee may be appointed from time to time but only with the approval of the Board of Directors.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><u>Meetings</u></p> <p><i>The Committee will meet regularly to consider and approve or decline all commercial loan applications and residential loan applications where a customer's exposure to the Society exceeds or may exceed €1 million. Meetings will be held when required.</i></p> <p><i>Committee Meetings should facilitate an open discussion on all credit applications presented and encourage the view points of committee members and underwriters.</i></p> <p><i>Credit Committee decisions made should be communicated to the appropriate underwriter immediately after the meeting. Decisions made should then be communicated by the appropriate underwriter to the originator of the credit application and noted there on.</i></p> <p><i>Minutes of meetings should capture discussions and should be circulated to members of the Committee and be available for inspection by Internal or External Auditors and by Regulators.</i></p> <p><i>The Secretary of the Credit Committee will be appointed by the Commercial Lending Manager.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><u>Authority / Duties</u></p> <ul style="list-style-type: none"> • <i>All Commercial loan applications must be approved or declined by the Credit Committee.</i> • <i>The Credit Committee has authority to approve all commercial loan applications and any residential loan applications submitted to the Committee.</i> • <i>In the event that a credit decision is required urgently and it is not possible to convene a meeting with the Credit Committee, the credit decision must be approved by the Managing Director and any two of the following Credit Committee members:</i> <ul style="list-style-type: none"> • <i>Tom McMenamin</i> • <i>Martin Noonan</i> • <i>Gary McCollum</i> <p><i>Any loans so approved should be signed off by the Credit Committee as soon as possible.</i></p> <ul style="list-style-type: none"> • <i>Exceptions to the Commercial and Residential Mortgage Lending Policies and approval procedures must be approved by Credit Committee.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> • <i>The Credit Committee will ensure that credit applications comply with the current Commercial and Residential Mortgage Lending Policies of the Society, as amended from time to time.</i> • <i>The Credit Committee is responsible for ensuring that lenders / underwriters review all relevant documentation pertaining to a credit application e.g. accounts, valuations, security, guarantees, cash flow etc before an application is submitted to the Credit Committee. In addition, the history of the borrower should be reviewed together with the borrower's existing exposure levels.</i> • <i>The Credit Committee is responsible for ensuring that the total exposure to a borrower or connected group of borrowers is reflected in the application.</i> • <i>The Credit Committee may decline credit applications for various reasons e.g. credit policy, inadequate cash flow and / or security cover etc. When a credit application is declined, it should be noted in the minutes of that meeting.</i> • <i>The Credit Committee will review and consider:</i> <ul style="list-style-type: none"> - <i>Commercial loans which have a capital and / or interest moratorium which needs extending.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> - Commercial loans that are in large arrears and / or deemed nonperforming. - Any loans submitted to it as part of the credit review process. - <i>All residential loan applications submitted to the Society where a customer's exposure to the Society exceeds or may exceed €1 million.</i> - Relevant MIS reports e.g. sectoral exposure, customer exposure / concentration. - Any issues raised by Internal Audit and / or other advisors / regulators (KPMG / Central Bank). <p>[emphasis added]</p> <ul style="list-style-type: none"> • <i>The Credit Committee will ensure that members of the Credit Committee and commercial lenders are updated and informed of market conditions through internal and external research.</i> • <i>Any issues raised by the Board of Directors that refer to the Credit Committee should be communicated to the members of the Credit Committee by the Secretary of the Society.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> <li data-bbox="1263 336 2033 402">• <i>The Credit Committee will undertake other duties as assigned to it from [sic] time to time by the Board".</i>

APPENDIX 16

SPC 6 – RELEVANT POLICY PROVISIONS

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 6.1	Board did not receive reports on exceptions to commercial lending policies.	2005 Impairment Provisioning Policy	0.7.120.25083	<p>Pages 1 to 2:</p> <p><u>“2. Credit risk management”</u></p> <p><i>The Society monitors and manages credit risk through:</i></p> <ul style="list-style-type: none"> • <i>The credit committee, the provisions committee and the assets and liabilities committee.</i> • <i>The mortgage administration department to ensure that borrowers are making agreed repayments and that corrective active is taken when loans fall into arrears.</i> • <i>The internal audit risk assessment programme and regular reviews by internal audit of high risk areas identified by the risk assessment programme.</i> • <i>Regular reports to the management and the Board on:</i> <ul style="list-style-type: none"> - <i>Arrears and non performing loans.</i> - <i>Loan on moratoriums.</i> - <i>Exceptions to lending policies.</i> - <i>Concentration of the loan book by sector and geographically.</i>
SPC 6.2	Board did not receive the required quarterly commercial lending report for the following five quarters: June 2007; December 2007; March 2008; June 2008; and September 2008.	2006 Impairment Provisioning Policy	0.7.120.449670	
		2007 Impairment Provisioning Policy	0.7.120.449577	

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> - Significant credit exposures -Top 30 Exposures - Quarterly review of commercial lending. <p>Loan grading Each loan is graded as follows:</p> <p><u>Credit risk grading</u> Land or property is credit graded depending on whether it is zoned, pre-sold, pre-let or pre-leased and by the type of property or development such as commercial development, retail development and residential development.</p> <p><u>Sectoral coding</u> These codes are used to classify loans into particular activities. The nature of the activity is identified and the sectoral code classification is based on the activity.</p> <p><u>Credit grading</u> Loans are graded based on the loan to value ratio and the repayment capacity. A rating of 1 to 6 is assigned depending on factors such as the security the experience and net worth of the customer.</p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>The Society further minimises the risk of default by dealing with counterparties, who having been assessed by our underwriting teams, and meet our lending criteria.</i></p> <p><i>In addition, the Society monitors and assesses the level of credit risk through:</i></p> <ul style="list-style-type: none"> • <i>Structured committees such as Credit Committee, Provisions Committee, Assets and Liabilities Committee and Audit Committee</i> • <i>Internal Audit risk assessment programme</i> • <i>Regular reviews by Internal Audit of high risk areas as identified through their risk assessment programme and the production of reports on their findings.</i> • <i>Regular reports to the Board on:</i> <ul style="list-style-type: none"> - <i>Arrears and Non Performing Loans</i> - <i>Moratoria and Term Extensions</i> - <i>Exceptions to Lending Policy, giving reasons for departure</i> - <i>Management Accounts</i> - <i>Concentration of the loan book e.g. by sector analysis, geographically</i> - <i>Significant credit exposures -Top 30 Exposures (connected counterparties)</i> - <i>Schedule of Key Ratios</i> - <i>Commercial Lending Reviews (quarterly)</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<i>Each of the above stages and controls are completed at regular intervals, for example weekly Credit Committee meetings and monthly Board reporting and meetings. Meetings of Credit Committee are minuted and recorded.</i>
SPC 6.1 SPC 6.2	Board did not receive reports on exceptions to commercial lending policies. Board did not receive the required quarterly commercial lending report for the following five quarters: June 2007; December 2007; March 2008; June 2008; and September 2008.	31 October 2006 Credit Risk Department Terms of Reference	0.7.120.13615	Page 9: “Terms of Reference – Credit Risk Department ... <i>(iii) The preparation of quarterly Commercial Lending Reviews for submission to the Board of the Society. The content and coverage of this report will be varied and enhanced from time to time”.</i>
SPC 6.3	Board did not receive a report on the results of annual credit risk stress tests which were to have been completed annually.	27 June 2007 Credit Risk Management Policy	0.7.120.431329	Page 33: “3.7 Stress Testing of Credit Risk <i>The Credit Risk department reports to the Board on the results of credit risk stress tests performed annually. The Credit Risk department plans to expand future tests to include a wider set of variables and range of data, in order to</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>improve the quality of the overall results generated and enable the Society to more accurately assess its risk in this area. Credit Risk will carry out the next detailed stress test on the mortgage book as at 31st December 2006 during Q2, 2007”.</i></p>
SPC 6.4	Board did not receive reports on compliance with geographic concentration risk limits.	27 June 2007 Concentration Risk Policy	0.7.120.432154	<p>Page 5: “3.3 Managing other concentration risk</p> <p><i>The main approach used by the Society in managing large exposures and other concentration risk is based on regulatory exposure limits. The Society imposes following regulatory limits:</i></p> <ul style="list-style-type: none"> • <i>Risk Assets concentrated in one sector cannot exceed 200% of Total Own Funds</i> • <i>Risk Assets concentrated in two or more sectors with a common predominant risk factor cannot exceed 250% of Total Own Funds (e.g. K11 & F1)</i> <p><i>The Society also imposes an internal limit in relation to its geographical locations, as follows:</i></p> <ul style="list-style-type: none"> • <i>Risk Assets concentrated in one geographical category cannot exceed 800% of Total Own Funds”.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p>Page 6:</p> <p>“6. Role of the Board and Concentration Risk</p> <p><i>The Society’s concentration risk policy is approved by the Board and is subject to regular review to take account of any changes in risk appetite and business environment. The Board ensures that the Society’s policy is enforced by receiving regular reports on concentration risk and breaches of respective limits”.</i></p>
SPC 6.4	Board did not receive reports on compliance with geographic concentration risk limits.	27 June 2007 Credit Risk Management Policy	0.7.120.431329	<p>Pages 34 to 40:</p> <p>“4. Concentration Risk</p> <p>4.1 Definition</p> <p><i>Concentration Risk can be defined as “any single (direct and/or indirect) exposure or group of exposures with the potential to produce losses large enough to threaten an institutions health or its ability to maintain its core business”¹, The Society’s concentration risk arises from the following:</i></p> <ul style="list-style-type: none"> a) <i>Large (connected) individual exposures (“Single Name”), and</i> b) <i>Significant exposures to a group or groups of counterparties whose likelihood of default is driven by common underlying factors e.g. sector, geographical location, (“Other Concentration Risk”).</i>

¹ CEBS, Technical Aspects of the Management of Concentration Risk under the Supervisory Review Process, 14 December 2006.

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p>4.2 Single Name Concentration Risk</p> <p>4.2.1 Definition of Large Exposure</p> <p><i>An exposure to a client or a group of connected clients where its value is equal to or exceeds 10% of the Society's Own Funds, is deemed to be a large exposure. For the purposes of this definition, exposures are deemed to be connected where two or more natural or legal persons constitute a single risk as one of them, directly or indirectly has control over the other or others. Control is defined as direct or indirect ownership, management control or financial dependencies.</i></p> <p><i>Examples of connected customers include:</i></p> <ul style="list-style-type: none"> • <i>Persons within the same legal group</i> • <i>Persons whose ultimate owner is the same individual/s.</i> • <i>Companies having common directors or management.</i> • <i>Persons linked by cross guarantees.</i> <p>4.2.2 Measuring Large Exposures</p> <p>LEX Return</p> <p><i>Each large exposure is determined on a case by case basis, with a large exposure calculator being used to calculate the exposure ratio as part of the underwriting procedures. The Society's total exposure to a group of connected customers is</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>calculated by summing individual exposures to customers within a connected group. At the quarter month end the LEX return is compiled in order to submit to the Financial Regulator. The LEX return details the Society's Top 30 exposures and includes:</i></p> <ul style="list-style-type: none"> • <i>Drawn Facilities</i> • <i>Guarantees not held on Summit</i> • <i>Deposit Lien Accounts</i> • <i>Commitments on Undrawn Facilities</i> • <i>Specific Provisions</i> <p><i>Individual Concentration Risk Measurement</i></p> <p><i>The Society also measures its' [sic] individual concentration risk as follows:</i></p> <ul style="list-style-type: none"> • <i>The Top 30 exposures per LEX Return are examined and the Society's total Own Funds.</i> • <i>The Top 30 exposures are then examined to identify those exposures above 20% of Own Funds. As the regulatory large exposure limit is 25% of Own Funds, the Society feels that where individual concentration exceed 20% of Own Funds, it would be prudent to hold additional capital in such circumstances.</i> • <i>Extra capital will be held for the portion of the exposures above 20% of Own Funds.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> • <i>This figure is then risk weighted an additional 50%.</i> <p>Group Concentration Risk Measurement</p> <p><i>As the Society's highest concentrations are within its' [sic] Top 30 exposures group i.e. Top 30 exposures account for 42% of the total loan book as at 31 December 2006, the Society's measurement of group concentration risk focuses on these Top 30 exposures.</i></p> <ul style="list-style-type: none"> • <i>The Society assigns a materiality threshold for concentration risk in the total loan book (including commitments) of 33.33%. This threshold is applied to the Top 30 exposures i.e. in the event of the Top 30 exceeding this threshold additional capital is required. The reasoning behind this threshold is that the Society although concentrated in its Top 30 exposures, also has strong relationships with its customers and therefore should be able to obtain an allowance for good/acceptable concentrations.</i> • <i>The amount of the Top 30 exposures above the 33.33% threshold is then risk weighted at an additional 50%, in order to determine the risk weighted assets for group concentration. This amount is then multiplied by 8% to ascertain the additional capital required to be held.</i>

				<p>4.2.3 Managing Large Exposures</p> <p><i>The main approach used by the Society in managing large exposures is based on regulatory exposure limits. The Financial Regulator imposes the following limits:</i></p> <ul style="list-style-type: none"> • <i>Total Large Exposures cannot exceed an overall maximum of 800% of Own Funds.</i> • <i>The Largest Single Exposure cannot exceed a maximum of 25% of Own Funds.</i> <p>4.2.4 Monitoring Large Exposures</p> <p><i>The Top 30 Large Exposures are reported to the Board quarterly. In addition, the lenders monitor the larger counterparty exposures on a monthly basis. The Society ensures that limits are not breached by utilising its Large Exposures ("LEX") calculator for all large exposures. Large exposure ratios are monitored to avoid potential over concentration of the loan book and over exposure to individuals or groups.</i></p> <p>4.3 Other Concentration Risk</p> <p>4.3.1 Definition of Other Concentration Risk</p> <p><i>Other concentration risk can be defined as the risk arising from a group of exposures that share the same underlying risk factors, such that deterioration in the common risk factors could affect the ability of all counterparties to service the debt.</i></p>
--	--	--	--	--

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p>4.3.2 Measuring Other Concentration Risk</p> <p><i>The Society also measures other concentration risk by defining the relevant sectors and geographical areas it is exposed to.</i></p> <p><i>The Society classifies its' [sic] geographical locations into five broad categories as follows:</i></p> <ul style="list-style-type: none"> • <i>Dublin City and County</i> • <i>Rest of Republic of Ireland</i> • <i>London</i> • <i>Rest of UK (including Northern Ireland)</i> • <i>Other</i> <p><i>From 1 July 2007, the Credit Risk department will commence the preparation of Concentration Risk - Geographical Analysis Report, to include in its reporting analysis to the Board on a quarterly basis. This report will detail the Society's exposure in each of the above geographical categories as a percentage of Own Funds. The Credit Risk department will alert the Board to a breach of geographical limits.</i></p> <p><i>The Credit Risk department will monitor the geographical concentrations and alert the Board to any breach of geographical limits.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>The Society also classifies its' [sic] lending into various sectors, as Laid down by the Financial Regulator (See Appendix A). In this regard, the Society also produces a quarterly report detailing on analysis of sectoral lending and deposits. This report details the Society's exposures in each sector as a percentage of Own Funds.</i></p> <p><i>As the Society's highest sectoral classes include K11 and F01, which will be risk A weighted at 150%, and in addition may also attract additional capital under concentration risk, the Society feels that no extra capital is required to be held for sectoral concentrations.</i></p> <p>4.3.3 Managing other concentration risk</p> <p><i>The main approach used by the Society in managing other concentration risk is based on regulatory exposure limits. The Financial Regulator imposes the following limits:</i></p> <ul style="list-style-type: none"> • <i>Risk Assets concentrated in one sector cannot exceed 200% of Total Own Funds</i> • <i>Risk Assets concentrated in two or more sectors with a common predominant risk factor cannot exceed 250% of Total Own Funds (e.g. K11 & F1)</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>The Society incorporates an internal limit in relation to its geographical locations, as follows:</i></p> <ul style="list-style-type: none"> <i>Risk Assets concentrated in one geographical category cannot exceed 800% of Total Own Funds.</i> <p>4.3.4 Monitoring of Other Concentration Risk</p> <p><i>The Board receives quarterly updates on the status of other concentration risk via the group concentration, quarterly sectoral and geographical concentration reports. These reports focus attention on lending concentrations and changes in these concentrations which may cause concern.</i></p> <p>4.4 Mitigation of Concentration Risk</p> <p><i>The followings are mitigants used by the Society to reduce its levels of concentration risk:</i></p> <ul style="list-style-type: none"> Limits - <i>The Society has a comprehensive limit system which identifies large individual and connected exposures e.g. the Society may not incur an exposure to a client or group of connected clients that exceeds 25% of its own funds or large exposures which in total exceed 800% of its own funds.</i> Customer Relationships - <i>The Society has a strong customer base and it generates repetitive business from long term customer relationships. It deals with customers who have a high net worth and a proven track record of success.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<ul style="list-style-type: none"> • Portfolio management - The Society manages its lending portfolios and identifies individual, group, sectoral and geographical concentrations in its loan book. Monitoring of risk concentration assists the Society in identifying concentrations which have arisen in a timely manner. • Capital buffers - The Society will hold additional capital above required minimum regulatory capital, for concentration risk, where required. <p>4.5 Stress Testing of Concentration Risk</p> <p>The Society has conducted scenario analysis on concentration risk calculations as at 31 December 2006. The Society aims to enhance its stress testing of concentration risk using different scenarios for analysis going forward. Such stress tests will be performed as part of the Society's overall stress test of credit risk.</p> <p>4.6 Role of the Board and Concentration Risk</p> <p>The Society's concentration risk policy is approved by the Board and is subject to regular review to take account of any changes in risk appetite and business environment. The Board ensures that the Society's policy is enforced by receiving regular reports on concentration risk and any breaches of respective limits.</p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p>4.7 Role of Senior Management and Concentration Risk</p> <p><i>Senior management ensure that reports are prepared and submitted to the Board and the Financial Regulator on a timely basis. Senior management monitors the risk environment in particular sectors and geographical areas. They manage concentration risk by using mitigating actions e.g. allocating additional internal capital".</i></p>

APPENDIX 17

SPC 7 – RELEVANT POLICY PROVISIONS

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
SPC 7	Failure to ensure that the establishment of profit share agreements were the subject of any formal credit risk policy.	27 June 2007 Credit Risk Management Policy	0.7.120.431329	<p>Pages 5 to 9:</p> <p>“1. INTRODUCTION</p> <p><i>It is the responsibility of the Credit Risk department to monitor the factors affecting the Society’s level of credit risk, and to advise the Board in the formulation and communication of an effective Credit Risk Management Policy. In this regard, the following policy deals with the management of credit risk in terms of the commercial and residential lending undertaken by the Society.</i></p> <p>1.1 Role of the Board and Credit Risk</p> <p><i>It is the Board’s overall responsibility to approve the Society’s Credit Risk Management Policy and other significant policies relating to credit risk and its management. The Board must ensure that the Society’s overall credit risk exposure is maintained at prudent levels consistent with available capital. The Board must also ensure that the Society implements practices and procedures for the identification, measurement, monitoring and control of credit risk. The first task of the Board, in approving the Credit Risk Management Policy, is to determine the risk appetite of the Society.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p>1.2 Lending Strategy and Appetite for Credit Risk</p> <p><i>The Society's strategy has been and continues to be to develop secure profitable lending. Traditionally, the focus of the Society's business was on the provision of finance for housing that included, home loans, residential investment property and housing development. However, in recent years, the Society has placed greater emphasis on residential investment property, housing development and other commercial property lending where the profitability is greater. It would like to maintain its' [sic] presence in the highly competitive home loan market. However, due to the Society's size, it does not have the resources to pursue market share. Therefore, the Society's current lending strategy, which is subject to regular review, is to seek to maintain 25% of its lending as traditional home loans.</i></p> <p><i>The Society generates good residential and commercial lending in Ireland. It also lends a very significant part of its funds in the UK, mainly in the commercial and retail market, including leisure and mostly in the London area. The Society's current strategy is to seek to maintain its UK commercial lending and continue to build on its' [sic] success there in the coming years. The Society does very little residential lending in the UK, as the margins are extremely low due to competition and the high cost of funds. The Society has also provided some finance for ventures in Europe and this remains a market to be cautiously explored in the future.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>The Society's strategy seeks to exploit its built up experience in its chosen markets and focuses on identifying opportunities where there is repeat business with successful clients. In this regard, the Society is involved with quality clients e.g. long established property developers, with expertise in purchasing and recognising value. It is this spread of expertise among its borrowers, which has given the Society an appreciation of the market in which it operates. The Society has developed a very strong niche market, particularly in the UK, by dealing with high net worth customers who have a proven record of success.</i></p> <p><i>The Society's lending expertise and commercial ethos enables it to evaluate business and make decisions quickly, allowing customers to commit to a deal and lock out other purchasers. This philosophy, together with continuing to supply good customer service, has enabled the Society to maintain its strong customer base and generate repetitive business from long term customer relationships.</i></p> <p><i>The Society's commercial loans are generally not long term, primarily lending short term loans ranging from 6 months to 3 years. This results in value being created quickly and projects being less susceptible to market moves. The Society will sometimes finance an initial development with another institution providing the finance for the development on a long term basis. However, in many of these deals the Society retains 25% - 50% of the project's profit as a fee, thereby removing the risk from the Society at an early stage.</i></p>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p>1.3 Role of the Board in defining Credit Risk Appetite</p> <p><i>It is the Board's view that the Society's loan book has an appropriate risk profile having regard to the Society's long experience and expertise, its low loan losses and the quality of its' [sic] current book. The current lending strategy has the effect of reducing the risks in the Society's lending compared with attempting to increase its' [sic] market by lending in the broader market or engaging in peripheral activities. The Society's appetite for risk is clear and focused. The success of the Society's strategy is evident from its growth in recent years, and the outstanding results achieved.</i></p> <p>2. CREDIT RISK</p> <p>2.1 Definition of Credit Risk</p> <p><i>The Society's credit risk comprises the following:</i></p> <p>a) Default Risk - <i>the risk that an obligor will default on its' [sic] obligations with the Society.</i></p> <p>b) Concentration Risk - <i>as part of credit risk, includes:</i></p> <ul style="list-style-type: none"> <i>i. Large (connected) individual exposures, and</i> <i>ii. Significant exposures to groups of customers whose likelihood of default is driven by</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<p><i>common underlying factors e.g. sector, geographical location.</i></p> <p>c) Residual Risk - <i>the risk that recognised risk measurement and mitigation techniques prove less effective than expected.</i></p> <p>2.2 Role of Senior Management and Credit Risk</p> <p><i>The Society's Senior Management have responsibility for developing and establishing credit risk policies and credit administration procedures as part of the Society's overall system of credit risk management. They must prepare policies on the following areas and ensure that they are approved by the Board:</i></p> <ul style="list-style-type: none"> • <i>Credit origination, administration and loan documentation procedures;</i> • <i>Credit approval authority, hierarchy and limits;</i> • <i>Risk identification, measurement, monitoring and control;</i> • <i>Management of problem credits.</i>

SPC Allegation No.	SPC Allegation	Policy	Doc ID	Policy Provision
				<i>It is the responsibility of Senior Management to ensure effective implementation of these policies. Senior management must also ensure that any deviations/exceptions to policies are communicated to the Board, who recommends corrective actions to be taken”.</i>
SPC 7	Failure to ensure that the establishment of profit share agreements were the subject of any formal credit risk policy.	Figure 12.4 of the Investigation Report – List of all policy and other control documentation reviewed for the purposes of SPC 7	RDU_REL-000000036 (page 65/81)	<p>Figure 12.4 of the Investigation Report contains a list of 210 documents identified during the course of the investigation which could have been considered to have been INBS policies or other control documentation.</p> <p>The Inquiry has reviewed the policies / control documentation listed at Figure 12.4 and has found no evidence of any stand-alone policy in relation to the establishment of profit share agreements.</p>

APPENDIX 18

SUMMARY TABLE OF SECTOR SPECIFIC LTV LIMITS

Sector	Specific LTV Limits as per Commercial Mortgage Lending Policies ¹
Residential property investment/development – existing borrower	92%
Residential property investment/development – new borrower	85%
Pub	70%
Hotel – existing borrower	70%
Hotel – new borrower	60%
Development finance	Case by case basis
Office/retail rental – existing borrower	85%
Office/retail rental – new borrower	70%
Retail distribution	70%

¹ The relevant policies are: the 28 February 2007 Commercial Mortgage Lending Policy; the December 2007 Commercial Mortgage Lending Policy; and the 21 April 2008 Commercial Mortgage Lending Policy. The same LTV limits are identified in each of these policies.

PART 2

SANCTIONS REPORT

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

Sanctions Report

Marian Shanley

Geoffrey McEnery

Ciara McGoldrick

26 February 2025

TABLE OF CONTENTS

Section	Page
Background	1
The Findings Report	2
Sanctions Hearing	2
Relevant Legislation	3
Central Bank Guidance Documents	4
Principles set out in Relevant Case Law	6
Written and Oral Submissions	8
<ul style="list-style-type: none"> • <i>I. & II. Whether a sanction is warranted and the type of sanction that is appropriate</i> 	8
<ul style="list-style-type: none"> • <i>III. The relevant sanctioning factors that the Inquiry Members should have regard to when deciding on any appropriate sanction</i> 	8
<ul style="list-style-type: none"> (a) <u>The Nature, Seriousness and Impact of the Contraventions</u> 	13
<ul style="list-style-type: none"> - <i>The loss or detriment or the risk of loss or detriment caused to consumers or other market users</i> 	20
<ul style="list-style-type: none"> - <i>The extent to which the contravention departs from the required standard</i> 	21
<ul style="list-style-type: none"> (b) <u>The Conduct of the Individual after the Contraventions</u> 	25
<ul style="list-style-type: none"> (c) <u>The Previous Record of the Individual</u> 	26
<ul style="list-style-type: none"> (d) <u>Other General Considerations</u> 	27
<ul style="list-style-type: none"> • <i>IV. Other information relevant to the Inquiry Members' considerations</i> 	35
Determination on Sanction	36
<ul style="list-style-type: none"> • <i>Reprimand</i> 	37
<ul style="list-style-type: none"> • <i>Period of Disqualification</i> 	38

• Monetary Penalty	38
(a) <u>The Nature, Seriousness and Impact of the Contraventions</u>	39
(b) <u>The Conduct of the Individual after the Contraventions</u>	40
(c) <u>The Previous Record of the Individual</u>	40
(d) <u>Other General Considerations</u>	40
• Costs	42
<u>Enforcement's submissions</u>	43
<u>Mr Purcell's submissions</u>	43
<u>LPT's submissions</u>	45
<u>Inquiry Members' decision on costs</u>	46
• Sanction	47
Appendix 1	48

SANCTIONS REPORT

BACKGROUND

1. This Inquiry was established to determine 21 Suspected Prescribed Contraventions (**SPCs**) that the Enforcement Directorate of the Central Bank (**Enforcement**) suspected had been committed by Irish Nationwide Building Society (**INBS**) in the conduct of its commercial lending business between 1 August 2004 and 30 September 2008 (**Review Period**). In the Investigation Report produced by Enforcement¹, these SPCs were divided into seven categories (SPCs 1 to 7) and each category alleged a breach of two separate legislative provisions² and a condition of authorisation³, hence the overall total of 21 SPCs. The categories covered all aspects of commercial lending from inception of the loan to its conclusion (SPCs 1 to 4). They also covered non-loan related issues such as reports to the Credit Committee and Board (SPCs 5 and 6) and the lack of a formal policy in relation to profit share lending (SPC 7). Each category (with the exception of SPC 7) was broken down into a number of sub-categories in respect of which allegations were made. A total number of 42 sub-allegations (**SPC Allegations**) were made across all of these categories and sub-categories.
2. Five persons concerned in the management of INBS (**Persons Concerned**), were suspected of participating in certain of these SPCs. INBS and three of those Persons Concerned entered into settlement agreements with the Central Bank, admitting to certain of the contraventions and, in the case of the three Persons Concerned (Dr Michael Walsh, Mr Tom McMenamin and Mr Gary McCollum), paying a fine and accepting other sanctions.⁴ The Inquiry was permanently stayed against a fourth Person Concerned, Mr Michael Fingleton, on medical grounds. Accordingly, the remaining individual subject to the Inquiry and concerned with this Sanctions Report is Mr John Stanley Purcell, former executive director and secretary of INBS throughout the Review Period. In respect of certain of the SPC Allegations there was either no allegation of participation against Mr Purcell or the participation allegation fell away. Consequently, it was only necessary for the Inquiry Members to consider and determine an allegation of participation against Mr Purcell in respect of 33 of the 42

¹ The Investigation Report comprises the original 2014 Investigation Report prepared by Enforcement, the Supplemental Investigation Report dated 30 April 2015 and the Revised Supplemental Investigation Report dated 19 June 2015.

² Regulation 16(1) of the European Communities (Licencing and Supervision of Credit Institutions) Regulations 1992 (SI 395/1992) and Section 76(1) of the Building Societies Act, 1989 (as amended).

³ Part 1 of the Financial Regulator Credit Institutions Regulatory Document entitled "Impairment Provisions for Credit Exposures" dated 26 October 2005.

⁴ See paragraph 88 below for a summary of the settlement agreements.

SPC Allegations.

THE FINDINGS REPORT

3. Following the conclusion of the oral hearings and a consideration of the evidence provided to the Inquiry, the Inquiry Members set out their findings in respect of the alleged contraventions in a Findings Report. The Findings Report sets out the Inquiry Members' findings as to whether contraventions were committed by INBS and whether Mr Purcell participated in those contraventions. The evidence examined by the Inquiry Members included loan files in respect of which multiple breaches of internal commercial lending policies were alleged, as detailed in SPC 1, SPC 2, SPC 3 and SPC 4. A further tranche of evidence (related to alleged breaches of all seven SPCs) consisted of documentary evidence of alleged failure by INBS to comply with commercial lending policies and, in the case of SPC 7, an alleged failure to establish a formal policy.
4. The Investigation Report prepared by Enforcement alleged that Mr Purcell had participated in:
 - (a) The 21 Individual SPCs alleged to have to have been committed by INBS; and
 - (b) Thirty-three SPC Allegations alleged against INBS in respect of which the Inquiry Members considered and determined an allegation of participation against Mr Purcell.
5. The Inquiry Members found that Mr Purcell participated in:
 - (a) Eighteen of the 21 Individual SPCs; and
 - (b) Thirteen of the 33 SPC Allegations.
6. The findings of participation on the part of Mr Purcell in the contraventions proven against INBS (the **Proven Contraventions**) are set out in detail in **Appendix 1** of this Sanctions Report.

SANCTIONS HEARING

7. The Findings Report was delivered to Mr Purcell and Enforcement on 30 April 2024. In its correspondence dated 30 April 2024 (the **30 April Letter**)⁵, the Inquiry invited written submissions from Enforcement and Mr Purcell and the Legal Practitioner Team

⁵ Letter from RDU to Mr Purcell dated 30 April 2024 (Doc ID: RDU_REL633-000000001).

(LPT), as necessary, on:

- I. whether a sanction is warranted;
 - II. the type of sanction that is appropriate;
 - III. the relevant sanctioning factors that the Inquiry Members should have regard to when deciding on any appropriate sanction; and
 - IV. any other information relevant to the Inquiry Members' consideration of the sanctions to be imposed.
8. Enforcement, Mr Purcell and the LPT provided written submissions dated 12 July 2024, 13 September 2024 and 9 October 2024 respectively.
9. Following receipt of these submissions, an oral sanctions hearing (**Sanctions Hearing**) was held on 21 October 2024 to afford Mr Purcell and Enforcement an opportunity to provide any further information or submission that they believed the Inquiry should consider. The LPT was also provided with an opportunity to clarify any matters arising from the written and oral submissions.
10. In preparing this Sanctions Report the Inquiry has had regard to:
- (a) The relevant legislation.
 - (b) The Central Bank guidance documents.
 - (c) The principles set out in relevant case law.
 - (d) The written submissions received from Enforcement, Mr Purcell and the LPT.
 - (e) The oral submissions made by Enforcement, Mr Purcell and the LPT.

RELEVANT LEGISLATION

11. Section 33AQ(5) of the Central Bank Act 1942 (as amended) (the **1942 Act**) as was in force during the Review Period provides:

“If the [Central Bank] makes a finding that a person concerned in the management of a regulated financial service provider is participating or has participated in the commission by the financial service provider of a prescribed contravention, it may impose on the person one or more of the following sanctions:

- (a) *a caution or reprimand;*
- (b) *a direction to pay to the [Central Bank] a monetary penalty not exceeding the prescribed amount;*
- (c) *a direction disqualifying the person from being concerned in the management of a regulated financial service provider for such period as is specified in the order;*
- (d) *...*
- (e) *a direction to pay to the [Central Bank] all or a specified part of the costs incurred by [the Central Bank] in holding the inquiry and in investigating the matter to which the inquiry relates”.*

Section 33AQ(6) of the 1942 Act establishes monetary limits to the fine applicable. For the purposes of this Sanctions Report, that limit is €500,000.

CENTRAL BANK GUIDANCE DOCUMENTS

12. In determining appropriate sanctions, guidance is offered by the “*Inquiry Guidelines prescribed pursuant to section 33BD of the Central Bank Act 1942*” adopted by the Central Bank in November 2014 (the **2014 Inquiry Guidelines**) and the “*ASP Sanctions Guidance*” adopted by the Central Bank in November 2019 (the **2019 Sanctions Guidance**)⁶.
13. The 2014 Inquiry Guidelines state:

“All the circumstances of the case will be taken into account by the Inquiry Members in determining the appropriate sanction(s) and, in doing so, regard may be had to the following factors –

1. *The Nature, Seriousness and Impact of the Contravention*

- (a) *whether the contravention was deliberate, dishonest or reckless;*
- (b) *duration and frequency of the contravention;*

⁶ The 2019 Sanctions Guidance, in very large part, provides elaboration on the sub-factors identified in the 2014 Inquiry Guidelines.

- (c) the amount of any benefit gained or loss avoided due to the contravention;*
- (d) whether the contravention reveals serious or systemic weaknesses of the management systems or internal controls relating to all or part of the business;*
- (e) the extent to which the contravention departs from the required standard;*
- (f) the impact or potential impact of the contravention on the orderliness of the financial markets, including whether public confidence in those markets has been damaged or put at risk;*
- (g) the loss or detriment or the risk of loss or detriment caused to consumers or other market users;*
- (h) the effect, if any, of the contravention on vulnerable consumers;*
- (i) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention;*
- (j) whether there are a number of smaller issues which individually may not justify administrative sanction, but which do so when taken collectively;*
- (k) any potential or pending criminal proceedings in respect of the contravention which will be prejudiced or barred if a monetary penalty is imposed pursuant to the Administrative Sanctions Procedure.*

2. *The Conduct of the Regulated entity after the Contravention*

- (a) how quickly, effectively and completely the regulated entity brought the contravention to the attention of the Central Bank or any other relevant regulatory authority;*
- (b) the degree of co-operation with the Central Bank or other agency provided during the investigation of the contravention;*
- (c) any remedial steps taken since the contravention was identified, including identifying whether consumers have suffered loss or*

detriment and compensating them, taking disciplinary action against staff involved (where appropriate), addressing any systemic failures, and taking action designed to ensure that similar problems do not arise in the future;

(d) the likelihood that the same type of contravention will recur if no administrative sanction is imposed;

(e) whether the contravention was admitted or denied.

3. *The Previous Record of the Regulated entity*

(a) whether the Central Bank has taken any previous enforcement action including instances resulting in a settlement or sanctions or whether there are relevant previous criminal convictions;

(b) whether the regulated entity has previously undertaken not to do a particular act or engage in particular behaviour;

(c) whether the regulated entity has previously been requested to take remedial action, and the extent to which such action has been taken.

4. *Other General Considerations*

(a) prevalence of the contravention;

(b) the appropriate deterrent impact of any sanction on the regulated entity and on other regulated entities;

(c) action taken by the Central Bank in previous similar cases;

(d) the level of turnover of the regulated entity in its last complete financial year prior to the commission of the contravention; and

(e) any other relevant consideration".⁷

PRINCIPLES SET OUT IN RELEVANT CASE LAW

14. The overarching principles to be taken into account in determining the appropriate level of sanction were set out in two legal precedents: ***Medical Council v Murphy*** [1984] 6

⁷ 2014 Inquiry Guidelines, paragraph 5.9.

JIC 2901 and **Hermann v Medical Council** [2010] IEHC 414. In **Medical Council v Murphy** (in the context of the regulation of medical practitioners) Finlay P in the High Court set out the principles in determining sanction, as follows:

*“First, I have to have regard to the element of making it clear by the Order to the Medical Practitioner concerned, the serious view taken of the extent and nature of his misconduct, so as to deter him from being likely, on resuming practice, to be guilty of like or similar misconduct. Secondly, it seems to me to be an ingredient though not necessarily the only one that the Order should point out to other members of the Medical Profession the gravity of the offence of professional misconduct. And thirdly, and this must be to some extent, material to all these considerations, there is the specific element of the protection of the public which arises where there is misconduct and which is, what I might describe as the standard of approach in the practice of medicine. I have as well an obligation to assist the Medical Practitioner with as much leniency as possible in the circumstances”.*⁸

15. These principles were endorsed by Charleton J in the High Court in **Hermann v Medical Council**. In this case (which also arose in the context of the regulation of medical practitioners) the court found that a penalty imposed by the Medical Council was proportionate and justified in the circumstances and held that the level of sanction depended on the seriousness of the conduct and the level of risk posed by the practitioner. The range of penalties applied by the Medical Council (from an admonishment to a lifetime ban on the practice of medicine) are broadly similar to those applicable to this Inquiry. Charleton J acknowledged the importance of protecting the public where serious incidents have occurred. He stated:

*“In that and the other more serious category, the protection of the public is paramount to the approach of the Medical Council. The reputation of the medical profession must, in those instances be upheld. This exceeds in importance, where the misconduct is serious, the regrettable misfortune that must necessarily be visited upon a doctor”.*⁹

⁸ [1984] 6 JIC 2901.

⁹ [2010] IEHC 414, paragraph 9.

WRITTEN AND ORAL SUBMISSIONS

16. Enforcement, Mr Purcell and the LPT addressed the four issues raised in the 30 April Letter.

I. & II. Whether a sanction is warranted and the type of sanction that is appropriate

17. In their written submissions, all parties agreed that a sanction was warranted and that a reprimand, a period of disqualification and a monetary penalty were appropriate. There was disagreement between the parties as to the amount of monetary penalty. Enforcement submitted that a contribution to the costs of the Inquiry was also warranted. This was disputed by Mr Purcell.

18. The Inquiry members are of the view that significant sanctions are warranted in view of the seriousness of the proven allegations.

III. The relevant sanctioning factors that the Inquiry Members should have regard to when deciding on any appropriate sanction

19. Submissions received on this point were focused primarily on the level of monetary sanction that was appropriate.

20. Enforcement, Mr Purcell and the LPT commenced their submissions with relevant background points but the main thrust of each of their respective submissions adopted the broad headings of the sanctioning factors set out in the 2014 Inquiry Guidelines and the 2019 Sanctions Guidance. These are:

- (a) The Nature, Seriousness and Impact of the Contraventions.
- (b) The Conduct of the Individual after the Contraventions.
- (c) The Previous Record of the Individual.
- (d) Other General Considerations.

21. Enforcement submitted that in deciding on appropriate sanction, the Central Bank should bear in mind its mission, namely:

“The Central Bank’s mission is to serve the public interest by safeguarding monetary and financial stability and by working to ensure that the financial

system operates in the best interests of consumers, investors and the wider economy.

*The imposition of sanctions plays an important role in deterring misconduct, promoting public trust and confidence in financial regulation and the financial system, and in protecting investors, consumers and market integrity”.*¹⁰

22. Enforcement described the contraventions by INBS in which Mr Purcell was found to have participated as “*significant*” and stated:

“Those Contraventions amount to a persistent failure to ensure the establishment of, and compliance with, commercial lending and credit risk policies and procedures, with complete disregard for the consequences. The Contraventions represent significant and persistent regulatory compliance failures over several years, resulting in the most serious case of regulatory failings that Enforcement has seen”.

...

*“The Findings Report points to the ultimate responsibility of a Board to ensure an adequate and effective system of internal controls is established and maintained. Senior role holders such as Mr Purcell have significant positions of responsibility and accountability. Board Members of financial institutions are expected to drive a culture of good governance and compliance from the top down...”*¹¹

23. In the course of the Sanctions Hearing, Enforcement elaborated on this point stating:

“...the findings, it certainly seems to Enforcement, are highly significant findings, they highlight the fact that a major financial institution was run in a seriously and significantly deficient manner over a very significant period of time, and that those lapses related to commercial lending practices, commercial risks which I think... ran the whole gamut of the credit and lending process. In other words, those matters which are absolutely fundamental to the operation of INBS during this four-year period... And the fact of those lapses having been identified is absolutely vital in terms of signalling to the regulated

¹⁰ Written Submissions on behalf of Enforcement dated 12 July 2024, paragraphs 11 and 12 (Doc ID: RDU_REL_AD-000000001).

¹¹ Written Submissions on behalf of Enforcement dated 12 July 2024, paragraphs 14 and 16 (Doc ID: RDU_REL_AD-000000001).

*financial services industry generally as to the response to that, the question of deterrents, and matters of that sort”.*¹²

24. In his written submissions, Mr Purcell accepted that sanctions were warranted. He stated:

*“Strictly for the purposes of this sanctions hearing, there can be no meaningful dispute as to the lapses in governance in INBS which give rise to the Inquiry’s findings. Nor can there be any meaningful dispute as to the broader societal consequences of those lapses. It is for those reasons that Mr Purcell accepts that some form of monetary sanction is warranted”.*¹³

25. Mr Purcell submitted that, as 60% of the SPC Allegations were not proven against him, the appropriate penalty could not exceed €200,000. He further submitted that with mitigation, a monetary penalty of €100,000 was appropriate.

26. In the course of its oral submissions, Enforcement took issue with the use of the word “strictly” in the quotation at paragraph 24 above, stating that it showed a lack of insight on the part of Mr Purcell. Enforcement stated: *“Insight is something that decision-making bodies such as yourselves frequently would consider to be a very important sanctioning factor”.*¹⁴

27. Counsel for Mr Purcell clarified Mr Purcell’s position and stated unequivocally that Mr Purcell accepted the findings of the Inquiry and did not propose appealing them.

28. The LPT did not accept Mr Purcell’s contention that the maximum possible monetary penalty which could be imposed on Mr Purcell was €200,000 and submitted that the participation in any individual Proven Contravention could, in principle, attract the maximum monetary penalty of €500,000. The LPT, in their written submissions, stated:

*“However, that is not at all to say that the principle of proportionality should not be applied to the monetary penalty to be imposed on Mr Purcell. On the contrary, the monetary penalty to be imposed should be proportionate having regard to the Sanctioning Factors identified in the 2014 Inquiry Guidelines...”.*¹⁵

29. The LPT also addressed this issue at the Sanctions Hearing and summarised the

¹² Transcript of Sanctions Hearing dated 21 October 2024, page 34 line 26 (Doc ID: RDU_FT_SH-00000001).

¹³ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraph 21 (Doc ID: RDU_REL_AD-000000002).

¹⁴ Transcript of Sanctions Hearing dated 21 October 2024, page 34 line 17 (Doc ID: RDU_FT_SH-00000001).

¹⁵ Written Submissions on behalf of the LPT dated 9 October 2024, paragraph 81 (Doc ID: RDU_REL_AD-000000003).

position in the following way:

“Firstly, that participation in any one contravention can attract a penalty up to a maximum of €500,000, being the maximum prescribed amount in the context of the then relevant legislation.

Secondly, that €500,000 is the maximum regardless of the number of contraventions, if it arises in respect of the same conduct.

*And then thirdly, if there’s participation in more than one contravention then the Inquiry can have regard to the totality of the contraventions in setting the monetary penalty”.*¹⁶

30. Mr Purcell submitted that whilst he accepted that a reprimand, a disqualification and a financial penalty were required, certain overarching principles needed to be taken into account in determining the appropriate level of sanction and he cited two legal precedents on the point: **Medical Council v Murphy** [1984] 6 JIC 2901 and **Hermann v Medical Council** [2010] IEHC 414. In **Medical Council v Murphy** (in the context of the regulation of medical practitioners) Finlay P in the High Court set out the principles in determining sanction. These are set out at paragraph 14 above. These basic principles inform all regulatory decision makers and have been applied in the present Inquiry.
31. In his submissions, Mr Purcell referred to the principles enunciated by Finlay P and also to their endorsement by Charleton J in the High Court in **Hermann v Medical Council** (which again arose in the context of the regulation of medical practitioners). As outlined at paragraph 15 above, in that case the court found that a penalty imposed by the Medical Council was proportionate and justified in the circumstances and held that the level of sanction depended on the seriousness of the conduct and the level of risk posed by the practitioner. The range of penalties applied by the Medical Council (from an admonishment to a lifetime ban on the practice of medicine) are broadly similar to those applicable to this Inquiry. Charleton J acknowledged the importance of protecting the public where serious incidents have occurred. He stated:

“In that and the other more serious category, the protection of the public is paramount to the approach of the Medical Council. The reputation of the medical profession must, in those instances be upheld. This exceeds in

¹⁶ Transcript of Sanctions Hearing dated 21 October 2024, page 18 line 26 (Doc ID: RDU_FT_SH-00000001).

*importance, where the misconduct is serious, the regrettable misfortune that must necessarily be visited upon a doctor”.*¹⁷

Mr Purcell submitted that the principles of leniency and proportionality require that the Inquiry commence its analysis with the most lenient available sanction, and move upwards in terms of severity until it reaches the most lenient sanction, which meets the justice of the case.¹⁸

32. On the issue of proportionality and leniency, the LPT addressed the submission from Mr Purcell and agreed that it was central to the principle of proportionality that a sanction should not go further than is necessary and not be unduly severe. The LPT continued:

“However, that is not to say that, when imposing a sanction, the Inquiry is not to have regard [to] other factors, such as those indicated in the 2014 Inquiry Guidelines... including, for example, ensuring that the sanction has the appropriate deterrent impact...”

*As such the principle of proportionality requires that, in setting a sanction, the Inquiry not go beyond what is necessary to meet the requirements of the Sanctioning Factors..., show as much leniency as possible to Mr Purcell (while meeting the requirements of the Sanctioning Factors) and avoid the imposition of an unduly severe sanction”.*¹⁹

33. The Inquiry Members agree that the principles of leniency and proportionality as set down by Finlay P and quoted above, are applicable principles for the purposes of deciding the appropriate penalties in this Inquiry. They also agree that the most lenient sanction that meets the seriousness of the case is the appropriate sanction to impose.
34. In their written submissions, the LPT submitted that the monetary penalty should be proportionate having regard to the sanctioning factors identified in the 2014 Inquiry Guidelines. The LPT submitted that the following were amongst the key factors in that regard:

“(i) The Prescribed Contraventions are very serious, albeit not, in the LPT’s

¹⁷ [2010] IEHC 414, paragraph 9.

¹⁸ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraph 14 (Doc ID: RDU_REL_AD-000000002).

¹⁹ Written Submissions on behalf of the LPT dated 9 October 2024, paragraph 31 and 32 (Doc ID: RDU_REL_AD-000000003).

view, of the most serious nature;

- (ii) The Prescribed Contraventions and the failings in INBS's management systems or internal controls which caused them were of long duration and frequent;*
- (iii) The Prescribed Contraventions posed a high risk of loss and detriment to consumers (such as savers with INBS) and other market users;*
- (iv) While Mr Purcell was not the executive with primary responsibility for commercial lending and was entitled to rely on his fellow executive directors and senior management in INBS to whom such responsibility was delegated, Mr Purcell departed very significantly from the standard required of him as a director;*
- (v) Mr Purcell was aware of the underlying failings in INBS's management systems and internal controls which caused the Proven Contraventions but did not take effective action to remedy those failings;*
- (vi) Mr Purcell has a previously unblemished record".²⁰*

35. Using the framework of the Central Bank guidance documents, as set out at paragraph 20 above, the parties addressed, in both written and oral submissions, the factors to be taken into account in determining appropriate sanction.

(a) The Nature, Seriousness and Impact of the Contraventions

36. Enforcement submitted that the contraventions identified in the Findings Report occurred throughout the Review Period and that they "*represent persistent regulatory compliance failures and a pervasive disregard by INBS and persons concerned in its management for the firm's own commercial lending and credit risk processes and procedures...The prevalence and systemic nature of the breaches in internal controls, as illustrated by the Findings Report, is viewed by Enforcement as extremely serious*".²¹

37. Enforcement gave examples from the Findings Report which, it submitted, pointed to the seriousness of the contraventions and it concluded:

²⁰ Written Submissions on behalf of the LPT dated 9 October 2024, paragraph 81 (Doc ID: RDU_REL_AD-000000003).

²¹ Written Submissions on behalf of Enforcement dated 12 July 2024, paragraphs 23 and 24 (Doc ID: RDU_REL_AD-000000001).

*“The Contraventions created a significant risk of loss or detriment to consumers or other market users, which ultimately crystallised in the collapse of INBS...INBS’s financial instability and the makeup of its loan portfolio left it exposed during the global financial downturn, and ultimately led to its collapse”.*²²

38. With respect to Mr Purcell’s participation, Enforcement submitted that he *“was aware of the failings in the systems and controls for commercial lending and credit risk at INBS, as well as the specific concerns of the Financial Regulator regarding those issues during the Review Period. This underscores a further point, that robust systems of internal control are only as effective as the individuals who implement them. The Findings Report details extensive engagement between INBS and the Financial Regulator regarding serious concerns about commercial lending and governance at INBS, with recommendations on how to mitigate those issues”.*²³

39. In its oral submissions, Enforcement reiterated this point and submitted, on the question of the appropriate financial sanction:

*“..., can it really be said that persistent and serious lapses of the sort identified in the Findings Report at a major financial institution, that exist at each and every separate and distinct stage of the lending process, over a period of years, involving participation of a senior executive Director against the background of the institution collapsing...is not at the top end of the scale? We suggest it’s difficult to see how that might be so”.*²⁴

40. Enforcement said that the LPT correctly identified the absence of dishonesty, fraud, deliberation and matters of that sort. Enforcement also accepted that had there been any of those factors present, the maximum monetary penalty available to the Inquiry would still be €500,000. Enforcement continued *“And when one considers that significant numbers of what we might call non-deliberate contraventions or failings particularly where they occur over a period of time, where that occurs it may well be appropriate to consider it on a cumulative basis and result in a financial sanction at the top end of the scale”.*²⁵

²² Written Submissions on behalf of Enforcement dated 12 July 2024, paragraph 27 (Doc ID: RDU_REL_AD-000000001).

²³ Written Submissions on behalf of Enforcement dated 12 July 2024, paragraph 28 (Doc ID: RDU_REL_AD-000000001).

²⁴ Transcript of Sanctions Hearing dated 21 October 2024, page 45 line 10 (Doc ID: RDU_FT_SH-000000001).

²⁵ Transcript of Sanctions Hearing dated 21 October 2024, page 46 line 17 (Doc ID: RDU_FT_SH-000000001).

41. In his written submissions, Mr Purcell stated that *“two fundamental threads of unfairness permeate Enforcement’s submissions – threads which ultimately render the monetary penalty and costs contribution it seeks entirely disproportionate to the circumstances of this Inquiry”*. Firstly, he submitted that there was no finding that he had been primarily responsible for the contraventions committed by INBS and only *“13 of the suite of 33 allegations referred to Inquiry”* had been proven against him. Secondly, Mr Purcell submitted that Enforcement sought to penalise him for robustly defending himself and appeared to suggest that unless a person concerned acquiesced to some form of sanction prior to an inquiry concluding, they must be prepared to bear *“extraordinarily burdensome sanctions”*.²⁶
42. Mr Purcell questioned whether the maximum penalty of €500,000 could be applied in respect of a single prescribed contravention notwithstanding that a person may be charged with multiple such contraventions. He also submitted that INBS as an entity as well as four other key personnel within INBS were referred to Inquiry and that he was both one of many individuals involved in the failings identified within INBS and one of five individuals referred to Inquiry.
43. At the Sanctions Hearing, Counsel for Mr Purcell submitted that he is 71 years old and is alive to the reality that he will never work in the financial services sector again, or probably in any other sector, and therefore leaves it to the Inquiry to determine the length of any disqualification period imposed.
44. On the question of the monetary penalty, Counsel for Mr Purcell submitted that the Inquiry should look at the facts found proven against Mr Purcell in their contexts and, in that setting, identify the appropriate headline level of fine somewhere on the scale between zero and €500,000. He accepted that applying mitigating factors to this headline figure was not an arithmetic process but submitted that factors such as the reprimand, disqualification, public opprobrium and publicity that Mr Purcell has and will face arising out of this process are a serious deterrence without the need to increase the fine imposed. In that regard, it was suggested that a fine of €100,000 would be a sufficient deterrent.
45. Counsel for Mr Purcell sought to put the findings made against Mr Purcell into context and submitted as follows:
- (a) Only 13 of the 33 specific allegations made against Mr Purcell were found

²⁶ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraph 1 (Doc ID: RDU_REL_AD-000000002).

proven.

- (b) Virtually all of the findings against Mr Purcell arose in the context of his status as a director of INBS and the collective responsibility that flowed from that, rather than any direct personal involvement.
 - (c) Mr Purcell was not a lender and was not directly involved in lending.
 - (d) Mr Purcell was found guilty of errors of omission rather than errors of commission and these, it was suggested, were less serious.
 - (e) There was no finding of dishonesty or recklessness against Mr Purcell and no suggestion of personal benefit.
 - (f) The breaches occurred between 16 and 20 years ago at a time when the country had been in an economic boom for more than a decade with the general expectation that property values would continue to increase.
 - (g) The breaches also occurred in the context of a dominant Managing Director in INBS. Mr Purcell attempted to impress upon this individual the importance of adopting certain measures but ultimately he did not have the ability or capacity to achieve that. Neither, it was submitted, had any other Board member.
 - (h) Finally, no causative link between Mr Purcell's breaches and the ultimate insolvency of INBS had been demonstrated in the Findings Report and therefore the fact that INBS collapsed into insolvency could not be a factor in imposing sanction.
46. Counsel for Mr Purcell suggested that, taking these factors into consideration, there could be no basis for Enforcement's position that the starting point in terms of a fine should be at the higher end of the scale. In circumstances where Mr Purcell did not act dishonestly, did not personally benefit, and was not found to have been reckless, it would be, it was submitted, a travesty of justice to find that he should be sanctioned in the same way as someone who had so conducted themselves.
47. Counsel for Mr Purcell submitted:

"...in a context where 20 of the 33 specific allegations against Mr Purcell were not found to be made out, in a context where he was not found to be guilty of any dishonesty, recklessness, where no personal benefit was found to arise, and having regard to all of the other contextual factors I have identified, the

headline fine here would be more appropriately somewhere below the mid point of the scale between zero and €500,000, when looking at everything in-the-round".²⁷

48. Counsel for Mr Purcell further submitted that the Inquiry should have no regard to the settlements already entered into with the Central Bank as they were the result of consensual negotiation between two parties who have no decision-making capacity in the context of this process.
49. Counsel for Mr Purcell submitted that there were four mitigating factors which should be applied to the appropriate headline fine, as follows:

(a) Insight

Enforcement had submitted that the fact that Mr Purcell had made no “*guilty pleas*” (as Mr Purcell’s characterised them in his submissions²⁸) suggested a lack of insight as to the seriousness of the contraventions found against him. Counsel for Mr Purcell submitted that if Mr Purcell had conceded the allegations at the outset he would have conceded 20 allegations which were subsequently not found to be made out. He further submitted that Mr Purcell has accepted the findings of the Inquiry, is grateful for the work of the Inquiry, has learned from the Findings Report and has learned from the process, thereby displaying insight into the findings made.

(b) Mr Purcell’s unblemished record

Counsel for Mr Purcell submitted:

“Mr Purcell is a man who is 71 years old. He qualified with a Bachelor of Commerce from UCD in 1973. He then qualified as a chartered accountant in SKC, which subsequently came KPMG, in 1977. He worked in accountancy, in financial controller roles between 1977 and 1986 in a number of substantial entities. He took on the role as Financial Controller with INBS in 1986, and in 1994 he was appointed to the Board as Financial Director. He occupied that position until 2010. During the entire course of that period of his career, between 1973 and 2010, he was never the subject

²⁷ Transcript of Sanctions Hearing dated 21 October 2024, page 64 line 23 (Doc ID: RDU_FT_SH-00000001).

²⁸ Transcript of Sanctions Hearing dated 21 October 2024, page 66 lines 23 to 27 (Doc ID: RDU_FT_SH-00000001).

*of any finding or, indeed, allegation of wrongdoing and I do believe that that has to be taken into account as a mitigating factor on his behalf”.*²⁹

- (c) The impact of this Inquiry on Mr Purcell outside of the effect of any formal sanctions

Counsel for Mr Purcell outlined to the Inquiry that having had a very successful career and having an unblemished record, once the investigations alleged in the Inquiry commenced Mr Purcell has not worked in any meaningful role for over 10 years. It was submitted that he would have reached normal retirement age in 2016 and would have intended to work until that time and possibly beyond. It was further submitted that the publicity arising from the process has had a serious reputational impact on him and that this was something that the Inquiry could take into account in determining a formal sanction.

- (d) Mr Purcell cooperated with the Inquiry

Counsel for Mr Purcell submitted that he sought to engage with the Inquiry in a straightforward and courteous way. It was submitted that it was possible to cooperate with the Inquiry without necessarily pleading guilty.

50. It was then submitted on behalf of Mr Purcell that the headline sanction should be below €250,000 and with the application of significant mitigating factors that figure should be reduced to €100,000.

51. In their written submissions, the LPT referred to the 2019 Sanctions Guidance which, they said, suggests that:

*“Proven dishonesty is always at the most serious end of the spectrum of gravity. If a contravention involves dishonesty and / or was committed deliberately, the matter will ordinarily be viewed as more serious”.*³⁰

52. Addressing the factors that should be considered by the Inquiry in imposing sanction, the LPT identified the first relevant factor as: whether the conduct involved was deliberate, dishonest or reckless. No finding was made that Mr Purcell acted dishonestly or that he benefitted personally in respect of the contraventions he was found to have participated in or that he had behaved recklessly.

²⁹ Transcript of Sanctions Hearing dated 21 October 2024, page 67 line 18 (Doc ID: RDU_FT_SH-00000001).

³⁰ Written Submissions on behalf of the LPT dated 9 October 2024, paragraph 39 (Doc ID: RDU_REL_AD-000000003).

53. Reiterating this point in their oral submissions, the LPT stated:

*“...the most serious matter that an individual can be involved in, the most serious conduct is obviously dishonestly, and that was not alleged in respect of Mr. Purcell and no such finding is made in the Findings Report. So it does not arise here. What also does not arise here is any suggestion that Mr. Purcell benefited personally in respect of the contraventions as found against him. And there’s no evidence that he behaved recklessly”.*³¹

54. The LPT submitted in both their written and oral submissions that the Proven Contraventions occurred repeatedly throughout the Review Period and were by no means a one-off contravention. The 2019 Sanctions Guidance states: *“in general, contraventions that occur over a longer period or with greater frequency will be treated as more serious”* and *“Serious or systemic weaknesses, particularly where they result in ... a threat to financial stability, will ordinarily mean that the matter is viewed as more serious”*.³²

55. The LPT further submitted that *“There was no question but that the Proven Contraventions revealed serious and systemic weaknesses in the management systems and internal controls of INBS”*.³³

56. The LPT submitted that a reprimand, a significant period of disqualification and a monetary penalty would be appropriate. The LPT submitted that although the Proven Contraventions in which Mr Purcell was found to have participated were very serious, they did not believe that they ought to be characterised as being of the *“most serious”* nature in circumstances where Mr Purcell’s participation in them did not involve conduct on his part which was *“deliberate, dishonest or reckless”*.³⁴

57. The LPT expressed the view that insofar as Enforcement contended that the Proven Contraventions *“are at the most serious end of the scale”* it was appropriate to treat them as less serious than if they had been deliberate, dishonest or reckless.³⁵

The Inquiry Members acknowledge that no finding of recklessness or dishonesty was

³¹ Transcript of Sanctions Hearing dated 21 October 2024, page 21 line 21 (Doc ID: RDU_FT_SH-00000001).

³² 2019 Sanctions Guidance, page 6.

³³ Written Submissions on behalf of the LPT dated 9 October 2024, paragraph 46 (Doc ID: RDU_REL_AD-000000003).

³⁴ Written Submissions on behalf of the LPT dated 9 October 2024, paragraph 78 (Doc ID: RDU_REL_AD-000000003).

³⁵ Written Submissions on behalf of the LPT dated 9 October 2024, paragraph 44 (Doc ID: RDU_REL_AD-000000003).

made against Mr Purcell in the Findings Report.

The loss or detriment or the risk of loss or detriment caused to consumers or other market users

58. Enforcement submitted that:

*“The Contraventions created a significant risk of loss or detriment to consumers or other market users, which ultimately crystallised in the collapse of INBS. Between 2008 and 2010, INBS suffered financial losses in excess of €6 billion, primarily arising from the impairment of its commercial loan book. INBS’s financial instability and the makeup of its loan portfolio left it exposed during the global financial downturn, and ultimately led to its collapse”.*³⁶

59. The LPT in their written submissions referred to the 2019 Sanctions Guidance, which they submitted suggests that:

“Where there has been widespread loss or detriment or the risk of loss or detriment, the contravention(s) will ordinarily be viewed as more serious”.

The LPT further observed that in its submissions Enforcement had stated that the contraventions that Mr Purcell had been found to have participated in had created a significant risk of loss or detriment to consumers or other market users, which ultimately crystallised in the collapse of INBS. The LPT expressed the view that based on the findings in the Findings Report and the evidence before the Inquiry, *“the Inquiry would go too far were it to find direct causality between Mr Purcell’s participation in the Proven Contraventions and the full extent of the losses suffered by INBS and its ultimate collapse. However, there is no doubt but that the Proven Contraventions necessarily contributed to, at the very least, increased risk of loss being suffered, since the Proven Contraventions related to deficiencies in INBS’s management systems and internal controls which, if avoided or remedied, would have seen increased controls over money being lent and increased the ability to recover that money”.*³⁷

60. In their oral submissions the LPT addressed the argument that Mr Purcell’s contraventions created a real risk of loss to consumers and market users crystallising in the collapse of INBS and stated:

³⁶ Written Submissions on behalf of Enforcement dated 12 July 2024, paragraph 27 (Doc ID: RDU_REL_AD-000000001).

³⁷ Written Submissions on behalf of the LPT dated 9 October 2024, paragraph 47 et seq. (Doc ID: RDU_REL_AD-000000003).

*“LPT have considered that and they considered that perhaps the Inquiry Members may ultimately come to the conclusion that Enforcement go too far in that regard.... There is certainly arguments that can be made that there was a contribution to the risk of loss being suffered due to the deficiencies in management of control that the Inquiry Members have found existed within INBS, and indeed that Mr. Purcell contributed to”.*³⁸

61. At the Sanctions Hearing, Enforcement submitted that whilst there was no finding of a direct causative link between the contraventions and the collapse of INBS, it is a relevant part of the backdrop. It also submitted that the settlements reached with the other Persons Concerned are of some significance in that a sanction in excess of that imposed by way of settlement would appear to be appropriate.
62. The Inquiry Members find that although the banking practices of INBS may have contributed to its ultimate demise, no evidence was led and there were no findings that the Proven Contraventions, in respect of which Mr Purcell was found to have participated, led to that demise. Therefore, whilst the Inquiry Members have taken into account that the contraventions in which Mr Purcell was found to have participated were such that they could have created a real risk of loss to consumers and market users, neither the ultimate collapse of INBS nor the extent of the losses incurred are factors that the Inquiry Members have taken into account in determining sanction. What has been taken into account is the magnitude of the risk represented by the governance failings in INBS.

The extent to which the contravention departs from the required standard

63. In its written submissions Enforcement submitted that:

“The Findings Report ascribes to Mr Purcell direct knowledge or awareness of the deficiencies at INBS. Given his role on the Board and his unique position as the point of contact for regulatory correspondence, Mr Purcell was aware of the failings in the systems and controls for commercial lending and credit risk at INBS, as well as the specific concerns of the Financial Regulator regarding those issues during the Review Period. This underscores a further point, that robust systems of internal control are only as effective as the individuals who implement them. The Findings Report details extensive engagement between INBS and the Financial Regulator regarding serious concerns about

³⁸ Transcript of Sanctions Hearing dated 21 October 2024, page 23 line 2 (Doc ID: RDU_FT_SH-00000001).

commercial lending and governance at INBS, with recommendations on how to mitigate those issues. This correspondence, together with evidence adduced at Inquiry, illustrates the disappointment of the Financial Regulator about the relaxed response and degree of sanguineness on the part of the INBS Board to those concerns. It also demonstrates how far the acts and omissions of INBS and Mr Purcell, as a person concerned in its management, departed from the required standards at the time.

*Mr Purcell's behaviour, in respect of the Contraventions, fell dramatically short of the basic responsibilities expected to be met by individuals in the trusted position of Board member, regardless of whether they are executive or non-executive directors, which includes 'exercising appropriate supervision or oversight at board level in respect of the execution or discharge of whatever tasks or functions have been properly and appropriately delegated to others'.*³⁹

64. In their written submissions, the LPT submitted that the 2019 Sanctions Guidance suggests that: *"This will be determined not in relation to the standards commonly observed in the sector, but objectively by reference to best practice"*. The LPT stated that whilst there was no independent evidence either cited in the Investigation Report or before the Inquiry as to *"best practice"* for someone in Mr Purcell's position, ultimately, his participation in the Proven Contraventions arose through his position as a director of INBS. The LPT submitted that directors' duties are well established in law and include an obligation, addressed by Keane J in ***Fitzpatrick v Connaughton*** [2016] IECH 533 as quoted with approval by Faherty J in the Court of Appeal in ***Fennell v Appelbe*** [2022] IECA 160 §64, and as already quoted above by Enforcement, *"to exercise appropriate supervision or oversight at board level in respect of the execution or discharge of whatever tasks or functions have been properly and appropriately delegated to others"*.⁴⁰
65. The LPT submitted that this obligation represents an important part of the *"required standard"* from which Mr Purcell departed in his participation in the Proven Contraventions.

³⁹ Written Submissions on behalf of Enforcement dated 12 July 2024, paragraphs 28 and 29 (Doc ID: RDU_REL_AD-000000001).

⁴⁰ Written Submissions on behalf of the LPT dated 9 October 2024, paragraphs 50 and 51 (Doc ID: RDU_REL_AD-000000003).

66. At the Sanctions Hearing, the LPT repeated this and stated that Mr Purcell's role as a director involved duties of supervision at Board level and this was an important part of the standard to which Mr Purcell did not adhere. The LPT concluded that this was a relevant matter that the Inquiry Members could take into account.⁴¹
67. The Inquiry Members are of the view that the standard required of Mr Purcell, in his position as a Board member of INBS, included obligations of governance, commercial risk management, supervision and oversight. Mr Purcell did not meet this standard. Mr Purcell did not ensure that, having regard to governance and control, appropriate policies were in place for the commercial lending conducted by INBS, with profit share lending being a dominant feature of this commercial lending, or that those policies that were in place were adhered to. His failure to reach this required standard continued for the duration of the Review Period but became more serious as the extent of profit share lending grew both in terms of volume and value.
68. The Inquiry Members view this failure in his obligation of supervision and oversight as a significant factor in determining sanction.
69. In their written submissions, the LPT stated that the Proven Contraventions occurred on an ongoing basis throughout the Review Period. They submitted Mr Purcell was aware of the failings in INBS that caused the Proven Contraventions through his participation in Board meetings and his awareness of the matters addressed in the various internal reports available during the Review Period. They further submitted he was also aware of these failings through his role (including sometimes that of author, on behalf of INBS) in respect of correspondence between INBS and the Financial Regulator relating to relevant aspects of INBS's regulation.
70. The LPT referenced Mr Purcell's submissions where he drew the Inquiry Members' attention to: his requests, beginning in 2003, that Mr Fingleton establish a credit risk department; the fact that the Board and Audit Committee sought to implement the recommendations of the auditors and the Financial Regulator; and the fact that Mr Fingleton consistently failed to attend Credit Committee meetings. The LPT submitted that notwithstanding these submissions: "*Ultimately, nothing in the Findings Report suggests that any such efforts materially remedied the failings in INBS's management systems and internal controls which led to the Proven Contraventions*".⁴²

⁴¹ Transcript of Sanctions Hearing dated 21 October 2024, page 23 line 26 (Doc ID: RDU_FT_SH-00000001).

⁴² Written Submissions on behalf of the LPT dated 9 October 2024, paragraph 62 (Doc ID: RDU_REL_AD-000000003).

71. The LPT referred to this factor in their oral submissions stating:

“What is of relevance, ...is the fact that while Mr. Purcell was not directly involved in lending, so he was not primarily the one involved in a number of the matters at issue, because of his status as a Director and at Board level, he was the recipient of a number of reports, ... and he was also the recipient of, and indeed the author of some of the regulatory correspondence with the Central Bank or the Central Bank predecessors at the time.

*It is important to note that, in the context of those contemporaneous reports and regulatory correspondence, a number of matters were repeatedly raised in those reports and in that correspondence and brought to the attention of the Board and they were not ultimately remediated”.*⁴³

72. The Inquiry Members have found that the Proven Contraventions in respect of which Mr Purcell was found to have participated occurred on an ongoing basis throughout the Review Period and, through contemporaneous reports and Financial Regulator correspondence, Mr Purcell together with other Board members was aware of the risks involved in the commercial lending practices of INBS. The Inquiry Members note that Mr Purcell did ultimately succeed in his attempts to establish a credit risk department in INBS but, while it affected some improvement and did succeed in some respects, this did not remedy the failings in INBS’s management systems and internal controls that led to the Proven Contraventions. Notwithstanding its limited impact, Mr Purcell’s attempts in this regard were taken by the Inquiry Members as a mitigating factor in deciding appropriate sanctions.

73. Enforcement suggested in its written submissions that account should be taken of the fact that Mr Purcell failed to acknowledge the failings of INBS and his participation in them. The LPT noted that in criminal proceedings such acknowledgement would be seen as a mitigating factor. However, the LPT submitted that regard should be had to the fact that Mr Purcell successfully resisted a very significant number of the allegations made against him.

74. The Inquiry Members agree with Mr Purcell’s submissions on this point, made principally in the context of liability for costs, that he should not be penalised for robustly defending the allegations made against him. In determining the appropriate financial penalty in this case, the Inquiry Members did not regard Mr Purcell’s failure

⁴³ Transcript of Sanctions Hearing dated 21 October 2024, page 25 line 16 (Doc ID: RDU_FT_SH-00000001).

to acknowledge the contraventions by INBS or his participation in them as a relevant factor.

(b) The Conduct of the Individual after the Contraventions

75. In its written submissions, Enforcement submitted:

*“Mr Purcell failed to notify the Central Bank of the breaches and failed to take any remedial steps. Enforcement deems this an aggravating factor, particularly in light of Mr Purcell’s role as point of contact with the Financial Regulator. As noted in the Findings Report, by virtue of his roles at INBS, Mr Purcell was aware of deficiencies identified in contemporaneous audit and inspection reports, and in some instances gave undertakings on behalf of INBS to the Financial Regulator that those deficiencies would be promptly addressed, or, in other cases, represented that those deficiencies had been addressed when that was not in fact the case”.*⁴⁴

76. Responding to this point, Mr Purcell in his written submissions stated:

*“There is a significant difference between failing to take action on foot of a recommendation from a regulator and/or auditor – no matter how forcefully expressed – and, as Enforcement seeks to characterise Mr Purcell’s conduct, knowingly continuing to breach a statutory obligation with a penal focus of the type contained in Part IIIC of the 1942 Act”.*⁴⁵

77. Mr Purcell further submitted that Enforcement’s claim that *“Mr Purcell failed to notify the Central Bank of the breaches and failed to take any remedial steps”* suggests detailed knowledge of specific regulatory breaches which, he submitted, is simply not a sustainable claim.⁴⁶

78. The Inquiry Members take the view that although the contraventions in which Mr Purcell was found to have participated continued throughout the Review Period, there is no evidence that he allowed this to happen in the knowledge that specific regulatory breaches were occurring.

79. Enforcement submitted that although Mr Purcell responded to correspondence issued

⁴⁴ Written Submissions on behalf of Enforcement dated 12 July 2024, paragraph 30 (Doc ID: RDU_REL_AD-000000001).

⁴⁵ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraph 30 (Doc ID: RDU_REL_AD-000000002).

⁴⁶ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraph 31 (Doc ID: RDU_REL_AD-000000002).

to him during the investigation, this should not be seen as a mitigating factor as the level of his cooperation was what was to be expected and was therefore neutral in relation to sanctioning.

80. Mr Purcell submitted that:

*“...credit is warranted in circumstances where he did not attempt – beyond availing of ordinary legal procedures and protections available to all citizens – to unduly delay the Inquiry’s progress”.*⁴⁷

Mr Purcell also submitted that he had made every effort to cooperate as far back as 2009 with the investigation that ultimately led to this Inquiry.

81. In their written submissions, the LPT referred to Enforcement’s submission that account should be taken of the fact that Mr Purcell delivered a full defence, as he was entitled to do. Enforcement had further submitted that Mr Purcell had shown a lack of insight regarding his culpability as he failed to acknowledge the failings of INBS, his participation in those failings, the magnitude of those failings and the consequences for others. Addressing this, the LPT submitted that by analogy with criminal proceedings, where a person concerned is ultimately found to have participated in proven contraventions it would be a mitigating factor if the person had acknowledged the contravention and/or their participation. However, the LPT added:

*“...regard should also be had to the fact that, at least insofar as it relates to the number of Specific Allegations made against him, Mr Purcell has successfully resisted a very significant number of the allegations made against him”.*⁴⁸

82. The Inquiry Members do not view Mr Purcell’s failure to acknowledge failings in advance of the Inquiry as an aggravating factor in determining sanction, as he was entitled to defend himself as robustly as necessary.

(c) The Previous Record of the Individual

83. Enforcement acknowledged that there had been “no adverse prior record of relevance”⁴⁹ in relation to Mr Purcell and that this could be taken as a mitigating factor.

⁴⁷ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraph 32 (Doc ID: RDU_REL_AD-000000002).

⁴⁸ Written Submissions on behalf of the LPT dated 9 October 2024, paragraph 64 (Doc ID: RDU_REL_AD-000000003).

⁴⁹ Written Submissions on behalf of Enforcement dated 12 July 2024, paragraph 34 (Doc ID: RDU_REL_AD-000000001).

84. In this regard Mr Purcell submitted:

“In keeping with ordinary principles of fairness and proportionality in any sanctioning process, Mr Purcell is entitled to credit from the Inquiry Members for his unblemished record. And, in Mr Purcell’s submission, that record must operate to reduce the maximum headline penalty by at least 33%, in addition to the necessary reduction arising from the fact that only 40% of the allegations were made out.

*This reflects the fact that a previously unblemished record is a fundamental principle of any sanctioning process”.*⁵⁰

In support of this view, Mr Purcell cited Professor Tom O’Malley SC who noted that credit for previous good record is a general sentencing principle.⁵¹

85. In the course of the Sanctions Hearing, Counsel for Mr Purcell made this point more forcefully as outlined at paragraph 49 above.

86. Enforcement submitted, at the Sanctions Hearing, that where contraventions occur over a very significant period of time, a previously unblemished record may be less relevant. Enforcement noted that the conduct under consideration took place over a period of four years and was also the subject of fairly persistent engagement by the Financial Regulator. Enforcement submitted *“It’s not conduct that could ever be credibly characterised as a once-off or out of character”*.⁵²

87. The Inquiry Members are of the view that the length of Mr Purcell’s unblemished record, in a career spanning a period of 43 years, is a mitigating factor and it has been taken into account by them in determining sanction.

(d) Other General Considerations

88. In its written submissions, Enforcement submitted that the Inquiry should consider a greater uplift for deterrence on the basis that the acts and omissions of Mr Purcell, *“facilitated a pattern of systemic failures by INBS to implement or adhere to key policies, leading to poor risk management, ineffective governance, deficient lending*

⁵⁰ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraphs 19 and 20 (Doc ID: RDU_REL_AD-000000002).

⁵¹ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraph 20 (Doc ID: RDU_REL_AD-000000002).

⁵² Transcript of Sanctions Hearing dated 21 October 2024, page 41 line 21 (Doc ID: RDU_FT_SH-000000001).

practices, and an overall culture of high-risk lending".⁵³ To illustrate this point, Enforcement set out the sanctions that had been imposed in the four settlements already reached in this case. These sanctions are set out below.

Date	Entity/Person	Disqualification	Monetary penalty	Reprimand
July 2015	INBS	N/A	€5m (maximum) (not collected)	Yes
February 2018	Michael Walsh	3 years	€20k	Yes
December 2018	Tom McMenamin	18 years	€250k (reduced to €23k under section 33AS)	Yes
June 2021	Gary McCollum	15 years	€200k	Yes

89. Enforcement submitted that because Mr Purcell failed to acknowledge the failings of INBS and his participation in those failings, together with the magnitude of the failings and the consequences for others, he has shown a lack of insight regarding his culpability for the contraventions, *“Therefore, Enforcement’s view is that the appropriate sanctions for Mr Purcell should exceed the sanctions imposed on Mr Walsh, Mr McCollum and Mr McMenamin”*.⁵⁴
90. Enforcement submitted that the appropriate financial penalty should be at the upper end of the €500,000 maximum available to the Inquiry. This, it submitted, would reflect the seriousness of Mr Purcell’s participation in the failings of INBS and would also act as an effective deterrent both for Mr Purcell and others.⁵⁵ Enforcement also submitted that a reprimand and a significant period of disqualification were appropriate.
91. In his written submissions, Mr Purcell submitted that there was no basis for Enforcement’s assertion that his *“participation is substantially more serious in nature*

⁵³ Written Submissions on behalf of Enforcement dated 12 July 2024, paragraph 35 (Doc ID: RDU_REL_AD-000000001).

⁵⁴ Written Submissions on behalf of Enforcement dated 12 July 2024, paragraph 40 (Doc ID: RDU_REL_AD-000000001).

⁵⁵ Written Submissions on behalf of Enforcement dated 12 July 2024, paragraphs 45 and 46 (Doc ID: RDU_REL_AD-000000001).

than that of Mr Walsh, Mr McCollum or Mr McMenamin". He stated: "No basis is offered for this assertion. Moreover, the Inquiry's Findings are replete with examples which evidence at least equal level of responsibility as that which attached to Mr Purcell for matters within INBS attaching to the other Persons Concerned".⁵⁶

92. Mr Purcell maintained that each of these other Persons Concerned were more directly involved in commercial lending. He submitted:

"Though the Inquiry has made its findings against Mr Purcell in his capacity as a board member, he was significantly hampered in his ability to exercise his oversight role by the conduct of the executives with day-to-day operational control of INBS' lending practices. And it cannot be forgotten that it is the lending practices which are at the core of the issues which ultimately led to INBS' downfall".⁵⁷

93. Mr Purcell further submitted:

"Though findings were, obviously, not made against Mr Fingleton, the responsibility he had for the governance failures of INBS far outstrips that of Mr Purcell and his conduct frustrated the Board's efforts to achieve compliance with the recommendations of internal and external auditors, the requirements of the Central Bank and INBS' lending policies. In particular, Mr Purcell draws to the Inquiry's attention... his attempts, beginning in 2003, requesting Mr Fingleton to establish a credit risk department. He also draws the Inquiry's attention to: the fact the Board and the Audit Committee sought at all times to implement recommendations of the auditors and the Financial Regulator; and the fact that Mr Fingleton consistently failed to attend Credit Committee meetings.

.....

Mr Purcell is not in any way trying to absolve himself of responsibility by highlighting the foregoing matters. Rather, they are simply examples of why Enforcement's attempts to treat Mr Purcell less favourably and more punitively

⁵⁶ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraphs 36 and 37 (Doc ID: RDU_REL_AD-000000002).

⁵⁷ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraph 41 (Doc ID: RDU_REL_AD-000000002).

*than the other Persons Concerned are neither fair nor warranted”.*⁵⁸

94. On this point, in their written submissions the LPT submitted:

*“Enforcement suggests that the Inquiry should have regard to the level of penalties imposed on Dr Walsh, Mr McMenamin and Mr McCollum. In the view of the LPT, it is appropriate to have regard to those penalties. However, they should not be given undue weight in circumstances where they are not based on any findings by this or any other Inquiry and are, in effect, negotiated such that they reflect the level of sanction which Enforcement and the relevant Person Concerned were respectively willing to accept”.*⁵⁹

95. The LPT reiterated this point at the Sanctions Hearing, stating:

“They are negotiated positions that are potentially, of course, relevant to the personal considerations, but also the participation levels of those other persons.

*So on that basis, we think that perhaps a more nuanced approach may need to be taken in the context of that issue”.*⁶⁰

96. The Inquiry Members do not agree with Enforcement’s submission that Mr Purcell’s participation was “*substantially more serious*” in nature than that of other Persons Concerned who had settled with the Inquiry. Mr Purcell was found to have participated in the Proven Contraventions by virtue of his position as a Board member. In that respect he had no more responsibility for the Proven Contraventions than might potentially have been ascribed to any other individual Board member.

97. The Inquiry Members are of the view that the settlements entered into by other Persons Concerned are also of some relevance in determining sanction. “*Settlement Policy and Procedure*” is dealt with in Part 4 of the Central Bank’s 2014 Outline of the Administrative Sanctions Procedure (**2014 Outline of the ASP**), which is one of the procedural documents the Inquiry Members had regard to when conducting the Inquiry. The Central Bank’s approach to settlement is set out at paragraph 4.2 of the document. It states:

⁵⁸ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraphs 42 and 43 (Doc ID: RDU_REL_AD-000000002).

⁵⁹ Written Submissions on behalf of the LPT dated 9 October 2024, paragraph 69 (Doc ID: RDU_REL_AD-000000003).

⁶⁰ Transcript of Sanctions Hearing dated 21 October 2024, page 28 line 21 (Doc ID: RDU_FT_SH-000000001).

“The Central Bank considers that, in appropriate cases, it may be in the public interest for Administrative Sanctions Procedure cases to settle, and settle as early as possible. However, the Central Bank must be satisfied that the basis for settlement is appropriate taking into account all relevant facts, including the determination of the appropriate sanction, whether all concerns have been addressed to the Central Bank’s satisfaction, and any other relevant considerations...

The settlement procedure offers both the Central Bank and the regulated entity a means of achieving early resolution of the matter. Early settlement is an efficient use of the Central Banks resources, and provides timely resolution and transparency through the publication of the details of the case. Where settlement is agreed, it results in the avoidance of the additional costs and administrative burden of extended administrative sanctions proceedings for both the Central Bank and the regulated entity.

*In each case, the Central Bank will consider its statutory objectives in determining whether it is appropriate to settle a case, and on what terms, and whether the agreed settlement terms will result in an acceptable regulatory outcome”.*⁶¹

*Paragraph 4.4 of the 2014 Outline of the ASP describes the “Early Settlement Discount Scheme” that is applied by the Central Bank. Under this scheme a discount may be applied up to a set maximum “to a sanction that it would otherwise expect to be imposed on a regulated entity after considering the sanctioning factors”.*⁶²

98. A significant factor in any settlement is the expectation that the regulated entity will admit the contraventions. With regard to admissions, the Inquiry Members note from the Central Bank’s public statement on the settlement agreement between the Central Bank and Dr Walsh, that Dr Walsh admitted SPCs 5, 6 and 7 but he made no admissions in relation to SPCs 1, 2, 3 and 4.
99. The 2014 Outline of the ASP provides that a discount of up to 10% can be applied if a settlement occurs after a Notice of Inquiry has been issued. The Inquiry Members note that all settlements entered into by Persons Concerned in this Inquiry were agreed

⁶¹ 2014 Outline of the ASP. This document provides a general overview of the Central Bank’s ASP, but does not purport to represent a definitive legal interpretation of Part IIIC of the 1942 Act.

⁶² 2014 Outline of the ASP, paragraph 4.4.2.

after the Notice of Inquiry had been issued.

100. It should also be noted that Mr Purcell was found to have participated in Proven Contraventions as a Board member of INBS. Accordingly, the only other Person Concerned who in settlement terms could have any relevance to Mr Purcell is Dr Walsh, Board member and chairman of INBS throughout the Review Period. Both Mr McMenamin and Mr McCollum were directly involved in commercial lending in INBS. Mr McMenamin was head of commercial lending in the Republic of Ireland and Mr McCollum was branch manager of the Belfast Branch and was head of commercial lending in UK and Northern Ireland. Both of these individuals were directly involved in day to day commercial lending in INBS and their participation in Proven Contraventions was significantly different to Mr Purcell's participation as a Board member.
101. The Inquiry is mindful that the circumstances of each Person Concerned are unique to them and any settlements reached were a matter of private negotiation.
102. Whilst it is true that, unlike Mr McMenamin, Mr McCollum and Mr Fingleton, Mr Purcell was not directly involved in respect of day to day commercial lending, he still bore responsibility as a member of the Board for some of the more serious contraventions committed by INBS in which he was found to have participated. With regard to SPC 3 and SPC 7, the Board was front and centre in these matters and responsibility for them extended to each director including Mr Purcell. In addition, Mr Purcell had a responsibility to deal with matters that gave rise to other SPCs once he became aware of them as a Board member.
103. As a Board member, Mr Purcell was involved in approving all commercial loans of any significance in INBS. This was a unique feature in INBS and was represented by former Board members as providing a significant level of assurance that commercial lending was rigorously controlled. As pointed out in Chapter 11 of the Findings Report, the scale of the build-up of profit share lending during the Review Period made it impossible for any Board to properly consider individual loans. By way of example, in July 2006 Board minutes showed that 40 loans were approved at a single Board meeting involving in excess of €450 million. In October of the same year 38 loans totalling in excess of €500 million were approved at a single meeting and in November of that year 39 loans in excess of €500 million were approved.
104. As outlined in Chapter 11 of the Findings Report, it is clear that the sheer volume of loans that were presented to the Board for approval made it virtually impossible for the Board to apply appropriate oversight and rigour in approving these loans. Apart from

the challenge of considering such a high volume of proposals, the Board could not but be aware of the scale of the build-up of profit share lending emanating from the Belfast office. The characteristics of profit share lending are set out in full in the Findings Report and include: capital and interest moratoria, up to 100% funding, the use of SPVs, significantly large sums of money advanced, and 100% LTV. The Board would or at least should have been aware that, by approving these loans without personal guarantees from the directors or owners of the borrower company, they were stripping away an important safety net in the event of a market dislocation.

105. Mr Purcell's role as a director approving commercial loans in the circumstances outlined above is a significant factor taken into account by the Inquiry Members in determining financial sanction.
106. In his written submissions, Mr Purcell submitted that the wording of section 33AQ of the 1942 Act gave rise to several ambiguities regarding the practical imposition of a monetary sanction. He said that section 33AQ appeared to contemplate that the maximum amount could be imposed for a single prescribed contravention. He said that this would result in an "*absurd situation*" where a person who was found to have committed a single prescribed contravention could be liable for a fine of €500,000 where a person found to have committed 100 prescribed contraventions could also only be liable for a maximum fine of €500,000.⁶³ He further submitted that it could be argued that the statute permitted a sanction of €500,000 for each prescribed contravention, which would allow for extraordinary levels of financial sanction on an individual without the benefit of criminal processes.
107. In the course of the Sanctions Hearing, the LPT addressed this point stating:

"... in the context of those two provisions, that's 33AQ and 33AS, LPT's position is that you can summarise those principles in the following way:

Firstly, that participation in any one contravention can attract a penalty of up to the maximum of €500,000, being the maximum prescribed amount in the context of the then relevant legislation.

Secondly, that €500,000 is the maximum regardless of the number of contraventions, if it arises in respect of the same conduct.

⁶³ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraph 61 (Doc ID: RDU_REL_AD-000000002).

And then thirdly, if there's participation in more than one contravention, then the Inquiry can have regard to the totality of the contraventions in setting the monetary penalty".⁶⁴

Enforcement agreed with the LPT's submission on this point.⁶⁵

108. The Inquiry Members do not accept that the wording of Section 33AQ of the 1942 Act is ambiguous as to sanction. There can be no penalty imposed in excess of €500,000 and it is open to them to impose that full sanction in respect of a single contravention if so merited.

109. In his written submissions, Mr Purcell submitted:

"The sanctioning provisions of Part IIIC of the 1942 Act are, by any metric, penal statutes – i.e., a statute which poses a detriment on an individual. Consequently, it must be strictly construed and in favour of the part[sic] who would otherwise be subject to the penalty".⁶⁶

Mr Purcell cited ***Fingleton v Central Bank of Ireland*** [2016] IEHC 1 in which Noonan J stated:

"Although the subsection [Section 33AO] cannot be classified as one that imposes a penal sanction, it was I think conceded by the respondent in argument that it relates to such a provision and as such falls to be construed, if necessary, by reference to the principles applying to such legislation. These include the principal against doubtful penalisation or perhaps expressed in another way, penal statutes will be construed strictly in favour of the party subject to the penalty".⁶⁷

110. Drawing on the judgment of Noonan J and on the precedents referred to by him in the course of that judgment, Mr Purcell submitted that:

"The following principles emerge from these authorities:

(a) First, penal statutes must be construed strictly. The practical consequence of this is that if there is a doubt about the statute's ability to impose a sanction, then that doubt must be resolved in favour of the

⁶⁴ Transcript of Sanctions Hearing dated 21 October 2024, page 18 line 22 (Doc ID: RDU_FT_SH-00000001).

⁶⁵ Transcript of Sanctions Hearing dated 21 October 2024, page 37 line 25 (Doc ID: RDU_FT_SH-00000001).

⁶⁶ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraph 65 (Doc ID: RDU_REL_AD-000000002).

⁶⁷ [2016] IEHC 1, paragraph 96.

person who would otherwise be subject to the sanction.

(b) Second, a penal statute is not just a “criminal” statute, but any statute which imposes a detriment.

(c) Third, the statute must specify the conditions which must be met before it can be said that a person has committed an offence and, consequently, have a sanction imposed.

While the jurisprudence outlined above has emerged in[sic] not only in connection with sanction but specifically with the imposition of liability, in this instance it must operate to resolve the ambiguity as to what sanction may be imposed on Mr Purcell. That is particularly so when the fact that the notions of ‘participating in’ ‘prescribed contraventions’ are notably vague as to their content”.⁶⁸

111. Mr Purcell concluded his written submission by referring to what he called “*The lack of restraint on [sic] the way allegations may be made under Part IIIC of the 1942 Act*”. This, he submitted, led to “*42 allegations of ‘participation in’ widely-drawn ‘prescribed contraventions’ against five different individuals – each of whom had different roles and responsibilities – and a body corporate*”. He further submitted “*The vagueness, then, of the ‘wrongs’ which Mr Purcell has been found to have committed must bear on the level of sanction which ought to be imposed. If it is not possible to specify with precision what Mr Purcell has done and how what he did or did not do amounted to a prescribed contravention, then it is not possible to accurately connect sanction to that wrong*”.⁶⁹

112. The Inquiry Members agree with Mr Purcell’s submission in relation to the penal nature of Part IIIC of the 1942 Act and have applied the statute strictly in favour of Mr Purcell.

IV. Other information relevant to the Inquiry Members’ considerations

113. Mr Purcell submitted that he was not the only Person Concerned referred to Inquiry. He said that as well as INBS as an entity, four other key personnel within INBS were

⁶⁸ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraphs 68 and 69 (Doc ID: RDU_REL_AD-000000002).

⁶⁹ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraph 71 et seq. (Doc ID: RDU_REL_AD-000000002).

also originally included.⁷⁰ The LPT submitted, both in written and oral submissions,⁷¹ that no weight should be given to the fact that INBS itself and other INBS personnel were referred to the Inquiry, but regard should be had to Mr Purcell's role in INBS and his conduct, which amounted to participation in the Proven Contraventions.

114. The Inquiry Members do not believe that the fact that other persons were originally referred to Inquiry is a relevant factor in determining monetary sanction. Mr Purcell is being judged on his own role in the contraventions proven against INBS and the fact that other parties may or may not also have participated in these contraventions is not relevant. However, insofar as any contribution towards the cost of the Inquiry arises, Mr Purcell's participation as one of five Persons Concerned would be a factor.

DETERMINATION ON SANCTION

115. In considering the appropriate sanction in respect of the findings of participation on the part of Mr Purcell in the Proven Contraventions (as set out in **Appendix 1** of this Sanctions Report), the Inquiry Members have considered the applicable legislation, the guidance documents adopted by the Central Bank, relevant legal precedents and case law and the written and oral submissions made by Enforcement, Mr Purcell and the LPT.
116. As set out at paragraph 11 above, section 33AQ(5) of the 1942 Act provides for the following four possible sanctions that may be imposed on a person concerned once a finding of participation in a SPC has been made:

“...

(a) a caution or reprimand;

(b) a direction to pay to the [Central Bank] a monetary penalty not exceeding the prescribed amount;

(c) a direction disqualifying the person from being concerned in the management of a regulated financial service provider for such period as is specified in the order;

⁷⁰ Written Submissions on behalf of Mr Purcell dated 13 September 2024, paragraph 27 (Doc ID: RDU_REL_AD-000000002).

⁷¹ Transcript of Sanctions Hearing dated 21 October 2024, page 24 line 25 (Doc ID: RDU_FT_SH-000000001); Written Submissions on behalf of the LPT dated 9 October 2024, paragraphs 57 and 58 (Doc ID: RDU_REL_AD-000000003).

(d) ...

(e) *a direction to pay to the [Central Bank] all or a specified part of the costs incurred by [the Central Bank] in holding the inquiry and in investigating the matter to which the inquiry relates*".⁷²

Section 33AQ(6) of the 1942 Act provides that: *"For the purpose of subsection (5)(b), the prescribed amount is - (a) €500,000..."*.

117. Section 33AS of the 1942 Act sets limitations on imposing monetary penalties. This section states:

"If the [Central Bank] decides to impose a monetary penalty on a person under section 33AQ or 33AR, it may not impose an amount that would be likely to cause the person to be adjudicated bankrupt".⁷³

118. The Inquiry Members have set out below their determinations in respect of sanctions. In making these determinations, the Inquiry Members have had regard to the sanctioning factors suggested by the 2014 Inquiry Guidelines and the 2019 Sanctions Guidance as well as the submissions made by Enforcement, Mr Purcell and the LPT on same.
119. The Inquiry Members note that Enforcement, the LPT and Mr Purcell all agreed that a sanction, taking the form of a reprimand, a period of disqualification and a monetary penalty, was warranted. Enforcement sought a contribution to the costs of the Inquiry but, as set out at paragraph 158 below, the Inquiry does not believe that such an order is warranted in the circumstances of this Inquiry.

Reprimand

120. The Inquiry Members are of the view that a reprimand should be imposed on Mr Purcell as it is a serious penalty in its own right and is a mark of the Inquiry's disapproval of the Proven Contraventions and of Mr Purcell's participation in them. These Proven Contraventions were serious in nature, continued throughout the Review Period and had the potential to pose serious risks to financial markets and consumers. Having regard to the seriousness of the Proven Contraventions a caution would not be an adequate sanction.

⁷² Section 33AQ(5) of the Central Bank Act 1942.

⁷³ Section 33AQ(6) of the Central Bank Act 1942.

Period of Disqualification

121. The Inquiry Members are of the view that a period of disqualification should match the nature of the misconduct. One of the principal aims of such a sanction is the protection of the public. A substantial period of disqualification serves as a deterrent to other financial services providers who might otherwise engage in the conduct found to have occurred in this Inquiry.
122. The Inquiry Members note Mr Purcell has said he has not worked in the financial services sector since the commencement of the Inquiry and has stated he is unlikely to do so in the future.
123. The Inquiry Members note that a period of three years' disqualification was agreed with Dr Walsh, the only Board member who entered into a settlement agreement with the Central Bank. It is assumed that this was the period adjudged by the Central Bank as being appropriate to meet the needs of public protection and deterrence. The Inquiry is mindful that Mr Purcell must be treated with as much leniency as possible and that the principles of proportionality and reasonableness, as outlined above, must be applied. However, it is also of relevance that the disqualification period of three years was agreed as part of an overall settlement with Dr Walsh and it represented the outcome of a negotiation between the Central Bank and Dr Walsh in which the Inquiry Members played no part and of which they have no knowledge.
124. The Inquiry Members do not consider that a period of disqualification significantly in excess of that imposed on the other Person Concerned who was in a similar position to Mr Purcell would be proportionate or reasonable. However, the Inquiry Members consider that a period of disqualification somewhat longer than that agreed with the other Person Concerned would be reasonable and proportionate in the case of Mr Purcell, given the range of the contraventions he was found to have participated in and their seriousness and, accordingly, a period of four years disqualification is imposed

Monetary Penalty

125. The Inquiry Members are of the view that a monetary penalty should be imposed to reflect the seriousness of the contraventions and having regard to the sanctioning factors outlined in the Central Bank guidance documents. The Inquiry Members have set out their determinations below by reference to the broad headings of the

sanctioning factors.

(a) The Nature, Seriousness and Impact of the Contraventions

126. The Proven Contraventions were not deliberate, dishonest or reckless. They were however serious and breached fundamental principles of good banking governance.
127. The Proven Contraventions occurred throughout the Review Period and were not once off occurrences. The ongoing and continuous nature of the Proven Contraventions and Mr Purcell's knowledge and awareness of them were relevant factors in determining sanction.
128. As a member of the Board, Mr Purcell's role was to recognise the risks inherent in the business of INBS, anticipate adverse circumstances arising and, through the establishment of robust and prudent credit policy parameters, seek to limit those risks. Neither Mr Purcell nor the Board did this to any acceptable level.
129. The Proven Contraventions revealed serious and systemic weaknesses of the management systems and internal controls relating to the conduct of commercial lending in INBS. The Findings Report identifies numerous examples of systemic weaknesses in commercial lending in INBS.
130. Mr Purcell's participation in the Proven Contraventions was a significant departure from the standard required of a member of the board of a regulated financial service provider. In particular, Mr Purcell's role in approving high-value commercial loans, very many of which did not carry guarantees and where there was no real possibility of properly interrogating those loans, was a significant departure from the required standard. In addition, Mr Purcell's awareness of the risks inherent in profit share lending and his failure to address those risks also represented a significant departure from the standard required.
131. The Proven Contraventions were not found to have directly caused the demise of INBS and accordingly that demise was not a factor in determining sanction. However, the Proven Contraventions were of a sufficiently serious and systemic nature that they necessarily contributed to increased risk of loss being suffered. Had the deficiencies been remediated these would have increased controls over money being lent and would have increased INBS's ability to recover those monies.

(b) The Conduct of the Individual after the Contraventions

132. The Proven Contraventions were ongoing throughout the Review Period. Indeed, their seriousness grew more acute as profit share lending grew in terms of volume and value.
133. The Inquiry Members did not regard Mr Purcell's failure to identify the contraventions to the Central Bank as an aggravating factor. They believe that he showed no real insight at the time into the risks attaching to profit share loans and to the approving of such loans without guarantees.
134. Mr Purcell has sought to distance himself from responsibility for commercial lending. However, as a member of the Board he was directly involved in the approval of loans and for agreeing all major policies (as outlined in SPC 3 and SPC 7). Whilst not directly involved in many of the other contraventions alleged, he did, through his knowledge and awareness of them, have a responsibility to deal with them as a member of the Board. He did acknowledge that responsibility in the course of oral evidence during the Inquiry.

(c) The Previous Record of the Individual

135. Mr Purcell's previously unblemished record was regarded as a mitigating factor in relation to determining sanction.

(d) Other General Considerations

136. The imposition of sanctions plays an important role in deterring misconduct, promoting public trust and confidence in financial regulation and the financial system, and in protecting investors, consumers and market integrity. Mr Purcell had significant positions of responsibility and accountability as a long serving Board member and as such was expected to drive a culture of good governance and compliance from the top down.
137. Failure of board members in this regard must be viewed in the broader context of the importance of promoting and ensuring proper governance standards in the sector.
138. The Inquiry Members are mindful of the importance of sending a clear message indicating to the financial services sector through appropriate sanctions, the regulatory consequences for failings such as have been found in this Inquiry.

139. In being mindful of the importance of deterrence, the overarching imperative of leniency and proportionality has also been applied by the Inquiry Members. In addition, the requirement to apply the provisions of the 1942 Act strictly in favour of Mr Purcell has been a determining factor.
140. The Inquiry Members did not regard Mr Purcell's successful defence of a number of the allegations made against him as a significant factor. The nature and level of sanctions is related to the nature and level of seriousness of those allegations that have been proven. The Inquiry Members do not believe that any reduction in sanction is warranted as a result of certain allegations not being established.
141. The Inquiry Members did not regard the fact that other persons had been brought into the Inquiry as being a relevant factor. The Inquiry Members did take note of the settlements reached and they are aware that the roles played by the other Persons Concerned were individual and distinct to them and therefore were not necessarily helpful in considering the appropriate sanctions in respect of Mr Purcell. However, Mr Purcell's participation in the Proven Contraventions was based on the fact that he was a member of the Board of INBS. He, together with other Board members, took decisions and pursued policies that breached basic banking governance. Accordingly, the Inquiry Members have to have regard to the settlement reached between the other Board member and the Central Bank.
142. In the course of his oral submissions, Counsel for Mr Purcell addressed the provisions of section 33AS(2) of the 1942 Act and stated:
- "[Mr Purcell] envisages that it is unlikely that a financial sanction imposed against him would lead to him ending in personal bankruptcy, and therefore he has chosen not to put forward any evidence of his own financial means".⁷⁴*
143. In determining the appropriate monetary penalty, therefore, the Inquiry has not regarded section 33AS(2) of the 1942 Act as having relevance to the sanction imposed. It is presumed that Mr Purcell made that submission in the knowledge that a sanction could be up to €500,000 plus a contribution to costs.
144. Taking the seriousness of the contraventions into account and applying the principles of proportionality and leniency, as outlined above, the Inquiry Members believe that a

⁷⁴ Transcript of Sanctions Hearing dated 21 October 2024, page 73 line 5 (Doc ID: RDU_FT_SH-00000001).

monetary penalty in the top half of the available scale is appropriate. The fact that there was no dishonesty, personal benefit or recklessness reduces the upper limit of available sanction to €300,000. In addition, Mr Purcell's unblemished record, the impact this Inquiry has already had on him professionally and personally and his attempts to mitigate the risks in the commercial lending practices in INBS are all mitigating factors taken into account by the Inquiry Members. These mitigating factors reduce the penalty to €240,000.

145. As outlined above, the Inquiry Members are obliged to act proportionally and reasonably. In this regard the settlement reached with Dr Walsh must be considered and a monetary penalty so far in excess of that agreed with Dr Walsh would not be proportionate or fair. Dr Walsh's settlement admissions were in relation to his membership of the Board and were admissions restricted to SPCs 5, 6 and 7. Mr Purcell's participation was, additionally in respect of SPCs 1, 2 and 3. In those circumstances, the Inquiry believes that a monetary penalty of €130,000 should be imposed on Mr Purcell as being the most lenient sanction that meets the seriousness of the case.
146. As set out at paragraph 142 above, Mr Purcell submitted that he did not anticipate that any sanction imposed by the Inquiry would make him bankrupt. On the basis indicated at paragraph 143 above, the Inquiry understands that to mean that even a sanction of €500,000 plus a contribution to costs would not make Mr Purcell bankrupt. In those circumstances, and given that the amount of the sanction (€130,000) is less than that, the necessity for a statement of means does not arise.

Costs

147. The Inquiry Members' jurisdiction to make a direction in respect of some or all of the costs of the Inquiry is set out in Section 33AQ(5) of the 1942 Act. As set out at paragraph 11 above, section 33AQ(5) of the 1942 Act provides that one of the sanctions available to an Inquiry is:

“a direction to pay to the [Central Bank] all or a specified part of the costs incurred by [the Central Bank] in holding the inquiry and in investigating the matter to which the inquiry relates”.⁷⁵

⁷⁵ Section 33AQ(5) of the Central Bank Act 1942.

Enforcement's submissions

148. In oral submissions, Counsel for Enforcement accepted that the Central Bank had no entitlement to an award of costs against Mr Purcell merely because adverse findings had been made against him but that the making of adverse findings triggered the possibility of costs being awarded. He confirmed that Enforcement was not seeking to recover Enforcement's costs in investigating the matter or in participating in the Inquiry. He further said that in circumstances where Mr Purcell was not the only person the subject of the investigation and Inquiry he should not be liable for all of the costs and rather should make a contribution of a fixed amount towards the costs of the Inquiry.
149. In its written submissions, Enforcement identified the following factors that it said were supportive of an award of costs being made against Mr Purcell:
- (a) He maintained a full defence throughout the investigation and Inquiry process. While this was his entitlement it had the inevitable consequence of giving rise to very significant costs.
 - (b) The extent and scale of the evidence that had to be considered was a direct function of the extent and scale of the contraventions committed by Mr Purcell.
 - (c) As a general rule the costs of regulatory action should be borne by those whose conduct gives rise to it. Further, it was appropriate that those the subject of regulatory action would direct their minds to the question of how to most efficiently conduct their defence of the proceedings. In this regard, it was submitted that Mr Purcell had taken no steps to make admissions or otherwise cut down the scope of the Inquiry.
 - (d) The imposition of a costs sanction would send a signal to participants in the process to address their minds to the cost and duration of inquiries.
150. Enforcement clarified that the other Persons Concerned who had settled with the Central Bank were not required to make a contribution in respect of costs.

Mr Purcell's submissions

151. Mr Purcell strongly resisted Enforcement's submission that there should be an award of costs against him. In written and oral submissions, the following points were made in support of this position:

- (a) As regards the amount of any costs penalty, it was said that Enforcement had not said what level of contribution towards costs it was seeking and had not identified the principles that it says would apply to an award of costs. In addition, it had not said what level of costs the contribution should be reckoned out of. In the absence of such a total cost figure it was difficult for Mr Purcell to answer the request for costs.
- (b) Counsel for Mr Purcell considered the jurisdiction in the 1942 Act to award costs and submitted that no principles as to how such a direction would be made are identified within the statute.
- (c) It was submitted that it was important to note that there is no provision for Mr Purcell in any circumstances being entitled to an award of costs and therefore the principle that the costs should follow the event, as would be the case in litigation, does not apply. Further, given that there is no facility for Mr Purcell to be awarded his costs, the most reasonable interpretation of the statute is that the facility to award costs is an exceptional facility and would not follow in the ordinary case.
- (d) It was submitted that costs should only be awarded where there had been a finding of non-cooperation or obstructiveness and no such allegation had been made against Mr Purcell. It was further submitted that Mr Purcell did his very best during the process to act in a courteous and brief and helpful way to the Inquiry and he did not cause unnecessary costs to be incurred.
- (e) It was submitted that a substantial part of the hearing time was in respect of the allegations that were found not to be proven against Mr Purcell. Further, a large portion of the hearing time was dedicated to allegations which also involved other people. In Mr Purcell's written submissions it was stated that the majority of the Inquiry's time was spent considering the actions of other persons concerned and/or INBS.
- (f) As regards the criticism by Enforcement that Mr Purcell had not made admissions, it was submitted that the majority of allegations made against him did not result in findings and so he was vindicated in this approach. It was further submitted that it was a basic principle of fair procedures that a person is entitled to robustly meet allegations which are potentially injurious to their reputations and livelihoods.

152. Counsel for Mr Purcell raised a technical issue and submitted that it was not clear from the legislation when it referred to “*costs of the inquiry*” that this included legal costs rather as distinct from other costs of the Inquiry. He submitted that in other contexts where legal costs can be awarded, such as under the Legal Services Regulation Act and the Rules of the Superior Courts, specific reference is made to the recovery of legal costs and he queried whether, as this is a penal statute, costs can refer to legal costs when not explicitly stated.

LPT’s submissions

153. In their written submissions, the LPT submitted that under section 33AQ of the 1942 Act, it was clearly open to the Inquiry Members to require Mr Purcell to bear all or a specified part of the costs of the Inquiry and the investigation that preceded it.
154. As regards Enforcement’s submission, subsequently clarified, that the Central Bank was entitled to costs against Mr Purcell, the LPT pointed out that the Inquiry costs regime was not equivalent to the costs regime in civil proceedings. They also noted that had Mr Purcell been successful in defending all of the allegations, the Inquiry had no jurisdiction to make an award of costs against the Central Bank.
155. The LPT set out in written and oral submissions the following factors that the Inquiry should take into account in deciding whether to make a direction that Mr Purcell should pay costs:
- (a) The Inquiry concerned persons other than Mr Purcell. It was set up to investigate the conduct of INBS and five persons concerned in its management. This was particularly the case in the early stages of the Inquiry. In those circumstances it would not be appropriate to impose a costs burden on Mr Purcell in respect of those parts of the investigation and the Inquiry that would have been necessary regardless of the allegations against him.
 - (b) Mr Purcell was successful in defending a significant proportion of the allegations made against him. Had he been legally represented he would have no mechanism to recover costs in respect of these allegations. It would be inappropriate to impose a costs burden on him in respect of those specific allegations.
 - (c) It would be appropriate to require a Person Concerned to pay all or a part of the costs if their approach had caused the investigation or the Inquiry to take longer or be more costly than necessary.

- (d) While the Inquiry was up and running before settlements were concluded with Dr Walsh, Mr McMenemy and Mr McCollum, none of the statements issued by the Central Bank make any reference to those persons contributing to any of the costs of the Inquiry. As noted at paragraph 150 above, it was subsequently clarified by Enforcement that the terms of settlement did not require those persons to contribute towards costs.
- (e) Mr. Purcell cooperated with the Inquiry. While he defended himself in full, he was efficient in the manner that he dealt with the Inquiry, and he identified discrete issues that he wished to argue. There is no suggestion in the Findings Report that there was any undue delay as a result of Mr Purcell's engagement or how he conducted himself throughout the Inquiry hearings.

Inquiry Members' decision on costs

- 156. The Inquiry Members accept that they have jurisdiction to direct Mr Purcell to pay all or a specified part of the costs of the investigation carried out by Enforcement and/or the Inquiry.
- 157. It is noted that Enforcement is not seeking the recovery of its costs of investigation or the costs of its participation in the Inquiry.
- 158. The Inquiry Members have decided not to make an order directing Mr Purcell to pay any part of the costs of the investigation or Inquiry. The reasons for this are as follows:
 - (a) The regulatory proceedings provided for under Part IIIC of the 1942 Act are not akin to civil litigation in so far as costs are concerned. While providing for directions to pay costs of investigations and inquiries, it is silent in relation to the applicable principles in determining whether and to what extent such directions should be made. Absent guiding principles, the Inquiry Members have considered the particular circumstances of this Inquiry and the submissions made by Enforcement, Mr Purcell and the LPT.
 - (b) The legislation does not suggest that costs should follow the event as is the case in civil litigation. There is no provision for a person concerned to recover costs in the event that they are entirely or partially successful in defending allegations.
 - (c) Mr Purcell was entitled to defend himself and/or to require the Central Bank to prove what were very serious allegations against him and which would have

been expected to attract significant penalties if proven. He should not be penalised in costs for failing to make admissions. In the event, he was vindicated in this approach as he successfully defended a significant number of allegations against him.

- (d) In defending himself, Mr Purcell did not unnecessarily prolong the duration of the Inquiry or increase costs, for example, by engaging in frivolous or 'bound to fail' arguments, by failing to engage with the Inquiry, by obstructing the work of the Inquiry or significant non-cooperation with the Inquiry. Had this occurred the Inquiry Members would have been minded to make a direction as to costs as a mark of disapproval of such conduct and to send a signal to other persons who might be inclined to engage in such conduct. In respect of those matters where adverse findings were made against him, Mr Purcell defended those allegations in a reasonable manner. At all times he cooperated with the inquiry while exercising his right to defend himself.
- (e) Other Persons Concerned who reached settlements with the Central Bank were not required to make a contribution towards the cost of the investigation or subsequent Inquiry.
- (f) Having regard to the foregoing it is unnecessary to address the technical issue raised on behalf of Mr Purcell regarding the alleged lack of clarity in the 1942 Act as to what costs are covered by the 1942 Act and whether specific reference to legal costs is required for legal costs to be the subject of a costs direction.

Sanction

159. Having regard to the analysis and determinations made by the Inquiry Members above, the Inquiry Members deem it appropriate to impose the following sanction on Mr Purcell in respect of the contraventions he was found to have participated in:
- (a) A reprimand.
 - (b) A period of disqualification of four years.
 - (c) A monetary penalty of €130,000.
 - (d) No order as to costs.

APPENDIX 1

1. The Inquiry has set out below the findings of participation on the part of Mr Purcell in the SPCs and SPC Allegations.

SPC 1

SPC 1(a)

2. It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loan applications were processed in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 1(b)

3. It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loan applications were processed in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 1(c)

4. It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that commercial loan applications were processed in accordance with INBSs internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.
5. There were four SPC Allegations advanced against INBS in respect of SPC 1. Mr Purcell was found to have participated in one of these – SPC 1.3.
6. SPC 1.3 alleged a failure to acquire the following required information from borrowers

to facilitate an assessment of borrower's repayment capacity:

- (a) Three years' audited accounts (Company);
- (b) Business plan/proposals (Company);
- (c) Forecast cash flow analysis (Company);
- (d) Statement of affairs (net worth) (Individual);
- (e) Income details (Individual);
- (f) Bank statements (six months' current accounts) (Individual);
- (g) Loan statements (personal and business) (Individual); and
- (h) Business plan/proposal (Individual).

7. The Inquiry made the following finding in relation to Mr Purcell's participation in SPC 1.3 and SPC 1(a), 1(b) and 1(c):

"The Inquiry accepts that Mr Purcell was not directly involved with day to day commercial lending. His role, as set out by him in his submissions and other evidence to the Inquiry did not involve a role in processing commercial loans.

However, Mr Purcell was involved as a member of the Board. Mr Purcell, together with the other Board members, was aware from contemporaneous documents and from Financial Regulator Correspondence that commercial lenders were, in some cases, not obtaining the required information from borrowers in order to properly assess their capacity to repay the loan being provided.

Although a Commercial Advances Checklist had been introduced from June 2006, there was evidence from Contemporaneous Reports that this checklist was not being completed in all cases.

The Inquiry finds that Mr Purcell, as a Board member, did participate in the breaches set out in the SPC 1.3 Allegation. Accordingly, the Inquiry finds that Mr Purcell did participate in the commission by INBS of SPCs 1(a), 1(b) and 1(c)".⁷⁶

⁷⁶ Findings Report dated 30 April 2024, paragraphs 5.193 to 5.196.

SPC 2

SPC 2(a)

8. It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 2(b)

9. It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that INBS failed to ensure that CMOs complied with internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 2(c)

10. It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS's internal policies and that INBS failed to ensure that CMOs complied with internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.
11. There were 20 SPC Allegations advanced against INBS in respect of SPC 2. Mr Purcell was found to have participated in seven of these. These are SPC 2.1, SPC 2.2, SPC 2.3, SPC 2.5, SPC 2.6, SPC 2.8 and SPC 2.9.
12. The Inquiry Members dealt with SPC 2.1, SPC 2.2, SPC 2.3, SPC 2.5 and SPC 2.6

together as they were all related to the advancing of money without appropriate approval.

13. The Inquiry made the following finding in relation to Mr Purcell's participation in SPC 2.1, SPC 2.2, SPC 2.3, SPC 2.5 and SPC 2.6 and SPC 2(a), 2(b) and 2(c):

“The findings of both the Loan File Analysis and the Contemporaneous Reports raise a number of issues, as follows:

- (a) Large sums of money were paid out by INBS without Credit Committee or Board approval. The percentage of loans in the Loan File Analysis where this occurred is very high.*
- (b) It is not clear what value there was in either the Credit Committee or the Board approving a loan after the money had been paid out or the CMO had been signed. SPCs 2.2, 2.5 and 2.6 deal with these breaches and the Loan File Analysis alone shows a serious and systemic problem in this regard. As summarised at paragraph 6.337 et seq. above, in respect of SPCs 2.2, 2.5 and 2.6 the Loan File Analysis found that: 12 loans were advanced with no loan approval; 13 loans were advanced prior to Credit Committee approval and, very significantly, 17 loans were found to have been paid out prior to Board approval.*
- (c) Almost all of these loans emanated from the Belfast Branch of INBS.*
- (d) A total of 12 Contemporaneous Reports between 2004 and early 2009 flagged the issue of loans being advanced without appropriate approval.*

In spite of repeated recommendations from internal and external auditors, findings of unauthorised payments continued to be made in Contemporaneous Reports throughout the Review Period. Dr Walsh, the chairman of INBS, described the findings as ‘clearly very disturbing’. He maintained that instructions from the Board and the internal Audit Committee were to ensure that such payments could not take place.

As outlined in the preceding paragraphs, the Audit Committee and the Board considered these Contemporaneous Reports and in many cases, management undertook to implement recommendations. Mr Purcell attended these Audit Committee and Board meetings. He was aware that the issue of money being

paid out by INBS without appropriate authorisation was recurring. His evidence to the Inquiry was: 'I was aware and I was informed as – when I attended the Audit Committee meetings that action was being taken and things were being implemented'.

Nevertheless, persistent findings of money being paid out without approval should have raised alarm. Notwithstanding assurances given by the internal auditor in quarterly reports that the recommendation that no advances would be made without authorisation, was now implemented (see paragraph 6.63 above), the continued occurrence of these findings required direct action from the Board.

Mr Purcell, who was secretary to the Audit Committee, and the other non-executive Board members, all of whom were members of the Audit Committee, would have been aware or ought to have been aware that action was not being taken to ensure that unauthorised payments ceased. On the contrary, the audits and reports from 2006 onwards show an increasing issue with these payments. The Board had a responsibility to act decisively and had the authority to impose remedial action on management. There is no evidence that the Board responded to the extremely serious findings regarding money being paid out without authorisation, in any meaningful way. In fact, the minutes of Board meetings do not record any discussion on this matter. As a member of the Board, Mr Purcell shares in responsibility for this omission.

As already stated, the breaches identified in both the Loan File Analysis and in the Contemporaneous Reports related almost entirely to commercial lending emanating from the Belfast Branch. Even where commercial loans were put before the Credit Committee, it is clear from the evidence heard by the Inquiry that the members of the Credit Committee did not question or scrutinise these loans to a meaningful or acceptable extent. The evidence, as presented above, is compelling and there does appear to have been an understanding with respect to Belfast lending, that the Credit Committee was not expected to scrutinise or question the decision that had already been made by Mr Fingleton and Mr McCollum to advance the facility.

As outlined at paragraph 6.293 above, Mr Purcell stated that the responsibility for ensuring that appropriate actions were taken to address issues in respect

of approval of loans, variations to loans and CMOs rested with the commercial lending managers and the Managing Director.

Even allowing for the fact that Mr Purcell was not himself directly involved in commercial lending, and taking into account his submissions in relation to this SPC, he was, as a member of the Board responsible for ensuring that INBS was run in compliance with policy. It is hard to overstate the credit risk implications of lending large amounts of money with no Board or Credit Committee oversight. Mr Reilly of KPMG spelled out the risks in his testimony, outlined above. The evidence shows that money was being paid out effectively on the instructions of a single individual.

In addition to the clear warnings in relation to this issue coming from internal and external reviews, the Board was also engaged in correspondence with the Financial Regulator between 2004 and 2007. As has been quoted at various points throughout this Findings Report, but bears repetition here, the Financial Regulator spelt out its concerns in a letter dated 9 December 2004. This letter identified the Financial Regulator's overall concern as being the significant shift in the risk profile of INBS's overall loan portfolio in a relatively short period of time and the failure of control mitigants to keep pace. Chapter 12 of this Findings Report outlines in full the Financial Regulator's correspondence with INBS. In considering the question of Mr Purcell's participation in SPC 2.1, SPC 2.2 and SPC 2.3, the Inquiry has had regard to this correspondence and to the evidence from the Contemporaneous Reports.

The Inquiry has noted the evidence of the former Financial Regulator, Dr O'Reilly (as outlined above at paragraph 6.280 et seq.) who described the difficulty the Financial Regulator had experienced in getting INBS to respond to KPMG's and the Financial Regulator's recommendations and requests.

Mr Purcell's response to this allegation was to accept that lending money without Credit Committee and/or Board approval and without urgent credit decision approval procedures being applied was against policy. However, he said that responsibility for this area rested with Mr Fingleton and that he relied on Mr Fingleton's assurances that action was being taken and recommendations were being implemented.

Mr Purcell also accepted that he was aware of the contents of both the Financial Regulatory Correspondence and Contemporaneous Reports by

virtue of his role as secretary to the Audit Committee and as a Board member. In this regard, Dr Walsh's evidence in relation to the position of Mr Purcell as an attendee at Audit Committee meetings is significant. As set out at paragraph 6.272 above, Dr Walsh said that having Mr Purcell at Audit Committee meetings was valuable in the context of his role as finance director and also valuable in the context of ensuring maximum support for the internal auditor. Mr Purcell's own account of his Audit Committee attendance was that he was no more than a secretary with no responsibility for outcomes from the meetings.

The Inquiry believes that Mr Purcell's attendance at Audit Committee meetings informed him of issues raised in Contemporaneous Reports and Financial Regulatory Correspondence and gave him full insight into Management Responses. He had a responsibility to ensure that the Board took appropriate action and, as a Board member, he shared in the Board's responsibility for failing to so act.

The Inquiry accepts that the primary responsibility for dealing with these issues rested with the senior executives and the executive director with responsibility for lending, and it does take into account Mr Purcell's role in INBS.

Nevertheless, the persistent identification of a serious credit risk issue over the entire Review Period and beyond, brings the issue within his ambit of responsibility as a Board member.

For the reasons set out above, the Inquiry finds that Mr Purcell participated in the commission of SPCs 2(a), 2(b) and 2(c) by INBS in respect of SPC 2.1, SPC 2.2, SPC 2.3, SPC 2.5 and SPC 2.6.⁷⁷

14. The Inquiry dealt with SPC 2.8 and 2.9 together as they both related to unauthorised variations to commercial loans.
15. SPC 2.8 alleged the loan amount advanced per the CMO was in excess of the amount outlined in the CLA and approved by the Board and additional funds were not appropriately approved.
16. SPC 2.9 alleged the term of the loan extended was without appropriate approval.
17. The Inquiry made the following finding in relation to Mr Purcell's participation in SPC

⁷⁷ Findings Report dated 30 April 2024, paragraphs 6.377 to 6.392.

2.8 and SPC 2.9 and in SPC 2(a), 2(b) and 2(c):

“The Contemporaneous Reports that deal with SPC 2.9 are the 2003, 2004 and 2005 KPMG Management Letters, the 2007 Internal Audit Report, the May 2008 Deloitte Review, the 2008 Internal Audit Report, the September 2008 Deloitte Review and the 2009 Deloitte Review. The reports that raised the issue of moratoria loans are the 2003, 2004 and 2005 KPMG Management Letters, the 2007 Internal Audit Report and the 2009 Deloitte Review.

KPMG recommended in its 2003 Management Letter that the Credit Committee or Board approve all amendments to facilities in excess of individual credit authorities. This was changed in the 2004 and 2005 KPMG Management Letters to a recommendation that the Credit Committee or Board note all amendments. In response, INBS laid a report before the Board listing all moratoria amendments and the reasons for same, with effect from November 2004 and throughout the Review Period. KPMG also recommended in all three Management Letters that all amendments to original facility agreements should result in a new facility agreement that should be signed by all parties. INBS in its response resisted the proposal that the new facility be signed by all parties, until the 2005 KPMG Management Letter when they undertook to comply with this recommendation by September 2006.

Mr Purcell confirmed to the Financial Regulator in July 2005 that two members of the Credit Committee could approve moratoria amendments. In October 2006, by Board directive, INBS introduced the requirement that all such amendments be approved by the Credit Committee.

During this period the Financial Regulator was in regular correspondence with INBS following up on progress in implementing the KPMG recommendations and making it clear that its preference was for INBS to accept the recommendations in full.

The 2003 KPMG Management Letter spelt out the credit risk implications of variations and extensions being authorised by commercial lenders with no Credit Committee or Board approval. It stated: “Failure of lenders to seek approval... could result in inappropriate or unauthorised amendments that may increase the risk of future loss to the Society”.

Mr Purcell would have been aware or ought to have been aware of the extent to which these issues in relation to the approval of these amendments were raised, both as a Board member and as an attendee at the Audit Committee meetings at which these Contemporaneous Reports were discussed. Further, as the contact person for Financial Regulatory Correspondence within INBS, he would have had an enhanced awareness of the concerns of the Financial Regulator, and therefore would have been very aware of the Regulator's concerns.

Whilst undoubtedly the primary responsibility for ensuring that commercial lending was conducted in an appropriate manner rested with the executive director who had responsibility for that area within INBS, nevertheless persistent findings should have raised concerns with all Board members.

The Inquiry finds that in his repeated assurances to the Financial Regulator that remedial action had been taken, when in fact it appears that this was not the case, Mr Purcell as a Board member participated in SPC 2.8 and SPC 2.9.

...

The Inquiry finds that Mr Purcell participated in the commission by INBS of SPC 2(a), 2(b) and 2(c) in respect of SPC 2.8 and SPC 2.9, for the reasons set out above...⁷⁸

SPC 3

SPC 3(a)

18. It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that LTV limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992

⁷⁸ Findings Report dated 30 April 2024, paragraphs 6.422 to 6.431.

Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 3(b)

19. It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that LTV limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 3(c)

20. It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that LTV limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS's internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS's internal policies and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of the SPC.
21. There were five SPC Allegations advanced against INBS in respect of SPC3. Mr Purcell was found to have participated in one of these – SPC 3.2.
22. SPC 3.2 alleged personal guarantees from owner/controller of borrower private companies and/or joint and several guarantees where there was more than one director, were not obtained.
23. The Inquiry made the following finding in relation to Mr Purcell's participation in SPC 3.2 and SPC 3(a), 3(b) and 3(c):

“The basis for suspecting that Mr Purcell participated in SPC 3.2 is set out in Consolidated Table C3.25, as quoted at paragraph 7.36 above, and arises from his attendance at the Board meetings at which 32 of the 62 loans in the Loan Sample were approved.

Mr Purcell’s roles and responsibilities are set out at Chapter 2 of this Findings Report. As a Board member, Mr Purcell had a role in the approval of commercial loans. Prior to 17 December 2007, the Board was responsible for approving loans in excess of the specific authority levels delegated by the Board to the Credit Committee, as per the applicable Credit Committee terms of reference. The loan document provided to the Board was the CLA. The CLA contained the terms of the loan, including the security to be taken, valuations, and LTVs.

The Inquiry finds that Mr Purcell, by virtue of his attendance at these Board meetings and his role as a Board member in approving these loans, participated in the authorisation of 31 loans without a personal guarantee from corporate borrowers. The Inquiry finds that this amounted to participation by Mr Purcell in SPC 3.2 and, accordingly, that the allegation of participation by Mr Purcell in the commission by INBS of SPCs 3(a), 3(b) and 3(c) is proven”.⁷⁹

SPC 5

SPC 5(a)

24. It is suspected that from the 1 August 2004 to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS’s internal policies and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 5(b)

25. It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS’s

⁷⁹ Findings Report dated 30 April 2024, paragraphs 7.115 to 7.117.

internal policies and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 5(c)

26. It is suspected that from 10 July to 30 September 2008, INBS failed to ensure that its Credit Committee performed particular functions in accordance with INBS's internal policies, and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.
27. There were four SPC Allegations in relation to this SPC and Mr Purcell was found to have participated in two of these – SPC 5.1 and SPC 5.2.
28. SPC 5.1 alleged INBS's Credit Committee did not review and consider commercial loans in large arrears and/or deemed non-performing.
29. SPC 5.2 alleged INBS's Credit Committee did not review and consider loans submitted as part of the credit review process (as no such loans were submitted to it).
30. The Inquiry made the following finding in relation to Mr Purcell's participation in SPC 5.1 and SPC 5.2 and SPC 5(a), 5(b) and 5(c):

“In considering Mr Purcell's participation in SPC 5, which involves the failure of the Credit Committee to perform four specific functions set out in the terms of reference, the Inquiry has considered Mr Purcell's opening statement and closing submissions but makes the preliminary point that insofar as Mr Purcell was found to have participated in any of the contraventions in SPC 5, this participation was based on his membership of the Board of INBS and not on his personal role within INBS.

The Inquiry agrees with Mr Purcell's evidence that with respect to the recommendation in the 2004 KPMG Management Letter, that the results of credit reviews should be referred to the Credit Committee, he was entitled to rely on assurances provided to the head of compliance by Mr McMenammin. The Inquiry does not believe that it is reasonable to expect that Mr Purcell would

look beyond the assurances given by Mr McMenamain and inspect the minutes of the Credit Committee for himself.

The correspondence from the Financial Regulator dated 20 November 2006 (as outlined at paragraph 9.56 et seq. above) puts Mr Purcell on notice that the Credit Committee was not functioning appropriately. The findings contained in the 20 November 2006 letter should have raised immediate concerns and the Board should have taken responsibility to ensure that the issues identified were appropriately dealt with. Not only did this letter identify issues with regard to the terms of reference of the Credit Committee, but it identified extremely serious shortcomings in the operation of the Credit Committee. It must have been apparent to the Board that Mr Fingleton had not been engaging with the Credit Committee and therefore could not be relied upon to provide accurate responses to the concerns raised by the Financial Regulator. In such circumstances, it was not enough to allow matters to be handled in the same way as they previously had been. Mr Purcell's responsibility arises from his membership of the Board. The first line of responsibility lies with Mr Fingleton, it is then a matter for the Audit Committee and the non-executive directors. Ultimately, however, responsibility rests with the Board to ensure that the Financial Regulator is provided with full and accurate information.

The Inquiry considered the evidence of Mr Horan in relation to the high degree of reliance and trust placed on board members in a "principles-based" regulatory framework, as being of particular significance. The Inquiry believes that the Board's responsibility in such a regulatory environment was significant and required a more "hands-on" approach than that displayed by the Board.

In respect of the four particular functions identified in SPC 5, the Inquiry makes the following findings with respect to participation by Mr Purcell:

SPC 5.1 Allegation

This issue was not raised in any contemporaneous documents before the 2008 Internal Audit Report, which is close to the end of the Review Period.

However, it was raised in Financial Regulator Correspondence on 20 November 2006 and 14 March 2007, as outlined at paragraph 9.56 et seq. above. This correspondence specifically listed the four items in the terms of reference and stated that there was no evidence "from a review of the minutes"

that the Credit Committee was performing its credit risk management role i.e. reviewing arrears and non-performing loans. The 20 November 2006 letter stated: ‘...the Terms of Reference sets out the credit risk management role of the committee e.g. reviewing relevant MIS reports, reviewing arrears and non-performing loans etc. There is no evidence from a review of the minutes of the committee that it is performing this role. ...There is no reporting line from the Credit Committee to the Board in relation to the credit risk management role of the committee’.

As outlined at paragraph 9.58 above, Mr Purcell sent the letter of 20 November 2006, together with the INBS reply of 31 January 2007, to the non-executive directors of the Board. The response stated that ‘All reports submitted to and reviewed by the credit committee will be minuted in the minutes of the committee’.

When the Financial Regulator followed up on this and asked, in its letter dated 14 March 2007, from what date the Credit Committee would minute reports submitted, the INBS response, dated 17 May 2007, was: ‘The Credit Committee reviews all reports submitted to it and will minute it from June 2007’.

Mr Purcell has given evidence that he did not check the minutes of the Credit Committee after sending the letter of 31 January 2007 or the response of 17 May 2007, but relied on information provided by Mr McMenamin.

The Inquiry finds that INBS was in breach of this policy requirement. The Inquiry also finds that because of the nature of the correspondence with the Financial Regulator on the matter, as outlined above, the Board did participate in this contravention, and as a member of the Board Mr Purcell is found to have participated in this contravention.

Accordingly, for the reasons set out above, the Inquiry finds that the allegation of participation by Mr Purcell in SPC 5.1, and in the commission by INBS of SPCs 5(a), 5(b) and 5(c), is proven.

SPC 5.2 Allegation

This issue was raised in the 2004 KPMG Management Letter, the 2005 KPMG Management Letter and 2008 Internal Audit Report. The 2004 KPMG Management Letter recommended that: ‘management should now consider the merits of formally reporting the results of credit reviews performed by the Credit

Review Officer to the credit committee on a quarterly basis'. INBS's Management Response was that Credit Review Reports would be submitted to the Credit Committee on a quarterly basis.

In an update to the Financial Regulator, dated 22 December 2005, INBS stated that the first report was submitted to the Credit Committee in October 2005 and that the credit review officer would monitor the results of action steps and ensure that the recommendations are implemented. The Financial Regulator had asked whether the credit review officer had begun the process of monitoring and implementing any recommendations made by the Credit Committee following the Credit Review Report. The response from INBS was: 'The credit review officer has commenced following up on queries raised by the Credit committee'.

This was, of course, an incorrect statement. As outlined in the body of this chapter, 89 Credit Review Reports were forwarded to Mr McMEnamin by the credit review officer, Mr Casey, by email dated 4 October 2005. However, as testified to by Mr McMEnamin, he never submitted these reviews to the Credit Committee. He sent an email to Ms van der Berg, dated 21 December 2005, stating that these 89 Credit Review Reports had been discussed by the Credit Committee. Evidence from former Credit Committee members and from the minutes of the Credit Committee meetings show that this did not occur.

When this item was raised in the 2005 KPMG Management Letter, its status was listed as "Closed". The Inquiry does not find that Mr Purcell had any input into this response but would have relied, and would have been entitled to rely, on information from the department head, in this case Mr McMEnamin.

The matter was raised in Financial Regulator Correspondence dated 20 November 2006. As outlined above, that letter stated: 'There is no evidence from a review of the minutes of the committee that it was reviewing reports produced by the Credit Review function'. As further outlined above, the Management Response was that 'All reports submitted to and reviewed by the credit committee will be minuted in the minutes of the committee'. The issue of credit reviews was not specifically raised in the follow-up letter from the Financial Regulator, dated 14 March 2007, but that letter did refer to the 'review role' of the Credit Committee. INBS's response was to state that all reports would be minuted from June 2007.

Following an inspection by the Financial Regulator conducted between 4 and 14 December 2007, the Financial Regulator issued a post-inspection letter dated 8 February 2008. This letter identified that the results of credit reviews were not being provided to the Credit Committee. The INBS response dated 21 April 2008 stated: 'Credit risk review reports will be submitted to the Credit Committee when review are carried out'. The timeframe for completing this was given as May 2008, however there is no evidence from the minutes or packs of the Credit Committee meetings that this was ever done.

Credit Review Reports were never reviewed by the Credit Committee at any time during the Review Period. Whilst the Board was entitled to rely on Mr McMenamin's assertion that this was being done with respect to the 2005 KPMG Management Letter, the fact that the Financial Regulator could, by simply inspecting Credit Committee meeting minutes, establish that it was not being done was significant. Contrary to what was said by the head of commercial lending, the Board failed to ensure that the results of credit reviews were being reviewed by the Credit Committee, whilst assuring the Financial Regulator that this was being done.

The Inquiry has found that INBS was in breach of this policy requirement. The response of the Board to Financial Regulator Correspondence on this matter amounts to participation in this breach by Mr Purcell as a member of the Board.

Accordingly, for the reasons set out above, the Inquiry finds that the allegation of participation by Mr Purcell in SPC 5.2, and in the commission by INBS of SPCs 5(a), 5(b) and 5(c), is proven".⁸⁰

SPC 6

SPC 6(a)

31. It is suspected that from 21 December 2005 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to INBS's Board in accordance with INBS's internal policies, and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that

⁸⁰ Findings Report dated 30 April 2024, paragraphs 9.276 to 9.296.

certain Persons Concerned in the management of INBS during the Review Period participated in the commissions of this SPC.

SPC 6(b)

32. It is suspected that from 21 December 2005 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to INBS's Board in accordance with INBS's internal policies, and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commissions of this SPC.

SPC 6(c)

33. It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that certain reports relevant to commercial lending and credit risk management were provided to INBS's Board in accordance with INBS's internal policies, and thereby failed to comply with a condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commissions of this SPC.
34. There were four SPC Allegations advanced against INBS in respect of SPC 6. Mr Purcell was found to have participated in one of these allegations - SPC 6.3.
35. SPC 6.3 alleged that the Board did not receive a report on the results of annual credit risk stress tests, which were to have been completed annually.
36. The Inquiry made the following finding in relation to Mr Purcell's participation in SPC 6.3 and SPC 6(a), 6(b) and 6(c):

“Mr Purcell, on behalf of the Board, corresponded with the Financial Regulator before and after the implementation of the 27 June 2007 Credit Risk Management Policy. Paragraph 10.133 above outlines the litany of broken commitments contained in this correspondence. Ms Madden's evidence (at paragraph 10.135 et seq.) is striking in this regard as is the evidence of Mr Reilly of KPMG (at paragraph 10.151 et seq.).

Mr Purcell has submitted that the policy requirement to provide reports on stress tests did not arise until one year after the enactment of the June 2007 policy, which accordingly would have been June 2008. The first stress test report was in fact produced in November 2008. Whilst that delay might not appear significant in the overall context of what was happening in financial markets at the time, the Inquiry is of the view that given the importance of stress testing in the commercial lending conducted by INBS and given the importance attached to this matter by the Financial Regulator, KPMG and Deloitte, any delay in the provision of these reports on the part of INBS was unacceptable and a breach of policy.

The Inquiry believes that the Board of INBS had a responsibility to ensure that stress tests were completed and presented to the Board as part of its overall credit risk management responsibility.

The Inquiry finds that as a member of the Board, Mr Purcell did participate in the failure to ensure that the Board received a report on the results of annual credit risk stress tests that were to have been completed annually.

Accordingly, for the reasons set out above, the Inquiry finds that the allegation of participation by Mr Purcell in SPC 6.3, and in the commission by INBS of SPCs 6(a), 6(b) and 6(c), is proven.”⁸¹

SPC 7

SPC 7(a)

37. It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure that the establishment of Profit Share Agreements was the subject of any formal credit risk policy and thereby failed to manage its business in accordance with sound administrative and accounting principles and/or failed to put in place and maintain internal control and reporting agreements and procedures to ensure that the business was so managed, in contravention of Regulation 16(1) of the 1992 Regulations. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 7(b)

38. It is suspected that from 1 August 2004 to 30 September 2008, INBS failed to ensure

⁸¹ Findings Report dated 30 April 2024, paragraphs 10.205 to 10.209.

that the establishment of Profit Share Agreements was the subject of any formal credit risk policy and thereby failed to establish and maintain systems of control of its business and records, and systems of inspection and report thereon, as required by Section 76(1) of the 1989 Act. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.

SPC 7(c)

39. It is suspected that from 10 July 2006 to 30 September 2008, INBS failed to ensure that the establishment of Profit Share Agreements was the subject of any formal credit risk policy, and thereby failed to comply with the condition of its authorisation imposed in accordance with Part 1 of the 2005 Regulatory Document. It is also suspected that certain Persons Concerned in the management of INBS during the Review Period participated in the commission of this SPC.
40. SPC 7 alleged INBS failed to ensure that the establishment of profit share agreements was the subject of any formal credit risk policy. There were no separate underlying SPC Allegations in respect of SPC 7.
41. The Inquiry made the following finding in relation to Mr Purcell's participation in SPC 7:

"The Inquiry has considered Mr Purcell's submissions in which he denies participation in SPC 7.

As already outlined above, the Inquiry has found that there was no policy created by the 2004 KPMG Commercial Credit Review.

The Inquiry has already outlined Mr Purcell's roles and responsibilities in INBS in Chapter 2 of this Findings Report. It is Mr Purcell's submission that as finance director, he was not directly responsible for ensuring that a credit risk policy was put in place to cover profit share lending. He said that such a responsibility rested with the credit risk manager and with Mr Fingleton, to whom the credit risk manager reported.

The Inquiry accepts that Mr Purcell was not the executive with primary responsibility for commercial lending. The Inquiry also accepts that responsibility for aspects of commercial lending was properly delegated to senior management in INBS. The Inquiry further accepts that Mr Purcell was

entitled to rely on senior management and his fellow executive director to carry out recommendations from the Financial Regulator and the Audit Committee. However, in circumstances where INBS is shown to have been failing in its obligations, Mr Purcell together with the other members of the Board had a responsibility to act by virtue of their role in risk management.

The concerns expressed by the Financial Regulator from 2004 onwards imposed an obligation on the Board to ensure that commercial lending in INBS was conducted in a prudent and responsible way. In particular, the Board had a responsibility to ensure that this kind of lending was appropriately monitored and controlled. Mr Purcell shared that responsibility.

The Board members, including Mr Purcell, would have been or ought to have been aware of the risks associated with profit share lending and they were aware of Contemporaneous Reports recommending that a profit share policy be put in place.

Mr Purcell's letter dated 26 September 2008 to the Financial Regulator shows a marked misunderstanding as to the actual risks involved in profit share lending. The assertion that INBS bore none of the risks associated with these loans is patently untrue. In circumstances where INBS had no recourse to the individual directors of the borrowing company and where the loans were solely secured on the asset the subject matter of the loan, any deterioration in the value of the asset impacted on the security of the loan. This is particularly the case where loans were typically granted for 100% of the value of the property with interest and capital moratoria.

The Board is responsible for risk management and approving policies in connection therewith. In failing to approve a Profit Share Loan policy the Board failed in its obligations in this regard. As a member of that Board, Mr Purcell fully shares in that responsibility. Mr Purcell's responsibility does not arise because of his executive functions or his particular responsibilities in the organisational structure of INBS, but it arises by virtue of his Board membership.

For the reasons set out above, the Inquiry finds that Mr Purcell did participate in SPC 7 in failing to ensure that the establishment of Profit Share Agreements was the subject of a formal credit risk policy.

*Accordingly, the Inquiry finds that the allegation of participation by Mr Purcell in SPC 7, and in the commission by INBS of SPCs 7(a), 7(b) and 7(c), is proven”.*⁸²

⁸² Findings Report dated 30 April 2024, paragraphs 11.344 to 11.353.