

Private and Confidential

Ms Margaret Falsey
Secretariat
Dáil Committee of Public Accounts
Leinster House
Dublin 2

27 January 2015

Dear Ms Falsey,

Your correspondence of 16 January last on behalf of the Dáil Committee of Public Accounts refers.

The information sought by the Committee is set out below.

1. Note on NAMA cases that go to mediation

The first point to note is that NAMA utilises litigation as only one form of dispute resolution and also uses other dispute resolution options. The fact that NAMA has been successful in 160 of the 162 completed legal cases in which it has been involved to date clearly supports the contention that NAMA enters into legal action only in cases where it is justified in doing so.

Mediation is an alternative dispute resolution mechanism, either as an alternative to litigation or used within the litigation process. Where NAMA considers that there is a reasonable prospect of mediation being successful, it will use the mechanism. However, as mediation requires the agreement and full co-operation of all parties to a dispute, a decision whether or not to enter into mediation cannot be made unilaterally by NAMA.

To date, mediation has been completed or is being progressed in respect of 13 debtor connections with a combined PAR debt of €4.4bn. Mediation has been successful in the case of seven of these debtor connections with an aggregate PAR debt of €3bn, unsuccessful in the case of three connections with an aggregate PAR debt of just over €1.1bn, and is ongoing in respect of a further three connections with an aggregate PAR debt of €300m.

It was suggested by the Chairman of the Committee in his letter of 12 January 2015 to the Chairman of NAMA, that NAMA's usage of mediation is low. NAMA has since made enquiries of the Courts Service and we are informed that there is no statistical information available about the rate of usage of mediation within cases being litigated. We know of no other source of statistical information about the extent to which mediation is used as an alternative to litigating.

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2. Note on the number of court cases involving NAMA where the Courts ruled in favour of the other party

NAMA has been successful in 160 of the 162 completed court cases in which it has been involved to date. NAMA was the subject of both partial favourable and partial adverse findings in the remaining two cases.

The 162 cases comprise 22 cases in which NAMA was defending an action against it by another party and 140 cases in which NAMA had initiated the court action. NAMA was fully successful in 21 of the 22 cases taken against it and in 139 of the 140 cases initiated by it.

3. Note on the percentage of small debtors that are with receivers

As the Committee is aware, following the acquisition of loans in 2010 and 2011 NAMA directly managed the engagement with the 189 largest debtor connections [€61bn in PAR debt] and delegated the day-to-day relationship management, within specific delegated authority limits, of a further 583 debtor connections [€13bn in PAR debt] to the Participating Institutions (PIs).

NAMA has, to date, taken either full or partial enforcement action against 234 debtor connections (175 full connection enforcements and 59 partial connection enforcements) or just over 40% of the 583 smaller debtor connections managed on its behalf by the PIs.

NAMA is working on a consensual basis with debtors whose loans, in value terms, constitute 70% of the entire NAMA portfolio. An enforcement strategy is pursued by NAMA in circumstances where the debtor's business plan is not considered acceptable or where the debtor is not co-operating or where some other event has occurred that could potentially threaten NAMA's position as a creditor.

Yours sincerely,

Martin Whelan
National Asset Management Agency