

DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Dé hAoine, 20 Nollaig 2013

Friday, 20 December 2013

The Committee met at 11 a.m.

MEMBERS PRESENT:

Deputy Áine Collins,	Deputy Mary Lou McDonald,
Deputy Paul J. Connaughton,	Deputy Eoghan Murphy,
Deputy John Deasy,	Deputy Kieran O'Donnell,
Deputy Simon Harris,	Deputy Shane Ross.

DEPUTY JOHN MCGUINNESS IN THE CHAIR.

Mr. Seamus McCarthy (*An tArd Reachtaire Cuntas agus Ciste*) called and examined.

Business of Committee

Chairman: This is a special meeting to deal with NAMA and the Department of Finance. Deputy Deasy will be the lead speaker, followed by Deputy O'Donnell, and members can contribute and ask questions afterwards.

Before we call the witnesses, I advise the committee that I made contact with St. Vincent's Hospital, which has agreed to send representatives before the committee. I suggest that we invite witnesses from St. Vincent's before our first meeting of the new year on Thursday, 16 January, if the date suits. We will start the meeting at 10 a.m., take the first witness at 10.30 a.m. and immediately after that, depending on how long it takes - perhaps one hour or one and half hours - we will take witnesses from St. Vincent's. If members agree, we will investigate whether we can make an arrangement with St. Vincent's and whether the date suits. We will inform members thereafter.

Deputy Simon Harris: I thank the Chairman and the committee secretariat for the proactive way in which they pursued this issue. St. Vincent's has not made it easy to do so. The letter we received from the hospital yesterday borders on a waste of paper in that it refused to provide us with any of the information we sought which was not already in the public domain. Two key questions emerged for me during the course of the meeting yesterday. One related to the issue of a top up and whether they are in compliance with the Department of Public Expenditure and Reform's pay guidelines and the HSE's pay policy. St. Vincent's continues to be the only section 38 organisation in the country that will not divulge the level of private top up it pays its chief executive and two other managers. That is not acceptable. It had a chance to clear it up yesterday. It made us wait all day for this famous letter but when the letter came it did not refer to the issue.

The more serious issue, which was discussed at length here yesterday and which St. Vincent's completely ignored, although I am sure it was monitoring proceedings closely, is whether it is acceptable that the HSE pays a public salary to an individual to run a public hospital on a full-time basis while that official is double jobbing as head of the St. Vincent's Healthcare Group, which includes the private hospital. Who is looking out for the taxpayer and how can a person keep switching hats when he goes into board meetings representing the public interest and the commercial interest of the St. Vincent's Healthcare Group? Perhaps over the Christmas period and before the representatives of St. Vincent's come here on 16 January they can reflect on those matters in an effort to be constructive.

Chairman: I contacted St. Vincent's on foot of the lack of content in the letter and regarding the issues we were trying to address yesterday. Arising from that, and bearing in mind what Deputy Harris just said, the St. Vincent's representatives have agreed to come in. We are suggesting 16 January, the same day as Mr. Conlon. We will proceed from there. They may submit papers to the committee. I will ask the clerk to contact Mr. Jermyn and sort out the details. We invite the witnesses to attend.

2012 Annual Report of the Comptroller and Auditor General and Appropriation Accounts

Vote 7 - Office of the Minister for Finance

NAMA - Annual Report and Financial Statements 2012

Mr. Brendan McDonagh (*Chief Executive Officer, National Asset Management Agency*) and **Mr. Frank Daly** (*Chairman, National Asset Management Agency*) called and examined.

Chairman: I remind members, witnesses and those in the Visitors Gallery to please turn off their mobile telephones as they interfere with the sound quality of the transmission of the meeting. Witnesses are protected by absolute privilege in respect of the evidence they are to give the committee. If they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a Member of either House, a person outside the House or an official by name or in such a way as to make him or her identifiable. I remind Members of the provisions within Standing Order 163 that the committee shall also refrain from inquiring into the merits of a policy or policies of the Government or a Minister of the Government or the merits of the objectives of such policies.

I welcome Mr. Brendan McDonagh, CEO of NAMA, and invite him to introduce his officials.

Mr. Brendan McDonagh: I thank the Chairman. To my right is Mr. Frank Daly, chairman of NAMA, to my left is Ms Aideen O'Reilly, head of legal affairs, and the Department of Finance officials.

Mr. John Moran: I have Mr. Aidan Carrigan, who was helpful in originally putting together the NAMA legislation and can answer any particular questions on that. Also here is Mr. Declan Reid, who is responsible for the day-to-day supervision of NAMA operations in our Department.

Mr. Brendan McDonagh: We are grateful for this opportunity to address the committee and respond to a number of allegations which have been circulated to certain media outlets and Members of the Oireachtas over the past week. This committee is the appropriate forum for us to address these issues and to be subject to public scrutiny, as is appropriate. The chairman and I intend to be as open as possible this morning. However, we have been strongly advised not to say anything that could prejudice the outcome of investigations under way by the Garda Síochána. Our comments today are made in the context of that advice.

This week NAMA has been the focus of some very serious allegations, yet those making and circulating the allegations have made no attempt to address them directly to us. I will outline to the committee the facts as they are known to me but I am somewhat at a disadvantage in that some members of the Oireachtas may have more information on the allegations than we have.

Last weekend, NAMA was informed by a journalist that allegations of purported wrongdoing involving NAMA were in circulation. The journalist did not provide NAMA with any specific information which would enable us to investigate the claims further. Since then, we have read in certain media outlets of a number of apparently serious but unsubstantiated allegations about NAMA which are in circulation. We have also learned that a number of Deputies and Senators have been provided with documents which apparently have been circulated on a phased, drip-feed basis and which apparently purport to show evidence of wrongdoing in NAMA. There has been a carefully orchestrated operation targeted at a small number of media outlets and Oireachtas Members and its intended purpose is clear: to damage NAMA and thereby undermine the financial interests of the State.

As I mentioned, for all the extensive press coverage, NAMA was not given access to the detail of the allegations. For that reason, it was not possible for NAMA to comment on them. Only late on Wednesday evening, 18 December, did NAMA become aware of certain allegations. NAMA understands that these new allegations have been made by an ex-employee, Mr. Enda Farrell, who is the subject of investigation by the Garda bureau of fraud investigation, GBFI, following a referral to it by NAMA in September 2012. NAMA understands that the allegations being made by Mr. Farrell have been circulated to certain Members of the Oireachtas and to certain media outlets. NAMA also understands that among the documents circulated were documents which were provided by NAMA during the legal discovery process as part of English High Court litigation in 2012.

Regarding the allegations of which it has become aware, NAMA is satisfied that they are unfounded. If they are submitted to us formally and in sufficient detail, I assure the committee that we will deal with them individually and robustly. We have no tolerance for misdemeanour or any form of wrongdoing. It is not clear to me who owns the various documents which are currently swirling about and therefore I am not sure whose responsibility it is to submit them to NAMA. Under section 19 of the Criminal Justice Act 2011 there is a legal obligation on persons having evidence of any impropriety to bring it to the immediate attention of the Garda. Some of the allegations that have been advised to us seem to revolve around personal grievances of Mr. Farrell. Others appear to be the personal views of Mr. Farrell on various organisational matters on which he would not have a complete perspective nor could he expected to have, given the position he held. We understand that Mr. Farrell has now made a claim of unauthorised disclosure by him. He apparently alleges that he provided a so-called “full file” of personal information relating to Mr. Patrick McKillen to a particular third party. This new disclosure by Mr. Farrell directly contradicts his previous sworn statements.

NAMA, over the last 36 hours, requested its own internal auditors to review all electronic communications between Mr. Farrell and this third party. There is no evidence from the search to date that any information relating to Mr. McKillen was transmitted electronically. With regard to this so-called “full file”, NAMA has very little information relating to Mr. McKillen. Financial information would ordinarily be expected to include sworn statements of affairs, lists of unencumbered assets, borrowings with non-NAMA institutions and so on. NAMA has never possessed this information about Mr. McKillen because, as the committee will be aware, NAMA’s board took a decision in July 2011 not to acquire Mr. McKillen’s loans. Such information is usually provided as part of a debtor’s business plan submission and in this case, as we did not acquire the loans, no business plan was submitted.

Before I move on from the allegations regarding disclosure of information, a second case was referred to the Garda by NAMA in February of this year. It relates to a complaint made

to NAMA of a possible unauthorised disclosure of a single document by another ex-employee. The matter was brought to NAMA's attention shortly after the employee left NAMA and it was immediately referred to the Garda. No electronic record exists of the transmission of this document. NAMA provided further information requested by GBFI in July of this year and we understand the investigation is ongoing. There is no connection between this case and the earlier case of Mr. Farrell. We do not, as a matter of course, make public announcements on such referrals as the person who is the subject of investigation is entitled to due process and the Garda must be allowed to conduct its investigation in line with its normal procedures.

Based on allegations which have appeared in certain media outlets, a second serious allegation made is that NAMA engaged in a deliberate process of manipulating the valuation of property which was collateral for its acquired loans. NAMA utterly refutes this allegation and I wish to set out the factual position clearly. A key element in the valuation of the loans that NAMA acquired from the participating institutions in 2010 and 2011 was the current market value of the property or other collateral securing the loans. Let me make it clear that NAMA did not set the property valuations. Let me describe in detail the process. For each property, a valuation was initially provided by a professional valuer commissioned by the relevant participating institution, either AIB, Bank of Ireland, Anglo Irish Bank, the Irish Nationwide Building Society or the EBS. These valuations were conducted under the Royal Institution of Chartered Surveyors Red Book international standard for property valuations. Each valuation submitted by the financial institution to NAMA was reviewed by a second firm of independent valuers, appointed by NAMA from its own property valuation panel, which consisted of professional valuers appointed after a public procurement process. In the event that there was a material difference between the bank's submitted valuation and NAMA's valuation a further third valuation was carried out by a different independent valuer and this valuation was accepted by NAMA.

During the valuation process more than 10,500 property valuations were submitted by the institutions and reviewed by the independent NAMA property panel. In 88% of cases, by number, the NAMA panel valuers accepted the valuations initially submitted by the participating institutions. In 12% of cases the reviewing valuer from NAMA's review panel disputed the bank's valuation. In these cases NAMA referred the valuation to a third independent valuer and this third valuation was the one NAMA accepted as final, regardless of the views of its own valuer. At no stage in this process did NAMA itself determine property valuations. Mr. Farrell who is believed to be the source of the new allegations had an administrative role in the property valuation process as a conduit between the banks and the loan valuers. He had no valuation role whatsoever.

The process was subject to extensive auditing, including audits by KPMG in its role as the NAMA audit co-ordinator to the loan valuation and acquisition process. KPMG's brief included an analysis of all final valuations for consistency and robustness across the entire book. The process was also audited thoroughly by Ernst & Young and PwC on behalf of the European Commission and by the Comptroller and Auditor General. The Comptroller and Auditor General's first special report on NAMA which was published in October 2010 contained a detailed description of the loan valuation process. The then Comptroller and Auditor General, Mr. John Buckley, concluded: "In general, the audit work commissioned by my Office from valuation and legal consultants together with the audit testing conducted in the course of the audit of the 2010 financial statements gives a reasonable degree of assurance that the Agency's valuation processes were robust." I also note the comment made yesterday at a meeting of this committee by the current Comptroller and Auditor General, Mr. Seamus McCarthy, that it would be difficult to see on a broad scale how there would be any undervaluation of loans acquired by

NAMA, given the agency's approach to getting independent valuations. I fully agree with this.

I wish to make one further point. Any suggestion the NAMA valuation process resulted in a systematic undervaluation of acquired loans is thoroughly disproved by the fact that to date NAMA has had to take a cumulative impairment provision of €3.6 billion on these loans, including an impairment provision of €1.5 billion in our first year of operation. The NAMA accounts are audited and reflect these figures.

Separate from the allegations made by Mr. Farrell referred to, I wish to refer to reports in the media during the week that Mr. Patrick McKillen had made a complaint to the Garda about NAMA. As NAMA has not seen this complaint, we cannot know to what the actual complaint relates. However, we believe it may assist the committee to know the status of High Court proceedings which Mr. McKillen issued against NAMA earlier this year. On 26 April 2013 Mr. McKillen served a statement of claim on NAMA alleging that NAMA had provided confidential information and assistance for the Barclay brothers during 2011 when Mr. McKillen and the Barclays were in dispute about their respective shareholdings in the Coroin company which owns three London hotels. The committee will be aware from press coverage that Mr. McKillen has been involved in protracted litigation in the English courts with the Barclay brothers about control of these hotels. NAMA was a limited party to these proceedings. Following the conclusion of the English proceedings, Mr. McKillen began to submit written complaints in the second half of 2012 to NAMA that his confidential information might have been given to the Barclay brothers and he based these complaints on documentation which had been disclosed in the English High Court case. This documentation was available to his legal team when it cross-examined the two NAMA witnesses in the English proceedings. The High Court judge, in finding against Mr McKillen, noted as part of his judgment that he had found NAMA's witnesses to be wholly reliable. NAMA reviewed the complaints and found they had no basis in fact and referred to matters which could have been put to NAMA's witnesses in the English High Court but were not. However, I expressly undertook to Mr. McKillen that should he come to me with specific evidence of any breach of confidentiality, we would conduct a full investigation. No such evidence has been produced by Mr. McKillen since my last letter to him on the matter on 14 December 2012. We heard no more from him until he initiated Irish High Court proceedings in early 2013.

When NAMA's legal advisers reviewed the statement of claim served in April 2013, we found that it was based exclusively on the documents Mr. McKillen had obtained under the discovery process in the English High Court proceedings. This, in NAMA's legal view, constituted an unlawful use of privileged information by him. We wrote to his solicitors pointing this out. Mr. McKillen's solicitors then retracted the statement of claim. We understand from descriptions that excerpts from some of these documents may have been circulated to certain Oireachtas Members and certain media outlets. On 29 July 2013 Mr. McKillen served an amended statement of claim on NAMA. NAMA served a notice for particulars on Mr. McKillen in October 2013 seeking further information and clarification on the ambiguous and indefinable claims and allegations made in his statement of claim. NAMA has not received a response to this notice for particulars. In October 2013 NAMA filed a full defence to all claims made by Mr. McKillen. The matter will now continue to trial in the High Court and I cannot say any more on the matter.

NAMA is involved in a very difficult business with a lot at stake for the taxpayer and others. In seeking to do its job professionally it inevitably finds itself in dispute with various parties. Some of these will inevitably seek to intimidate or discredit NAMA for their own purposes.

Presumably, the strategy is that if enough mud is thrown, some of it will stick. We built this organisation from scratch with an opening balance sheet of €32 billion without staff or systems and, like all new organisations, not everything was perfect, nor could anyone reasonably expect it to have been. We continuously strive to improve and the board, the executive and I expend a large amount of time ensuring strong governance and controls. The staff assigned to NAMA are of a very high calibre and carry out their difficult duties with great commitment and diligence. We have every confidence in their integrity and professionalism. Unfortunately, in every walk of life there are bad eggs, but, thankfully, in our case, they have been few. The culture in NAMA is that there is no tolerance of anybody not performing his or her role honestly and professionally. We will not be deflected from the important work we are doing on behalf of the taxpayer. The chairman of NAMA, Mr. Daly, will now make some comments.

Mr. Frank Daly: On behalf of the NAMA board, I thank the committee for agreeing to our request to address it this morning and deal publicly with the allegations levelled against the agency. It was important to us that we get the earliest possible opportunity to do so and we appreciate the committee's quick response. This will be a very brief statement as I have just a few points to make.

On behalf of the board, I fully endorse the opening statement of the Accounting Officer. In particular, I assure the committee the NAMA board investigates every allegation of impropriety of which it becomes aware, whether the allegation relates to a NAMA staff member or a NAMA debtor. So far we have referred two complaints about former employees of the agency to An Garda Síochána pursuant to section 202 of the National Asset Management Agency Act which deals with unauthorised disclosure of confidential information. We have also referred two complaints under section 7 of the Act against NAMA debtors to An Garda Síochána for failing to provide accurate statements of affairs. All of these matters are under active investigation by the Garda.

I also assure the committee that the NAMA board has the utmost confidence in the robustness and propriety of the valuation process applied to loans. The Accounting Officer has outlined the very rigorous and independent approach taken and also the strong and independent oversight process. We have spent much time this week considering the material that has been appearing about NAMA. It is obvious that a considerable effort has been put into compiling and circulating that material. It is also obvious to any disinterested observer that we are dealing with an organised campaign of misinformation. We have to ask why this is being organised. It is hard to avoid the conclusion that the objective must be to undermine the effectiveness of NAMA and, none too subtly, influence its decisions. On behalf of the board and all of the employees at the agency, I want it to be clearly understood that if this is a campaign designed to undermine NAMA, we will not be intimidated, influenced or distracted by the efforts of whomever may be behind it.

In this agency we have learned not to believe everything all of our debtors tell us. We verify what is presented to us. It would be very foolish of us not to do so. This week's events suggest others, unfortunately, do not take the same basic precautions. It seems extraordinary to me that such unquestioning credibility has been given to a series of allegations about NAMA advanced, apparently, by an individual who is under investigation as a consequence of a formal complaint made about him by NAMA to the Garda Síochána. For NAMA, I make no claims that we should always be taken at our word without checking or verification. I have appeared before this and other committees many times and pointed to the huge levels of oversight built into the NAMA structure, a level of oversight which is unmatched by any financial institution

or State body in this country. We have always welcomed that oversight, including asking the committee to invite us today. It is an essential part of reassuring taxpayers that we are doing our job properly.

I acknowledge the very strong support the agency has received this week from many stakeholders and all of our staff, whom I particularly thank. They do not deserve to have a shadow cast over their excellent work by these unsubstantiated allegations. I also acknowledge those individuals in the political and media sectors who resisted the temptation to rush to judgment and instead have taken a measured approach to these matters. NAMA will continue to serve the taxpayer and recover every achievable cent from every loan on its books. This does not make it popular in all quarters. In recovering money for taxpayers it is, by definition, taking it from debtors. The progress NAMA has made has been recorded. We hope to be back here in the New Year reporting another excellent year of results for 2013. We will continue to do our utmost to work on behalf of the people to the very best of our ability. In particular, the NAMA board is determined that the attempts to advance the agenda of people who want to discredit NAMA and profit at the taxpayer's expense will not succeed.

Chairman: I thank Mr. Daly and Mr. McDonagh for their statements. May we publish the statements?

Mr. Frank Daly: Yes.

Chairman: While I understand Mr. Moran is not scheduled to make an opening statement, perhaps he might outline the role of the Department of Finance in relation to NAMA and clarify the issue raised in the Dáil this week in relation to the freedom of information request and the withheld documentation relative to that request.

Mr. John Moran: On the Department's relationship with NAMA, I am not the Accounting Officer for NAMA. It was set up under statute with its own board and Accounting Officer and, therefore, has a different relationship with the Department than other bodies under its aegis. Notwithstanding this, the Department has an interest on behalf of the taxpayer in NAMA because of the presence of a guarantee in respect of the obligations on NAMA. As a result of this, the Department has two roles in the context of the issue before the committee.

In the early days of the establishment of NAMA in 2009-10 the Department of Finance-----

Chairman: I apologise for interrupting Mr. Moran, but somebody's mobile phone is interfering with the broadcasting system.

Mr. John Moran: The Department of Finance was the line Department in the context of the legislation in respect of the establishment of NAMA and, therefore, the putting in place of the structure of NAMA, the valuation process which has been well described and the various checks and balances in the system in that regard. The Department is responsible for ongoing monitoring of NAMA's performance. As part of the checks and balances, a robust series of financial information must be prepared and delivered to the Minister in advance of presentation to the Oireachtas. Therefore, staff in the Department participate in a review of that information and, if required, have conversations with Mr. McDonagh and his team in respect of clarifications required in the giving of advice to the Minister to whom the NAMA board and CEO directly report.

On the freedom of information request commentary, the Department finds itself in a difficult position with respect to the documentation concerned. First, as I recall it, reference was made

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to 19 documents. It was stated the Department had refused to release 13 of these documents, three of which were already in the public domain by way of responses to parliamentary questions. I am happy to answer further questions in that regard for those who do not have copies of the replies in their possession. The other documentation relates to a number of offers received by the Department from parties with respect to loans, in which one particular individual had an interest. These offers were considered by the officer with responsibility in this area to be commercially sensitive. Following the procedure of the Freedom of Information Act is essential in the interests of protecting the Department. If we do not follow this procedure correctly, we do not have the ability to protect the Department from civil and criminal liability for unauthorised disclosure of documentation.

The series of documentation requested falls into a number of categories, some of which contain specific descriptions of offers made in respect of assets held at the time by the IBRC or contain email exchanges between officials in the Department relating to these offers. A key ingredient of whether documentation can be disclosed is that of commercial sensitivity. It is certainly the case that with the passage of time what was sensitive information at the time of the freedom of information request may well not be so in the future. In that sense, it is welcome that these documents have been submitted to the commissioner for urgent adjudication on whether they are still commercially sensitive. The committee may recall that the FOI requests were made prior to the liquidation of the IBRC and, therefore, the scenarios being used to determine such sensitivity are different than they are today. The departmental officials are happy to engage in a conversation on what information is now less sensitive and could be released. Although some may be less sensitive now than previously, I cannot release the documentation because to do so would not be in accordance with the Act and would, in my view, expose the Department to an unnecessary risk of litigation by parties who might describe disclosure of that information as being inappropriate. It would be helpful if in the fullness of time these documents were disclosed as I believe the information therein would get to the basis of the allegations made against the Department in regard to the reason these conversations were taking place and would explain the reason my officials felt it was absolutely necessary for them to do what they were doing in the interests of protecting the taxpayer.

Chairman: Does Mr. Moran believe those documents might be helpful in the work of the Committee of Public Accounts on this issue and will he clarify the suggestion there was inappropriate contact by him with people wishing to purchase properties?

Mr. John Moran: I am happy to comment on that issue. First, letters have been received in the Department on this issue and allegations have been made which, again, are uncorroborated. We have written to some of those people reminding them that the accusations they are making are possibly defamatory in respect of officials in the Department and myself. It is probably worth noting that, despite suggestions to the contrary, I have never met the Barclay brothers and I have never spoken to Mr. Faber. All I received was one e-mail which I passed on to officials in the Department, which then described this, correctly, as a commercial matter largely to be dealt with by the bank.

The Department's role in respect of issues such as IBRC is fundamentally to do with one point, which is similar to the role that NAMA has described, and that is to protect the taxpayer. That means that we must ensure the taxpayer is getting the best value for the assets being disposed of. In 2011 and 2012, the committee will recall that at the time it was very difficult to secure any interest for assets that were held and being disposed of by the Irish banks. Each time we or the bank sells an asset at a price that is less than 100% of the value of the loan, the

taxpayer pays the difference.

The e-mails that cannot be released at present could, when released - to give the committee a flavour of those, and I am being very careful here because I do not wish to say anything that is inappropriate - at least give rise to a substantiation of a series of facts that would require the Department to make sure that at the highest levels in the institution in question it was clear there were competing bids for some of the assets that the institution was managing at the time and a sense that, perhaps, not all of the options were being considered. The responsibility of my officials was to make it clear to the board of the bank, in which we had full confidence, that it should look at all options available for those assets. It is also true that other offers were made from various other parties to us, and in many cases we also verified that the institutions in question were aware of those offers and were taking them into full consideration. The only objective we have in this process is to ensure that when the assets are being sold the best value for the taxpayers is secured in all situations.

Chairman: The purpose of this meeting is to bring clarity to a number of issues raised in the Dáil and Seanad and in the media. I hope you and NAMA would take advantage of this meeting to allay any fears that might exist in the public domain arising from all those public comments and to clarify matters. Again, I believe you should reconsider the matter of those e-mails and determine whether they can be released to allay any speculation or fears that the public have with regard to the Department of Finance. However, it is a matter we will return to in the course of the meeting. I call Deputy Deasy.

Deputy John Deasy: Chairman, I thought it a little unusual that you changed the conventional procedures of this committee by questioning Mr. Moran first. I listened to that exchange and I believe Mr. Moran is in an invidious position. He has received a ruling from within the Department that this is commercially sensitive information, so he has answered the question from my perspective.

Chairman: It gives him the opportunity to say that.

Deputy John Deasy: I will start with the issue of undervaluing of loans and the allegations in the media over the past few days. The flavour of the allegations consists of questions about whether NAMA systematically undervalued loans and manipulated the price it paid banks for bad loans that staff were encouraged to deliberately undervalue. Some of the other allegations are that former employees of NAMA - I will not mention anybody - said publicly that they were among many people in NAMA to undervalue loans, meaning that many were doing this. One claim by a Member of the Oireachtas was that NAMA sold performing loans at a discounted rate to preferred bidders and that leaking of information was common. A key part of Mr. McDonagh's statement for me is that the person who was at the centre of these allegations had, in Mr. McDonagh's words, "no valuation role whatsoever". Effectively, he is saying that not only did it not happen, it could not happen, because that person had an administrative role and not a key role in respect of the valuation process. Perhaps he would deal with that. That is the central matter given what Mr. McDonagh said in the statement and the allegations that have been made in the press over the last few days. Not only did it not happen; it also could not happen. I ask him to elaborate on that.

Yesterday, I asked the Comptroller and Auditor General to give his opinion with regard to the reviews he has done in respect of loans and the valuations on those loans. He provided a comprehensive answer and I will ask him to come back to the process he and his office undertook with regard to this and his knowledge about the reviews that were undertaken by people

and offices other than himself and his office and in the European Commission and in Northern Ireland for the sake of clarity. Perhaps Mr. McDonagh will comment on those allegations again, and I will then refer it to the Comptroller and Auditor General.

Mr. Brendan McDonagh: With regard to the valuation process, as I outlined in my statement, the first people who did the property valuations, which were a key input into the loan valuations, were the financial institutions. They got their own valuers to value each of the properties. They submitted these to NAMA and NAMA sent the valuations to a property firm on our panel. That property firm, which was obviously different from the bank's firm, looked at the valuation and had to form an opinion on whether it agreed with the valuation and give the basis for the opinion, in accordance with the Red Book, which is the standards of the Royal Institution of Chartered Surveyors. If the firm agreed with it, as happened in 88% of cases, we accepted it. If the firm disagreed with it, the next key step was taken. We set up a process, which we agreed up-front with the European Commission, whereby if there was a dispute between a bank and NAMA where one valuation firm said 100, for example, and another valuation firm said 80, we would refer it to a third valuation firm to make a final determination. Therefore, the bank's original valuation and our valuer's opinion were sent to the third valuation firm. The third valuation firm had all the facts from both sides and it either agreed with the bank or with our original assessing valuation firm and gave its own opinion on what it thought the value of the property should be. That was submitted to NAMA and accepted. That fed into the loan valuation process and it was audited all along the stages.

The reality is that this particular individual did a huge job under a great deal of pressure. I must acknowledge that he worked very hard. However, he was a recipient of the property valuations from the banks and he referred them to our valuation firms to review the valuations. If there was a dispute, he referred it to the third independent valuation firm. He was a key man in the processing of the information but neither he nor anybody else was involved in the valuation process. He reported to the then head of portfolio management, Mr. John Mulcahy, who is now the head of asset management. Mr. Mulcahy has more than 40 years' experience in the property valuation industry. He oversaw Mr. Farrell. Mr. Mulcahy had to sign off on the valuation going out to the loan valuation firm. When signing his name to anything, if he did not agree with it, he would have asked the valuation firm to take account of these particular facts. Again, the valuation firm would have either accepted it or not accepted it. The final valuation in the loan valuation process always came from an independent reviewer or a third-party valuation firm. We had no input into determining the final valuation.

Mr. Seamus McCarthy: One thing worth bearing in mind is the background to the loan acquisition process. When NAMA was set up, one of the key problems and one of the key objectives was to remove uncertainty about the value of loans in the banks, so that was in the background. There was a sense that banks were overvaluing the loans they had on their books. One of the objectives was to take them out of the banks, bring them into NAMA, clean up the thing and remove that uncertainty about the value in the banks.

Mr. McDonagh has described the property valuation process exactly the way it was when we examined it. When we came to this, we recognised that we would need independent assistance with the valuation and legal aspects of it - the due diligence process around title and so on in regard to properties. We sought the assistance of the Valuation Office and a former Commissioner of Valuation for Northern Ireland. That is why there is a reference to Northern Ireland in the report. The former commissioner was acting on our behalf and was not acting in Northern Ireland or carrying out a separate exercise. It was part of the process we undertook.

We also brought in legal expertise to examine the legal process. We approached it from the point of view of looking at the system of valuation and understanding the system in place. As Mr. McDonagh has described, there was a long audit trail and several stages of assessment in that. KPMG was there as a form of process auditor to confirm that all the steps set down in the process had been implemented in each valuation. We examined that process to see if the control was working, and we found it was.

Separately, and to provide further assurance in that regard, we examined samples of the valuations to see whether the process expected was actually carried out. Our legal people looked at the due diligence in sample loans and were satisfied the processes followed the system described.

Yesterday, I described the uplift that was added to the market valuation of individual properties. Ultimately, as Mr. McDonagh said, it had to satisfy the European Commission that the process was appropriate and that there was not an undue element of state aid being paid to the banks as a result of the process. As I understand it, the Commission has approved three tranches. We examined the methodology it used and estimated that the element of state aid was about one fifth extra on top of the market value of the properties. That is the basis upon which I concluded that it is difficult to see how there could be any kind of systemic undervaluation of properties in the prices paid by NAMA.

Deputy John Deasy: Again, with regard to recent press coverage, is there a senior Garda officer liaising with NAMA on these complaints?

Mr. Brendan McDonagh: Ms Aileen O'Reilly, our head of legal affairs, has been liaising with senior people in the Garda on the two existing complaints. That has been going on for a long time. We have not been formally notified by the Garda of the senior officer, unless it is the same one who has been dealing with Ms Aileen O'Reilly on the two complaints we made.

Deputy John Deasy: Essentially, there is no specific liaison.

Mr. Brendan McDonagh: We have had no contact from the Garda about these complaints.

Deputy John Deasy: I want to move on to staff turnover. When Mr. McDonagh attended the committee in September, we spoke at length about the fact that one of the biggest deterrents to passing on information is the threat of prosecution under the Official Secrets Act as well as the NAMA legislation and contractual arrangements and so on. It is fair to say many civil servants are covered by the Official Secrets Act, but most of these do not deal with billions of euro. I accept that every mid-sized company runs the risk of an employee leaving and passing on information to a competitor. NAMA is described as the largest property management company in the world, but its senior staff seem to be leaving in considerable numbers. Mr. McDonagh gave the reasons he thinks that is the case the last day he appeared before the committee. Some people are asking whether these staff members are being head-hunted for their experience or their information - essentially, being poached by people who might gain adverse advantage from this knowledge.

I understand that under the National Asset Management Agency Act there is a lifetime prohibition on passing on information relating to the agency. I have been a Member of the Dáil for a while, however, and one has to ask how many civil servants have ever been prosecuted under the Official Secrets Act. I am not aware of too many since the Act was promulgated in 1963.

In the Dáil earlier this week, I spoke about transparency in the planning process. In my

opinion, one of the problems we had in local authorities was that those adjudicating on one-off housing one day were adjudicating on developments worth tens of millions of euro the next. In some cases, those individuals, character-wise, were unsuitable to be dealing with such planning permissions, which we found out to our cost. I am not casting any aspersions whatsoever on NAMA staff but the question must be asked about the safeguards in place with regard to information that could be leaked.

At the last meeting, I remember Mr. McDonagh saying that the cooling-off period for people who left the agency would be extended from three to six months. Does he have any concerns with regard to the safeguards, particularly considering the amounts of money involved and the risks and temptations that might emerge?

Mr. Brendan McDonagh: I have to be completely honest with the Deputy. We try to recruit people whom we believe have good experience and skills that can add value to NAMA. We also try to recruit people with integrity and honesty. Under the NAMA Act, there is a life-long confidentiality provision whereby all staff are obliged not to use information relating to NAMA. We recruited people into NAMA because of the skills we needed and not because of specific information they had. They will go back out into the jobs market as they do not have lifelong jobs in NAMA but have specific purpose contracts which could terminate in 2020 or earlier, if NAMA can be finished sooner. Most people who join NAMA will stay for a number of years. When they come in the door of NAMA, they are given formal induction training which covers issues of compliance, including section 202 of the NAMA Act, the Official Secrets Act and so forth. When they are leaving the organisation, they are also subject to an exit interview with the compliance department to remind them fully, as they are going out the door, of their responsibilities. We are doing everything possible within our remit to remind people of their obligations and to ensure they fulfil them. In any working environment it is possible that someone will decide not to follow the law, but I cannot control that.

Deputy John Deasy: That is fair enough.

Mr. Brendan McDonagh: What I would say though is that we are taking all the steps we can to remind people of their obligations. We expect our staff to be of good character in the first place because we do our best to recruit people who are professional, honest and have integrity.

Mr. Frank Daly: To add to that, the penalties under the NAMA Act are pretty severe. On conviction on indictment there is a fine not exceeding €5 million and-or imprisonment for a term not exceeding five years. There is a deterrent in place. On top of all that, as this committee has discussed, there are the structural, logistical and IT arrangements in place in NAMA which make it extremely difficult for somebody to access widespread information. Access for staff is now confined and limited only to the information the individual needs to do his or her work day to day. There is very limited access to widespread information. There is also an extensive audit trail right across the whole IT system in respect of e-mails, documents and interventions. It is even possible to trace documents that are printed back to the individual who printed them. These are processes and systems that we continually improve. Four years ago I could not have said our systems are as good as they are now. We have worked on them and in my opinion they are now state of the art, but we are never satisfied with them. The security systems in NAMA are a continuous focus of the board, the audit committee and the audit programme that our internal auditors conduct every year. We will continue to improve those systems. We have logistical and structural safeguards in place now.

Deputy John Deasy: As far as investigations are concerned, Ms O'Reilly and the Garda

Síochána are dealing with two. Are there any other investigations, internal or otherwise, going on in regard to NAMA or is that it?

Mr. Brendan McDonagh: That is it.

Deputy John Deasy: I am not going to get into those investigations because there is a file with the Director of Public Prosecutions at present.

Mr. Frank Daly: There are just those two investigations and both cases were reported to the Garda promptly. As we understand it, the cases are under active investigation.

Deputy John Deasy: I have a quick question for Mr. Moran. The key point he made during his exchange with the Chairman was that with regard to the individuals seeking to buy IBRC loans, there was one substantial e-mail which was passed on to an officer dealing with it in the Department of Finance. Is it the case that there was just one e-mail?

Mr. John Moran: We get a lot of inquiries from people as to whether they can participate in investing in Ireland. Some of the inquiries come to the Department directly and are passed on, if necessary, to the relevant banks and institutions. I got an inquiry by phone on the morning in question from a person I had never spoken to before. He asked specifically to speak to me but before I talked to him he sent in an offer by e-mail that he wanted to have passed on to the bank. I sent back an e-mail that afternoon, which is the only communication, in effect, between us. That e-mail essentially said that I was passing it on to two colleagues of mine in the Department who were responsible for the relationship with IBRC, one of whom identified quickly that this was a commercial matter for the bank to decide on.

Deputy John Deasy: Did Mr. Moran speak to the Barclay brothers or meet them or their representatives?

Mr. John Moran: No. I have never met the Barclay brothers nor have I met the other individual who was responsible for a lot of the freedom of information requests.

Deputy John Deasy: I wish to comment on what Mr. Daly said in his opening remarks. He spoke about unquestioning credibility and I would say that is not universal. We are dealing with a lot of public money here and with a public body. That is the gig we are in. It is good we have had this opportunity before Christmas to deal with this, and from my perspective, this meeting so far has been fairly illuminating. I thank the representatives for coming in.

Mr. Frank Daly: I would acknowledge that and, as the Chairman knows, we asked to come before the committee this morning to give these issues an airing. I would also point out that we seem to be some of the few people in Dublin or Ireland who do not have this dossier or file.

Deputy John Deasy: I do not have it.

Mr. Frank Daly: I am not saying the Deputy has it but it seems a lot of people have it. The entity against whom all of these allegations are being made does not have the file. In so far as we are able to respond here - we have responded comprehensively on the valuation issue, among others - it is based on material we are picking up from the media and elsewhere. We do not have the data. We are here today with the objective of being as open and honest as we can be, but to a certain extent our hands are tied because we do not know what information is out there.

Deputy John Deasy: I thank Mr. Daly for that.

Mr. Frank Daly: I made the point earlier that not everybody has rushed to conclusions, and we appreciate that.

Chairman: I thank Deputy Deasy and call Deputy O'Donnell.

Deputy Kieran O'Donnell: I thank the Chairman and welcome the representatives of NAMA and the Department of Finance to this meeting. To put this in context, NAMA as a financial entity has had an enormous impact on Ireland Inc. Our role as a committee is to examine the use of taxpayers' money. I note in his statement that Mr. McDonagh said that he and his colleagues built the organisation, but it was built with taxpayers' money.

When NAMA was established, the level of discounts taken in respect of the individual banks was up to 60%. The *Financial Times* ran an editorial at that time questioning whether one bank could bring down a country. When the markets saw the level of discounts being applied in the case of Anglo Irish Bank, they determined that if that was replicated across the entire banking sector, Ireland would not be able to shoulder the burden and our bond yields shot up overnight. That gave rise to the bailout. It had a monumental impact. The valuations put on the loans that went into NAMA had a monumental impact.

I remember when the NAMA legislation was going through the Dáil. The two underlying principles were that NAMA would help to improve the balance sheets of the banks and would determine the long-term economic value of the loans rather than their market value. In one way, I am surprised that 88% of the valuations of the banks stood up. That is very high. Why was that the case? On average, what did the loan valuations end up being above the market value? The issue of loan security was a major one at the time of the establishment of NAMA. My understanding of the loans in NAMA was that they were to be given a long-term economic value as distinct from a market value. As time went on, they veered increasingly towards market value. As a consequence, there were losses of €42 billion in the Irish banks as a result of loans being transferred to NAMA, for which the taxpayer had to pick up the tab. I have a series of questions. On the loans transferred to NAMA, by how much were they above market value?

My main concern is about controls. I do not want to discuss specific cases, as our role is to look at the robustness of NAMA's operations in terms of taxpayer's funds. Nobody wants a situation where there is potential for loans to be transferred to NAMA at a significant discount, for example, a loan of €10 million being transferred at a figure of €4 million, a discount of 60%, as many were, and subsequently for the same person purchasing it from NAMA for €5 million. While NAMA would make a profit of €1 million, the cost to the taxpayer would be €6 million. Will Mr. McDonagh give me a categorical assurance that controls are in place to ensure this will not happen?

To recap, what was the useful economic value and was it above market value? Are there controls in place in NAMA to prevent the situation I have outlined, whereby a person would be able to bypass the system and buy back his or her loans at a significant discount?

What is the turnover of staff and how can the level be controlled? Do the individuals in control of large portfolios remain in place for a significant length of time? Are there mechanisms in place to ensure security because ultimately this is taxpayer's money? Whether the money goes to the Exchequer, the banks or NAMA, it is the taxpayer's money. Mr. McDonagh will appreciate that for me the issue is simple; it is whether the systems in place are robust enough to stand up to scrutiny by this committee.

Mr. Brendan McDonagh: Let me assure the Deputy that nobody knows that more than I. The chairman and I fully understand we are working for the taxpayer and the State. We were charged at the start with trying to build an organisation.

Deputy Kieran O'Donnell: My point is that the process can never be bigger than the taxpayer.

Mr. Brendan McDonagh: Absolutely; I fully accept that.

The Deputy raised the question of the losses suffered by the banks on the transfer of loans at a discount to NAMA. The average discount across the five banks that transferred loans to NAMA was 57%. The losses ranged across the banks from 44% up to 61%. The Deputy is correct that there were losses of €42 billion. The reality is that NAMA did not create these losses. They were created as a result of decisions on lending that were not sensible. The banks overlent on assets as part of an asset bubble in the mid-2000s. The markets had already decided that the banks had made losses and that it was just a question of quantifying them. We were charged with taking certain loans from the banks and the evaluation process agreed with the European Commission ensured the banks had to apply a certain valuation standard to the assets. That is the reason 88% of the valuations were accepted because they had met that standard. Some 12% did not. That proves there were checks and balances in the system.

On long-term economic value, in a previous report the Comptroller and Auditor General estimated that if NAMA had not bought the assets from the banks - it paid €32 billion for €74 billion worth of loans - a market participant would have paid only €26 billion. The long-term economic value is the difference between €32 billion and €26 billion. If the banks had sold on the loans to third party private equity firms, they would probably have received only €26 billion at most. That is the quantification of the long-term economic value. Again, an EU process determined this for state aid purposes and it is subject to rigorous audit.

On the question of a debtor being able to buy back his or her loans from NAMA, there is a specific provision in the NAMA legislation, section 172, which prevents NAMA from selling an asset back to a defaulting debtor. If a debtor is not servicing the principal and interest on his or her loans in full, he cannot buy them back. We are legally prohibited from selling to him or her.

Deputy Kieran O'Donnell: What controls are in place to prevent an individual from going to NAMA, purporting to act for himself or herself, to buy the loan and subsequently selling it on to the previous debtor?

Mr. Brendan McDonagh: The board of NAMA has put in place a legal declaration whereby a purchaser of assets has to complete a section 172 declaration that he or she is in compliance with the law of the land. A person would have to make a false declaration. I cannot control this.

Deputy Kieran O'Donnell: What does a person declare when he or she signs a section 172 declaration?

Mr. Brendan McDonagh: Effectively he or she states he or she is not connected to the underlying debtor. The signed declarations are on file and audited by our internal auditors and available to the Comptroller and Auditor General.

Deputy Kieran O'Donnell: Do they give an assurance that they will not dispose of the asset to the debtor?

Mr. Brendan McDonagh: They do not give that assurance, but what they do say is that the purchaser of the asset is not connected with the original debtor.

Deputy Kieran O'Donnell: Does Mr. McDonagh not regard it as a reasonable suggestion that such an assurance be sought because they may not be connected with the debtor at that moment in time but subsequently could be?

Mr. Brendan McDonagh: The legal reality is that the purchaser of an asset, if he or she is not connected with the underlying debtor, can sell it to whoever he or she wants to afterwards. We cannot control this, as we are out of the process. The reality of life is that he or she can sell it on the market and we would have no legal basis on which to pursue it.

Deputy Kieran O'Donnell: Mr. McDonagh will appreciate that the original intention during the passage of the NAMA legislation was that NAMA would never be a conduit for people who had loans transferred to NAMA to buy them back at a significantly discounted value through circuitous routes. That feeds into undervaluation.

Mr. Brendan McDonagh: I understand what the Deputy is saying, but one can only operate within the law. Once we sell a loan to a third party and the third party completes the section 172 declaration, the subsequent sale is outside our control. I am not aware to date of any debtor who has bought his or her loan from a party to whom we have sold his or her loan. Is the Deputy aware of such a case?

Deputy Kieran O'Donnell: No; I am just looking at the systems.

Mr. Brendan McDonagh: We are operating within the law. That is the factual position.

Deputy Kieran O'Donnell: I feel strongly about this issue because we often lose sight of the total amount paid for the loans from the banks.

Mr. Brendan McDonagh: We paid €31.8 billion for €74 billion worth of loans.

Deputy Kieran O'Donnell: This is taxpayer's money.

Mr. Brendan McDonagh: The difference was made up by the taxpayer, clearly to recapitalise the banks for the losses they had suffered.

Deputy Kieran O'Donnell: This has had a major impact on people in their daily lives.

Mr. Brendan McDonagh: Absolutely.

Deputy Kieran O'Donnell: While I know the National Asset Management Agency has a job to do in obtaining value for taxpayers, a moral issue also arises. NAMA must be vigilant about its procedures.

Mr. Brendan McDonagh: I will mention one important point. In the recent liquidation of IBRC there is no prohibition on selling a loan back to a debtor. The rules applicable to NAMA are higher than the standard that applies in the current IBRC liquidation process.

Deputy Kieran O'Donnell: The loans in IBRC are existing loans in an institution which is doing a deal with a particular debtor.

Mr. Brendan McDonagh: Yes.

Deputy Kieran O'Donnell: While I accept Mr. McDonagh's point, there is a slight difference in that NAMA is a separate vehicle established and paid for by taxpayers. It is ironic that half of IBRC's loans went to NAMA.

Mr. Brendan McDonagh: No restrictions apply to the other half of IBRC's loan book in terms of selling the loans back to the debtors. They would be sold at a discount. That is all I am saying.

Deputy Kieran O'Donnell: The bulk of the loans in IBRC were performing. I know that is a separate issue.

Mr. Brendan McDonagh: No, they are not performing. If one examines the most recent published accounts of IBRC, approximately 70% of its loans are non-performing.

Deputy Kieran O'Donnell: That is correct but they would be non-development loans. What IBRC loans transferred to NAMA?

Mr. Brendan McDonagh: In the first instance, NAMA received land and development loans. If the debtor had other associated loans, which could relate to hotels, offices and so forth, they also transferred to NAMA. To transfer to NAMA, the debtor originally had to have land and development loans. That was the hook that dragged them in. The other half of the IBRC loan book is being sold as part of the liquidation.

Deputy Kieran O'Donnell: This was an issue among members of the public when NAMA was established.

Mr. Frank Daly: On behalf of the board, I should assure the Deputy in respect of section 172. Of all the entities that are, if one likes, deleveraging, whether they are banks, IBRC or other State-owned or controlled banks, NAMA is the only entity to which the section 172 restriction applies. That is a clear message from the Oireachtas to us and one which we take very seriously in terms of the declaration to which Mr. McDonagh referred. I reiterate Mr. McDonagh's point that we are not aware of any case in which a loan or asset, whether a property or the loan itself, has been sold back, either directly or indirectly, to a defaulting debtor. There is, however, only so much we can do.

Deputy Kieran O'Donnell: What has been the turnover of staff in NAMA?

Mr. Brendan McDonagh: According to the latest figures available to me, 62 people have left NAMA since the agency's inception. We lost 22 people in 2012 and 29 in 2013.

Deputy Kieran O'Donnell: How many of the individuals in question had knowledge of valuations and loans?

Mr. Brendan McDonagh: It depends on the role they had in the organisation. If they were part of the asset recovery teams, they would have had knowledge of debtors within their asset recovery team. Each asset recovery team consists of nine people who would probably manage 27 debtors.

Deputy Kieran O'Donnell: Mr. Moran referred to the taxpayer. The role of this committee is to obtain value for taxpayers. I ask Mr. Moran to consider the issue of the various e-mails that were spoken about and the sensitivity involved. He indicated that matters have become less sensitive as time has moved on. What is the current position in terms of the review process?

COMMITTEE OF PUBLIC ACCOUNTS

Mr. John Moran: I remind the committee that the decision was taken by an officer, independent of me and the Minister, as is appropriate, particularly in this case because there were communications that related to e-mails that I received and delivered. This is a matter in which I am not involved.

Deputy Kieran O'Donnell: Mr. Moran is referring to the freedom of information officer.

Mr. John Moran: Yes. An appeal was then conducted by a separate officer who re-adjudicated on the issues. An appeal was then made to the Information Commissioner in April last. There have been, therefore, a number of months during which the Information Commissioner has been looking at the file. The point I made earlier is that, with the passage of time, the nature of confidential information is such that some of it becomes less confidential while the rest remains as confidential as previously. That process is ongoing and the sooner it is completed and there is an adjudication on these issues, the sooner we will release the information in a safe manner, provided the Information Commissioner agrees to allow it to be released.

Chairman: I thank Mr. Daly, Mr. McDonagh and Mr. Moran for attending. Their statements and responses to questions have been thorough and helpful. I appreciate that they have come before us for this purpose given the work the committee has done with the agency and intends to do in future.

I have some brief questions which develop on the earlier discussion. Mr. McDonagh indicated there are two cases with the Garda Síochána. When Deputy Deasy asked about internal complaints in the National Asset Management Agency, we learned that no internal complaints have been made. Is there a mechanism in place in NAMA for making internal complaints?

Mr. Brendan McDonagh: Yes.

Deputy Eoghan Murphy: Will Mr. McDonagh describe this mechanism?

Mr. Brendan McDonagh: There is an independent compliance officer in the organisation and if somebody has a complaint about any matter, there are procedures within the staff handbook and the person can make the complaint to the head of compliance.

Deputy Eoghan Murphy: Would the complaint be notified to Mr. McDonagh?

Mr. Brendan McDonagh: The complaints officer is independent of me. The compliance officer in the National Treasury Management Agency covers all the businesses in the NTMA. She will take whatever steps she believes necessary to investigate the complaint.

Deputy Eoghan Murphy: To date, the compliance officer has not had to do so in respect of any employee of NAMA.

Mr. Brendan McDonagh: No.

Deputy Eoghan Murphy: We discussed the issue of gardening leave at our previous meeting with NAMA representatives when we heard the options available were for three or six months, depending on the individual in question. Mr. McDonagh indicated that, following an internal legal review, the minimum period of gardening leave would be extended to six months. Why was the decision taken to increase the minimum period from three to six months?

Mr. Brendan McDonagh: The review, which was NTMA wide and was not restricted to NAMA, arose as a result of a discussion on gardening leave during a meeting between the chief

executive of the NTMA and the committee. The NTMA commissioned Matheson to carry out a review of best practice across various organisations. The review made a recommendation that was approved by the advisory committee, the *de facto* board of the NTMA. The recommendation also went to the board of NAMA to advise its members that gardening leave would be three months for more junior ranking employees and six months for individuals in senior positions. This recommendation has been put in place. I should add that all contracts in NAMA provided for three months gardening leave in any case. Where someone is promoted to a very senior position in the agency or we recruit someone from the market to a senior position, the period in his or her contract will be six months.

Deputy Eoghan Murphy: We discussed this issue in detail in September. Will Mr. McDonagh confirm that the review that resulted in gardening leave being extended to six months had nothing to do with concerns arising from what was taking place in NAMA?

Mr. Brendan McDonagh: Yes, it had to do with somebody unconnected to NAMA who had left the NTMA's high profile division.

Deputy Eoghan Murphy: On the valuation of loans being transferred to NAMA from IBRC, is the same process being applied to these loans as was applied to the original NAMA loan book in 2009?

Mr. Brendan McDonagh: In terms of the IBRC liquidation, the special liquidator is charged under the relevant Act with valuing the loans. He determines the valuation and if he offers the loans to the market and they meet the reserve price or higher, they are sold to the market. If they do not reach the reserve price, NAMA is legally obliged to buy the loans at the reserve price set by the liquidator.

Deputy Eoghan Murphy: So there will not be a second or third valuation put on assets.

Mr. Brendan McDonagh: We have to buy them at the price set by the liquidator, whether we agree with it or not.

Deputy Eoghan Murphy: Mr. McDonagh stated previously that he was estimating, perhaps, €20 billion worth of loans coming across.

Mr. Brendan McDonagh: The book of IBRC at the time of liquidation empowered debt terms was €20 billion in commercial loans and €1.8 billion of residential loans. As members will have seen from the liquidator's statement last week, he was successful in selling just over €2 billion worth of loans in the evergreen book which is the commercial trading businesses. He said there are only likely to be three individual debtor loans which he would possibly transfer to NAMA out of that book, which total about €500 million empowered debt terms.

Deputy Eoghan Murphy: What is the total figure now expected?

Mr. Brendan McDonagh: If one takes €2 billion off the €20 billion commercial bill, he has another €18 billion worth of loans to sell which are on the market at present. I know many of them have gone into the second round but the liquidator runs the process completely independently of NAMA, because he is obliged to do that under the IBRC liquidation Act. Only when he has the sales process concluded will he notify me and the Department of Finance to say this is the amount of loans he has sold and this is the amount of loans that will come to NAMA.

Deputy Eoghan Murphy: Does Mr. McDonagh have an idea of when that timeline will

be completed?

Mr. Brendan McDonagh: His latest timeline, as per his press release last week, would probably go out towards the end of March 2014.

Deputy Eoghan Murphy: NAMA is legally obliged to buy them at the reserve price if they are not sold but will then undertake a valuation itself internally.

Mr. Brendan McDonagh: We are obliged because we are subject to international financial reporting standards, IFRS, to do what we call a day one fair valuation assessment to ascertain whether the valuations put on by the liquidator are reasonable for the board to take them on to its balance sheet at that value. That is a very detailed exercise that must be undertaken all the way through 2014 as, when we come to produce our accounts for auditing at the end of the year, the Comptroller and Auditor General will look closely to see if we took them on at fair value of if we had to take an adjustment to the valuation for which we were obliged to buy them from the liquidator.

Deputy Eoghan Murphy: In regard to the impairment on the books for the initial years, NAMA's assessment indicates that it paid too much for certain loans or assets at the beginning.

Mr. Brendan McDonagh: Under the EU process which was very regimental - it had to be in terms of calculating State aid - we had to buy the loans by reference to a single valuation date, 30 November 2009. As everybody knows, up until the early part of this year, the market in Ireland declined by 25% from the end of 2009. Thankfully, there has been a very strong recovery, particularly in Dublin, in the market in the past four to five months. We have taken €3.6 billion of provisions up to 30 June 2013. If the Deputy wants to put it in succinct terms, one could say we overpaid for them by reference to what we did but that was because the market declined.

Deputy Eoghan Murphy: Perhaps I can ask Mr. Moran one question. It is about oversight by the Department of NAMA in general. He will be aware from the legislation that the Minister and the Committee of Public Accounts are named. Therefore, we have a shared responsibility in looking at this agency and ensuring it operates in the way it should. Is the Secretary General satisfied with the oversight role his Department currently has on the organisation?

Mr. John Moran: In any engagement we have had with the board, we are satisfied with the oversight role. We also have a team of people who have the skillsets to review the accounts as they come in and the various statements and rely on the statements from the Comptroller and Auditor General and others to make sure that things are working well.

Deputy Eoghan Murphy: How regular is the Department's contact with the agency, either with the board or in terms of examining accounts and engaging in conversation with the-----

Mr. John Moran: Officially, quarterly, and almost daily on one issue or another, whether it be assessing the impact of potential legislation on NAMA's business and facilitating that dialogue but, more formally, on a monthly basis reviewing NAMA's progress, strategy, update on cashflow generation and sales processes and more formally on a quarterly basis with the section 55.

Deputy Eoghan Murphy: Okay.

Mr. John Moran: We are scheduled to complete a review of a five year period that will occur early next year. Contrary to suggestions made, this is not happening because of anything

that has occurred in the past couple of months. This is a regular scheduled review that the Department will conduct.

Deputy Eoghan Murphy: In terms of personal contacts, how often must the Director General meet Mr. Daly or Mr. McDonagh?

Mr. John Moran: I have officials in my Department who look at and are responsible for NAMA. Mr. Declan Reid and Ms Ann Nolan, second secretary, have the primary responsibility. To the extent that there are meetings with Mr. Brendan McDonagh and the board, and the chairman and the Minister, they are the officials who would attend because they have much more knowledge of the details of the actual specifics related to NAMA. On the other hand, I am on the NTMA advisory council. To the extent that issues have to be addressed at that level and there is a review in respect of that, I would have an overview of that as well.

Deputy Eoghan Murphy: How frequently would the Minister be involved in terms of discussing NAMA on a given day or at a special meeting?

Mr. John Moran: It varies. Certainly there is an intense engagement quarterly. If any specific issue is raised, effectively, there is an open door policy if Mr. Brendan McDonagh or Mr. Frank Daly or anybody else wants to have a conversation with the Minister and then our officials would support that discussion.

Mr. Frank Daly: I would meet the Minister sometimes with Mr. Brendan McDonagh and sometimes on my own on a pretty regular basis just to keep him updated on what is going on in NAMA - the key strategic directions we are taking, what the performance is like, and any issues or any problems that arise.

Chairman: I call Deputy Shane Ross.

Deputy Shane Ross: Very briefly, perhaps Mr. Frank Daly or Mr. Brendan McDonagh could tell the committee why they felt it was so urgent to appear before the committee.

Mr. Frank Daly: I will explain to the Deputy and Mr. Brendan McDonagh may wish to come in. The answer is in our statements. It is because of events that occurred in the past week in particular. There was the media commentary and then people were saying to us there was a dossier about NAMA in the media, which had been given to some Members of the Oireachtas and some members of the public and that it contained all sorts of allegations. Principally, it comes down to two sets of allegations, one of which was the valuations issue. That was a very serious issue so far as we were concerned because it was designed to undermine totally the credibility of the organisation. As we have gone into the valuation of the loans in detail earlier today I will not repeat it. Any suggestion left unchallenged and unchecked that NAMA had manipulated the valuations would have been a very serious issue for everybody in the organisation, for the board, for me as chairman and for Mr. Brendan McDonagh as CEO. That was one issue we wanted to get the opportunity to speak about. We did not want to just issue a statement and we did not want to hold a press conference. We thought the Committee of Public Accounts was the appropriate forum in which to address the issue. We also wanted to address the issue of the so-called leaking of information of which, when one strips away much of the verbiage and repetition, there have been only two instances in our four-year history in which we have reported individuals to the Garda for a breach of that legislation. That is under active investigation.

I will make the point I made earlier. We seem to be one of the few groups in Dublin that has not had seen this dossier or whatever it is. There are other allegations in it, all of which seem

to stem from Mr. Farrell, an individual whom NAMA reported to the Garda and who is being investigated for a criminal offence. We did think it extraordinary that nobody was questioning the source of all of that misinformation. We owed it to the taxpayers. We had a discussion earlier during which it was stated that the taxpayers own NAMA. We work for the taxpayer. We had a discussion at the board yesterday and we felt that taxpayers need to understand and to have confidence in the organisation. They may not agree with every decision we make but they need to have confidence in the integrity and the propriety within the organisation. We owed it to our staff, the 300 people working in NAMA.

Again, I refer to the point I made in my opening statement. By definition we are collecting money on behalf of the taxpayers and in doing that we are taking it from debtors. Understandably, there are many people out there who do not like us. The job that our staff do every day is very difficult. It is stressful. It is confrontational in many cases. As a board, chief executive and chairman, we owed it the staff because we believe in their integrity and work ethic to come before the committee and publicly confront these allegations. While they are in some cases unknown to us, we know they have been made. The principal allegation, on valuation, goes to the heart of NAMA's structure, propriety and professionalism. We wanted to nail it and I hope we have done so.

Deputy Shane Ross: Mr. Daly refers to an orchestrated campaign being run against NAMA. Will he elaborate on that statement? Does it mean it is not just one guy leaving in a sulk and taking a few potshots at the agency?

Mr. Frank Daly: What we are hearing is that there is a file of papers - let me call it a dossier - which is being provided to some sections of the media and perhaps some Oireachtas Members. As it is not something that appears casually, I am surmising that somebody went to some trouble to compile the dossier. If that is the case, one must question the motive behind it. I go back to the questioning we have had internally. What is the motive? It must be in some way to undermine NAMA or perhaps indirectly try to influence our decision-making and intimidate us. That is why the issue is very serious. To return to Deputy O'Donnell's point, it is serious because NAMA is owned by the taxpayer and what the agency does has direct implications for taxpayers. From the day NAMA was set up and I and the board were appointed, the taxpayer and nobody else has been our main concern in everything we have done.

Deputy Shane Ross: While I see Mr. Daly's point and remain neutral on the allegations, I see something of a problem in that those who have grievances against NAMA could well be right. Does Mr. Daly acknowledge that?

Mr. Frank Daly: If people have grievances against us, I would love them to come to us and be specific. I would love to deal with specific grievances and issues, not rumours or innuendo based on what appears to be one individual who has been discredited. I and Mr. McDonagh would be happy to meet anybody who has a grievance about NAMA. There is no issue with that; we would love to do so. If there is anybody who wants to do this, let he or she be upfront and come in and talk to us. I remind people who have information about impropriety in NAMA that they are obliged, under the Criminal Justice Act, to provide such information to the Garda. They are welcome to come to us or go to the Garda.

Deputy Shane Ross: Why should they go to Mr. McDonagh and Mr. Daly if they have grievances against NAMA? They are the last people those with a grievance should go to because NAMA cannot judge its own case.

Mr. Frank Daly: Let them go to the Garda. We have a history, in cases where complaints have been made to us, of investigating and reporting them to the Garda. There is no suggestion that people will not get a hearing from NAMA.

Deputy Shane Ross: Does Mr. Daly believe the statement made in Mr. McDonagh's presentation that there "has been a carefully orchestrated operation targeted at a small number of media outlets and Oireachtas Members and its intended purpose is clear: to damage NAMA and thereby undermine the financial interests of the State"? Does he believe that someone is setting out to damage the financial interests of the State?

Mr. Frank Daly: If one damages NAMA, one damages the financial interests of the State.

Deputy Shane Ross: One does not.

Mr. Frank Daly: One does.

Deputy Shane Ross: If one damages NAMA's reputation, one may be right.

Mr. Frank Daly: Let us assume for a moment that one is not right. If one is trying to undermine NAMA, one will ultimately damage the interests of taxpayers and the finances of the State. I am not-----

Deputy Shane Ross: That is not correct. We must question that statement. If this is an orchestrated campaign by people trying to point out - Mr. Daly used different language - inadequacies in the way in which NAMA operates, which Mr. Daly will grant is a possibility, and they criticise NAMA in a very public manner, it does not mean they are trying to damage the interests of the State. Mr. Daly is making the interests of the State synonymous with the interests of NAMA.

Mr. Frank Daly: I do so because NAMA is owned by the taxpayer. The agency paid €32 billion to the banks, of which €30 billion is a contingent liability on the State. We have repaid €7.5 billion of that so the figure is no longer €30 billion but the balance is still a contingent liability on the State. If, therefore, one damages NAMA, one damages the State. To return to the Deputy's point, I have no problem if somebody wants to tell me we can do better or work more efficiently and we are doing something wrong. People have done so and we have responded.

Deputy Shane Ross: Mr. Daly has a problem, however, if the individuals in question tell the media.

Mr. Frank Daly: I do not have a problem if they tell the media. I have a problem if they make generalised allegations in the media and do not tell us anything specific that we can investigate. What have they said - that our valuation process was flawed or manipulated? In light of what the committee has heard this morning from NAMA and, in particular, from the Comptroller and Auditor General, I do not see how the Deputy can claim that the process was manipulated or flawed.

Deputy Shane Ross: I am saying that because NAMA is owned by the taxpayer does not mean it is acting in the interests of the taxpayer. In the opinion of many people, a large number of State bodies and agencies are not acting in the interests of the State. Many would say that NAMA is not acting in the interests of the taxpayer. It may be owned by taxpayers but it is not necessarily acting in their interests.

Mr. Frank Daly: I beg to disagree. I strongly refute the claim that we do not act in the inter-

ests of the taxpayer. Everything we have done, from day one, and the results we have achieved have been in the interests of taxpayers. That is the *raison d'être* of the board, the executive and everybody in the agency.

Deputy Shane Ross: Mr. Daly is ascribing a motive to the individuals in question, namely, that they are seeking to undermine the financial interests of the State. The NAMA statement notes that its intended purpose is to undermine the financial interests of the State. While the individuals in question may have all sorts of malicious motives, the idea that they are seeking to undermine the interests of the State is absurd.

Mr. Frank Daly: With respect, we are making a natural link. If one damages an organisation that is managing €30 billion of taxpayers' money, one damages the financial interests of the State.

Deputy Shane Ross: I am talking about motive, not Mr. Daly's opinion of what is the effect. It is very dangerous for an organisation such as NAMA to identify itself with the State in that manner. This is partly related to the fact that the agency is in a monopoly position that it views itself in that way.

Mr. Daly made a good job of demolishing the accuser and he may be right to do so. Having said he did not want to say anything that would prejudice the investigations that are under way, he stated that they seem to revolve around the personal grievances of Mr. Farrell. Does he have a reason for making that statement?

Mr. Frank Daly: From what we are aware, in some of the allegations that have been asserted or are in the document that is circulating, Mr. Farrell would seem to-----

Deputy Shane Ross: Mr. Daly has not seen the document.

Mr. Frank Daly: From very good sources, and the same thing has been said to us from several sources, Mr. Farrell would seem to have had views. By the way, Mr. McDonagh acknowledged that Mr. Farrell was a very hard-working individual who worked in a very stressful situation. He now seems to be articulating personal views about NAMA, which is fine. If, however, we knew what they were, I would deal with them on a case by case basis.

Deputy Shane Ross: Does NAMA have a whistleblower's charter?

Mr. Frank Daly: Mr. McDonagh has described them.

Deputy Shane Ross: There is a procedure for them. Is that the case? We should have gone through that in the first place. Is that so?

Mr. Frank Daly: Yes.

Deputy Shane Ross: I accept that totally.

Let us get on with the case. The deputation mentioned Mr. McKillen in the opening statements. There was a high profile court case involving Mr. McKillen in 2011 which NAMA lost in the Supreme Court. Is that correct?

Mr. Brendan McDonagh: We do not accept that we lost. We were advised by the Supreme Court to take a fresh decision, which we did.

Deputy Shane Ross: How much did that case cost NAMA?

Mr. Brendan McDonagh: That case has finally got through taxing. In terms of paying Mr. McKillen's costs, he requested approximately €3.4 million. It went to taxing and it was adjudicated at €1.7 million.

Deputy Shane Ross: It cost NAMA €1.7 million. Was that money well spent?

Mr. Brendan McDonagh: We did not take the case. We had to defend the case that was brought by Mr. McKillen. We won comprehensively in the High Court but the Supreme Court took a different view of the matter. We did not appeal to the Supreme Court, Mr. McKillen did. Everyone is entitled to due process and to take whatever actions they wish through the courts and we must defend ourselves as part of that. The committee will recall that there were aspects wider than those relating to NAMA raised in the case. These related to constitutional issues and they need to be clarified by the Attorney General.

Deputy Shane Ross: NAMA had to pay the costs. Is that correct?

Mr. Brendan McDonagh: Yes.

Deputy Shane Ross: According to the press reports referred to by NAMA, Mr. McKillen feels aggrieved. Does NAMA accept that?

Mr. Frank Daly: I do not believe it is appropriate for us to comment.

Mr. Brendan McDonagh: He is in litigation with us at present in the High Court. There is a mechanism for anyone with a grievance to deal with it. Sometimes a given grievance must be dealt with by the courts.

Deputy Shane Ross: Mr. McDonagh commented on the matter in his statement. He said that Mr. Farrell apparently provided a so-called full file of personal information relating to Mr. Patrick McKillen, a particular third party. Mr. McDonagh was happy to comment on that.

Mr. Brendan McDonagh: Yes.

Deputy Shane Ross: He also said the new disclosure by Mr. Farrell directly contradicted his previous sworn statements. Does that mean Mr. McDonagh was rubbishing him?

Mr. Brendan McDonagh: I was not rubbishing him. It is a fact of law that when we sought an order from the courts against Mr. Farrell originally he was directed to provide sworn statements in terms of what information would have emerged. He provided sworn statements and there was no mention of the latest provision of a file in his two sworn statements.

Deputy Shane Ross: Mr. McDonagh went into a fair amount of detail about the information on Mr. McKillen and the transfer of the information about Mr. McKillen. Is that not so?

Mr. Brendan McDonagh: We went on to say as a point of fact that we do not have much information about Mr. McKillen because we did not acquire his loans until July 2011.

Deputy Shane Ross: Did NAMA sell any of his debt?

Mr. Brendan McDonagh: We sold the loans related to the three hotels in London of which Mr. McKillen was a shareholder to the Barclay brothers. That has been well-documented.

Deputy Shane Ross: Does Mr. McDonagh believe he might have a reason for feeling somewhat aggrieved about that?

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Mr. Brendan McDonagh: No, from our point of view it was a business transaction. The loans were bought off us at par.

Deputy Shane Ross: The loans ended up in the hands of someone who was a commercial enemy of Mr. McKillen. Is that a coincidence?

Mr. Brendan McDonagh: I am not interested in terms of the personalities. I am interested in the business transaction and in recovering for the taxpayer the maximum amount of the loan. The maximum amount of the loan that I could recover was the par debt. I recovered the par debt and therefore there was no loss to the taxpayer.

Deputy Shane Ross: I am interested in the personalities although Mr. McDonagh may not be. That is why I am putting the matter to him. There is a major personal factor involved in this case. The fact of the matter is the Barclay brothers and Mr. McKillen were at odds about something else. It might be ascribed to NAMA, perhaps wrongly, as insensitive or even malicious to be selling his loans to someone with whom he was involved in a commercial battle. It could be seen as damaging to him. Would NAMA have been aware of that?

Mr. Brendan McDonagh: No.

Deputy Shane Ross: Mr. McDonagh would not have been aware of the fact that Mr. McKillen and the Barclay brothers were in a commercial battle at the time. Is that the case?

Mr. Brendan McDonagh: Let us consider the history of the transaction. There were several shareholders in the company that owned those loans. One of the company shareholders sold his shareholding company to the Barclay brothers. That was fine. We sold a loan which had a share charge over another debtor's shareholding to a Malaysian sovereign wealth fund. Then we were approached by several parties to buy the loans associated with the debt secured on the three hotels. We sold the loans to the people who paid us the maximum amount, which was repayment of the full par debt. That was purely a business decision.

Deputy Shane Ross: It was a pure coincidence that it went to the Barclay brothers. Is that the case?

Mr. Brendan McDonagh: It was not a pure coincidence because there was another bidder on the loans. Mr. McKillen could have made an offer to acquire the loans at par debt, but he did not.

Deputy Shane Ross: Does Mr. McDonagh understand why Mr. McKillen might feel aggrieved?

Mr. Brendan McDonagh: I cannot comment on Mr. McKillen. Mr. McKillen makes his own determinations. Whatever grievances he has are simply his views. My view is that I am running a business and I take business decisions.

Deputy Shane Ross: Would Mr. McDonagh be prepared to meet Mr. McKillen?

Mr. Brendan McDonagh: I have met Mr. McKillen on a number of occasions.

Deputy Shane Ross: When was the last time?

Mr. Brendan McDonagh: The last time I met Mr. McKillen at his request might have been in early February 2011.

Deputy Shane Ross: That is nearly three years ago.

Mr. Brendan McDonagh: Yes. He has not sought a meeting with me since.

Deputy Shane Ross: Would Mr. McDonagh be prepared to meet Mr. McKillen if he looks for a meeting again?

Mr. Brendan McDonagh: Yes.

Deputy Shane Ross: That is fine. According to all the media reports he feels particularly aggrieved at the destination of those loans. Furthermore, he feels particularly aggrieved that he was moved on by NAMA when his loans were performing. I gather he believes given the circumstances that there is a history which might be something NAMA could look at again.

Can the deputation tell me about the NAMA board? How are the members selected?

Mr. Frank Daly: The board was appointed in December 2009 by the Minister for Finance of the time. I was asked to be chairman. I am not privy to what the selection process was when I was asked to be chairman. The board had already been selected and, therefore, I was presented with the board as it was. The legislation provides for nine persons on the board, including the chairman. There are two people on the board *ex officio*; one is the chief executive, Brendan McDonagh, and the other is the chief executive of the National Treasury Management Agency, John Corrigan. We have an executive director and the rest are non-executive directors. They were appointed for varying terms. There have been two changes on the board since its inception because two directors retired in 2010 or 2011.

Deputy Shane Ross: They are all selected by the Minister for Finance. Is that correct?

Mr. Frank Daly: Yes, the Minister of Finance is the appointing officer.

Deputy Shane Ross: Does NAMA carry out a board evaluation every year?

Mr. Frank Daly: Yes, we do a rigorous evaluation and we have done every year since inception.

Deputy Shane Ross: What are the results?

Mr. Frank Daly: They are generally positive but there are always suggestions and action points to be dealt with. We have followed that rigorously and we make a summary available to the Comptroller and Auditor General.

Deputy Shane Ross: Have the results ever been such that any board member has stepped down?

Mr. Frank Daly: No, not as a consequence of that. Two board members retired for personal reasons but there has never been a situation in which a board member has stepped down as a consequence of evaluation.

Deputy Shane Ross: What is the procedure for the board evaluation?

Mr. Frank Daly: It varies. There is a good practice policy which holds that sometimes the organisation carries out the evaluation and sometimes it should get in external people to do it. I will offer one example. The most recent evaluation involved a comprehensive questionnaire

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which was designed on the basis of professional questionnaires produced in the private sector. There is a whole series of questions on different aspects of the functioning of the board, ranging from what do you think of the Chairman to what do you think of the committees, do you think the committees are working, do you get enough information, have you access to the executives, can you ask questions, and all of that.

Deputy Shane Ross: Which one do you use?

Mr. Frank Daly: All of it.

Deputy Shane Ross: You use that yourself?

Mr. Frank Daly: All of that is in it. We used it on ourselves this time around. Previously we got an external evaluator to do it. It is a confidential process in that the board secretary collates all the responses. It is a system of ratings; good, very good, not good and free text for comments and suggestions.

Deputy Shane Ross: Would you like to share the results with us?

Mr. Frank Daly: I will think about it.

Deputy Shane Ross: You will be gone from here and we will never hear from you again. Would you like to share the results with us?

Mr. Frank Daly: I am back here on a regular basis.

Deputy Shane Ross: Not regularly enough for that.

Mr. Frank Daly: I would share it but this is a confidential process and people speak their minds. I certainly would have no problem in sharing a summary of the evaluation. Let me think about that.

Deputy Shane Ross: That is fine. I do not want to see personal comments, just the results. It would be invidious to ask for personal comments. It would inhibit people in the future.

Mr. Frank Daly: It would be counterproductive because they would never give an honest answer again.

Deputy Shane Ross: Correct. They are probably not doing that anyway.

Mr. Frank Daly: They are.

Deputy Shane Ross: I have a question for Mr. Moran. It is crystal clear that you had no contact with the Barclay brothers.

Mr. John Moran: With the Barclay brothers?

Deputy Shane Ross: Yes or anybody working for them.

Mr. John Moran: As I think the freedom of information request directed to the Department by Mr. McKillen clearly shows, there was a series of communications with a gentleman called Mr. Faber, whom I understand works for the Barclay Brothers, my response to him following a telephone call one morning, and a subsequent e-mail offering to buy loans, and an acknowledgement by him that he had sent in this document and I had sent it back. It was sent on to my colleagues who continued with the discussion.

Deputy Shane Ross: Would you meet Mr. McKillen if he wanted to meet you?

Mr. John Moran: I have no problem about meeting Mr. McKillen. What is interesting about this process is that Mr. McKillen has accused me of being partial about meeting people I have not met although he has since been in the Department meeting officials there who deal with the institutions with which he seems to have a problem.

Deputy Shane Ross: That is fine.

I have a final question. Maybe Mr. McDonagh could answer this. How many loans have you taken over from banks at zero consideration?

Mr. Brendan McDonagh: I do not have that information at hand at the moment but I can come back to the committee with it.

Deputy Shane Ross: Would you be able to give it to me?

Mr. Brendan McDonagh: Absolutely. I will contact the committee secretariat with that information.

Deputy Mary Lou McDonald: I feel as if I am on the set of an Agatha Christie drama. I will start with you, Mr. Daly. You indicated in your statement that the board investigates every allegation of impropriety. You indicated four complaints made to An Garda Síochána, two relating to former employees and two in respect of debtors. How many complaints or allegations of impropriety has the board considered or investigated over the past four years?

Mr. Frank Daly: The four that I have mentioned. Are you talking about internal NAMA staff or debtors?

Deputy Mary Lou McDonald: Both because you stated very clearly that it is a role of the board to investigate every allegation of impropriety.

Mr. Frank Daly: The four I referred to here, all of which have been referred to the Garda. There was one other allegation or suggestion of impropriety which we investigated and found that the allegation was not proven.

Deputy Mary Lou McDonald: What was the nature of that allegation?

Mr. Frank Daly: It related to an alleged disclosure of information.

Deputy Mary Lou McDonald: Can you give a fuller description than that?

Mr. Frank Daly: Not really. That was the allegation. We investigated it and we did not find that it was well-founded.

Deputy Mary Lou McDonald: Over the course of four years you have investigated five allegations of impropriety which have resulted in four referrals to An Garda Síochána. That is the net point.

Mr. Frank Daly: That is correct.

Deputy Mary Lou McDonald: Will you or Mr. McDonagh say something about Mr. John Fraher? This case was a cause of some public comment earlier this year, I understand.

Mr. Brendan McDonagh: I think it is in the public domain that Mr. Fraher is a debtor of

NAMA against whom we seek judgment proceedings. He made a complaint to the Data Protection Commissioner. As far as I am aware there was no basis for that.

Ms Aileen O'Reilly: My information is that the Office of the Data Protection Commissioner has investigated that complaint and would have been in contact with our data protection officer in the NTMA. I am not sure whether that investigation is fully complete. It is at a very advanced stage but given that the investigation is ongoing, in so far as I do not know whether a final determination has been issued by the office, there is not much we can say on that except that it is an ongoing investigation.

Deputy Mary Lou McDonald: I am sure you can agree that the complaint was of a most serious nature.

Ms Aileen O'Reilly: Yes, it was a data security breach and has been, and is, I understand, under investigation by the Office of the Data Protection Commissioner who is the regulator in the area.

Deputy Mary Lou McDonald: I am raising it with you for two purposes, the first being that, whatever about the particulars of the turn of events that we are discussing here, it is not the first time that a complaint has been made in respect of NAMA's handling of personal information, of business data. The second is that while I understand the pride you take in your organisation, which is very worthy, you are aware that many of us view NAMA as virtually impenetrable. Notwithstanding Mr. Daly's and Mr. McDonagh's comments about oversight and accountability, you are not amenable to us as parliamentarians in any meaningful way. You are immune to freedom of information legislation and that creates a ready perception not of wrongdoing but of secrecy which lends itself to the unfolding of situations such as the one we are dealing with here. We have raised this issue less often with you than with the relevant Ministers with whom we have raised it time and again. It is not helpful, given the scale of the assets you manage, and your task, that you are out of the reach of democratically elected persons such as us. I accept that your fortunes and the financial fortunes of the State are joined at the hip.

Mr. Frank Daly: I will be brief. As the Deputy inferred, we have been over this ground at considerable length in earlier sessions. I am of the view that we have been extremely accountable to this committee and any other before which we have appeared. There are few organisations - perhaps the HSE is an exception - which appear as frequently as we do before committees of the Houses. I could go into all of the oversight relating to the Comptroller and Auditor General, etc., but I will not do so because it is there for the record.

I understand that we will be subject to freedom of information requirements when the new legislation is passed. We have never objected to being accountable to this committee or anybody else. In fact, our annual report contains a plethora of information about the organisation. The one area where we have sensitivities is that which relates to commercial information. This goes to the heart of what we are, namely, a State body which is working on behalf of taxpayers but which is operating in the commercial arena. We need to do the best we possibly can and very often the debate regarding freedom of information and, lack of transparency seems to return to matters relating to loans and debtors. We are asked, for example, what we paid for loans, their value, who were the debtors involved and to whom we sold the loans and at what price. In the past I have pointed out that there is a need for a reality check in respect of a commercial organisation operating in the commercial arena. We cannot put our cards on the table and indicate what we paid for individual loans or assets we are trying to sell. If we did so, we would be telling people about our pricing. I do not want to go on about this matter because we

have been through it all before.

Deputy Mary Lou McDonald: We differ radically on this point.

Mr. Frank Daly: We do.

Deputy Mary Lou McDonald: As long as issues of that nature are not up for scrutiny by people such as us, then there is an obvious and fundamental issue of accountability. It is NAMA's bread and butter - what it does on a day-to-day basis - and we will have to agree to differ on that point.

The agency has a very high level of staff turnover. At a previous meeting, we discussed what constitutes an appropriate cooling off period and we also agreed to differ on that matter. I do not believe that NAMA adequately caters for such cooling off periods. Will our guests indicate the level of contact between NAMA or NAMA developers and former employees of the agency wishing to acquire NAMA properties? Have former employees acquired such properties and, if so, how often have they done so?

Mr. Brendan McDonagh: People who have left NAMA have moved to various places. Some 62 persons have left NAMA since its inception and, if it would be of help, I can outline the most recent information in my possession as to where they are at present. We believe that five people left to return to accounting practices, four left to join the Irish banks - namely, AIB, Bank of Ireland and Permanent TSB - two left to go into the aviation industry, nine have gone into various forms of consultancy - mainly IT contractors - one left to join an engineering firm, two returned to family firms, one moved to the FSA in the UK, one moved to Germany to work for one of the German bad banks, two left to join IBRC, one is going to the IMF, one has joined an international bank operating in Ireland, one went to an Irish PLC, two left and went to law firms, five left and joined different businesses in the NTMA, five moved to private equity firms, two moved to property valuers, four retired, two joined sovereign wealth funds, one joined a training firm, five left to go travelling around the world, five moved to the UK and one moved to the US.

Deputy Mary Lou McDonald: That is very informative. However, I must ask the question again. What, if any, contacts have there been between former employees and NAMA or NAMA developers with regard to the acquisition of NAMA properties?

Mr. Brendan McDonagh: As stated on previous occasions, when people leave us they go to work for various types of organisations.

Deputy Mary Lou McDonald: I am not asking-----

Mr. Brendan McDonagh: I am answering the Deputy's question.

Deputy Mary Lou McDonald: Okay, let us move it along then.

Mr. Brendan McDonagh: They work for firms, some of which may end up bidding for assets. As I have outlined very clearly in the past, where people are bidding for assets, the best defence NAMA has is that those assets are marketed openly and that everyone has access to the relevant data and information.

Deputy Mary Lou McDonald: Absolutely.

Mr. Brendan McDonagh: That is what we have done and ensured. The reality is that when

somebody leaves the organisation, I can no longer control them. They are subjected to their continued obligation in respect of confidentiality. However, in terms of their being involved in the purchase of assets, if we openly market such assets it means that the whole market has access to the same level of information.

Deputy Mary Lou McDonald: Okay. Taking all of that into account, will Mr. McDonagh answer my question? To his knowledge, how many such contacts have taken place?

Mr. Brendan McDonagh: Yes, we are aware of a number of people who left us and who joined firms which bid for NAMA assets.

Deputy Mary Lou McDonald: How many and what is the frequency involved?

Mr. Brendan McDonagh: I do not think the frequency is that often. However, there are certain firms which are buying assets in the Irish market and which people have joined. Those people might not be directly involved but the firms they have joined might be bidding for assets.

Deputy Mary Lou McDonald: Does Mr. McDonagh see a problem with that?

Mr. Brendan McDonagh: Not if the assets are openly marketed and everyone has access to the same information in respect of them. I cannot do any more.

Deputy Mary Lou McDonald: So it is not problematic for Mr. McDonagh that someone could work for NAMA, leave and take up employment in a different capacity with another firm and then be involved in contacts with NAMA-----

Mr. Brendan McDonagh: No, they are not in contact.

Deputy Mary Lou McDonald: Well that is the matter about which I asked Mr. McDonagh.

Mr. Brendan McDonagh: Effectively, they are working for firms that are dealing with agents. We appoint agents to sell the loans or we get debtors or receivers to appoint agents to sell the underlying properties. So they would be working for firms which might be in contact with those agents in terms of buying the assets. However, our *modus operandi* is that agents provide full information to all potential bidders for the assets in order that nobody has an undue advantage.

Deputy Mary Lou McDonald: Mr. McDonagh would not regard the insider knowledge-----

Mr. Brendan McDonagh: The issue of insider knowledge has been completely overblown. This is because when we acquired the assets they were valued by reference to 30 November 2009. The price people are paying today is the value of what the market thinks they are worth. Everybody knows that the Irish market has declined by 25% since November 2009, so there is no proprietary information as far as I can see. The market is the market. I would love it if some of these people were able to pay us what we paid for the assets in November 2009. We would not be carrying €3.6 billion worth of impairment if we could orchestrate that. However, we cannot do so.

Deputy Mary Lou McDonald: Mr. McDonagh might not view people leaving NAMA, not serving proper cooling off periods, going to work for wealth funds or whatever and then, by some other means, being involved with going back to NAMA and acquiring properties as being problematic. However, in terms of the credibility and standing of the organisation, I strongly suggest to him it is a problem for members of the public and for the uninitiated who are not

familiar with the finer details relating to how NAMA operates.

Mr. Brendan McDonagh: I do not accept that.

Deputy Mary Lou McDonald: I challenge Mr. McDonagh to vox pop on the streets of this town and suggest that as a proposition to anybody with an ounce of cop-on, and I will wager that the average intelligent person will have a problem with that. It raises a problem. In addition to NAMA being out of reach in terms of democratic oversight, as Mr. Daly has set out, for reasons of commercial sensitivity, there is the high level of staff turnover, no correct cooling-off period and the arrangement where staff can go off and work for another entity which has a commercial relationship with NAMA. That is not helpful to NAMA's credibility or standing. Mr. McDonagh would be concerned about this. Is he here really because he feels that damage has been inflicted or that there is an orchestrated attempt to undermine the integrity and practices of his organisation, and to set the record straight in that regard?

Mr. Frank Daly: Deputy McDonald said these people go out and then they have a commercial relationship with NAMA. They do not. People go out; they go to other jobs. Most of that list that was called out will never again, probably, appear on NAMA's horizon or anywhere near NAMA. Some of them may go to work for firms that will bid for NAMA assets. They will probably, not directly, get involved with NAMA but, to be honest with the Deputy, one cannot restrict somebody from earning a living. We, Deputy McDonald and I, have had this debate here before.

Deputy Mary Lou McDonald: We have, but that is not the issue. That is a misrepresentation of what was proposed.

Mr. Frank Daly: We, Deputy McDonald and I, have had this debate here before about what one does. Does one put people on gardening leave for a year or two years, and pay them at the taxpayer's expense? I think I said to Deputy McDonald that I would be in here answering a different set of questions if we were doing that.

Deputy Mary Lou McDonald: We differ on this. NAMA has a fairly high level of staff turnover. That is life. Staff are entitled to move jobs and to move their lives along. I do not think anybody with an ounce of wit or cop-on could understand or justify a situation where a person who works for NAMA leaves and, with no cooling-off period, overnight can be employed and, potentially, have contacts with NAMA.

Mr. Frank Daly: Sorry, there is a cooling-off period. It is not the situation there is no cooling-off period.

Deputy Mary Lou McDonald: How long is it?

Mr. Frank Daly: There is three months or six months, which Mr. McDonagh has explained.

Deputy Mary Lou McDonald: Which is?

Mr. Frank Daly: I know Deputy McDonald has a different view on how long that should actually be, but I would ask, "Why NAMA" What about the banks? What about any other organisation where people leave and they move off, and they might want in some way or other in the future to do business or be involved?

Deputy Mary Lou McDonald: I would remind Mr. Daly that they both went to some lengths - they have done this when they came before this committee - to outline the extraordi-

nary nature of NAMA and the extraordinary relationship that the fate of NAMA has with the State's finances-----

Mr. Frank Daly: And we have also gone to some lengths-----

Deputy Mary Lou McDonald: -----and their arrangements therefore should reflect that extraordinary phenomenon that is NAMA. That is my view and I know Mr. Daly will not agree with me on it.

I will summarise their position in respect of this dossier or file which I have not seen. Clearly, I was not one of the chosen few. Their proposition is as follows: a disgruntled Mr. Enda Farrell is the source of these allegations. Reference has been made to a complete file or a full file in respect of Mr. McKillen, and no such file actually existed or was in the possession of NAMA. None the less, somebody has gone to great lengths to put together a dossier of sorts and that somebody has drip-fed it into the political system and into the media. Presumably, they are referring to Independent Newspapers. When they talk about certain media outlets, I presume it is the *Sunday Independent*. That is quite a scenario, is it not? That is shocking, is it not?

Mr. Frank Daly: We are not referring to any particular newspaper. Let us be clear-----

Deputy Mary Lou McDonald: Okay, Mr. Daly can relax.

Mr. Frank Daly: -----just in deference to everybody else.

Mr. Brendan McDonagh: We do believe that a number of media outlets have got it.

Deputy Mary Lou McDonald: There is more at play here than simply the credibility and standing of NAMA. Mr. Daly's language is strong. He stated NAMA will "not be intimidated". He feels that this is an attempt at some level to intimidate NAMA or to intimidate him personally. Which is it?

Mr. Frank Daly: I do not take it personally. I have been around long enough not to get into that space. I just feel it is designed to damage NAMA, to undermine its credibility with the taxpayers of this country.

Deputy Mary Lou McDonald: That is self-evident. An accusation has been clarified here in respect of the valuation of properties, particularly with the input from the Comptroller and Auditor General. I do not understand why. To undermine NAMA's credibility and place a question mark over NAMA, that is self-evident. However, to intimidate NAMA, that is of a different order.

Mr. Frank Daly: We take tough decisions every day in NAMA, from individual staff members right up to the board, in respect of issues that come to the board. At the end of the day, we are accountable to Parliament, to the Oireachtas, to this committee, etc. It is important that all of the organs of the State and the general population have confidence in NAMA so we see it as something that we have to defend. This is an attack, really, or allegations essentially about the integrity of NAMA and the people in NAMA. It is not just quite natural for us to defend it, it is a responsibility for us to defend it.

Deputy Mary Lou McDonald: I would share that view with Mr. Daly.

Mr. Frank Daly: At the heart of the-----

Deputy Mary Lou McDonald: Mr. Daly might listen to what I am asking because I am curious to get to the bottom of this. I do not think he is contending that Mr. Enda Farrell is seeking to intimidate NAMA.

Mr. Frank Daly: No.

Deputy Mary Lou McDonald: Is Mr. Daly then stating that it is, in fact, Mr. Patrick McKillen-----

Mr. Frank Daly: No.

Deputy Mary Lou McDonald: -----who is so attempting?

Mr. Frank Daly: No.

Deputy Mary Lou McDonald: Is Mr. Daly associating that intimidation with any individual who has been named in the course of his presentation?

Mr. Frank Daly: No, and I want to be very clear about that. We do not know what or who is behind this, but we do know, or we can infer, I think, with very great reasonableness, that somebody has gone to a lot of trouble to compile this dossier. I do not know whether Mr. Farrell has been used in the process or what - I have no idea.

Deputy Mary Lou McDonald: Okay. It is clear that-----

Mr. Frank Daly: In fact, I am glad Deputy McDonald asked me that question.

Deputy Mary Lou McDonald: An inference could have been drawn from Mr. Daly's submission that he is attributing intimidation to either of the gentlemen named.

Mr. Frank Daly: No, no.

Deputy Mary Lou McDonald: Mr. Daly has made that absolutely clear.

Something more serious has happened, even than placing a question mark over the credibility of NAMA. If this is as Mr. Daly describes - I have no reason to say otherwise as he has set out his stall - then, in addition to placing a question mark over the credibility of NAMA, is it also a clearly orchestrated attempt to play Members of the Oireachtas? That is how I see it.

Mr. Frank Daly: I would not-----

Deputy Mary Lou McDonald: Perhaps Mr. Daly cannot comment on that and I might turn to Mr. Moran.

Mr. Frank Daly: I would not see it like that.

Deputy Mary Lou McDonald: I would. I would wonder at that. Where there is no file, these allegations are utterly baseless, and somebody goes to considerable trouble to put together a dossier and, as they describe, drip-feeds it to Members of the Oireachtas, I would consider that an attempt to play Members.

Deputy Micheál Martin raised a specific issue on this freedom of information request on Leaders' Questions this week. It was unusual for such a specific issue to be raised on Leaders' Questions. I cannot ever recall a particular freedom of information request being raised in that manner on Leaders' Questions. It is my first time in the Dáil, so correct me if I am wrong, but

did that strike Mr. Moran as being unusual?

Mr. John Moran: I have been here even less time than Deputy McDonald, and have certainly spent less time in the Chamber. As I have already pointed out in respect of freedom of information, and I have only read the media reports on this, but even the summary of that was an incorrect representation of the freedom of information request. Included in the documents that were not officially released but were already in the public domain, were three parliamentary questions, of which all Deputies would be aware, and therefore not even 13 documents were deemed to be commercially sensitive. Some of those parliamentary questions seemed to go to the heart of some of the unfounded allegations that there was an unfair treatment of one party to what seems to be a commercial dispute where we find ourselves in the middle. There was a specific request in from a Deputy to ask us if we had passed on representations made by Mr. McKillen to NAMA. I think Deputy Doherty asked that question. There was clearly an interest in the House to ensure that we were passing on representations made by parties to the dispute to the relevant institutions.

On the other hand it seems that the accusations of partiality, which I have said are unfounded, seem to suggest that in some way passing on communication received from the other party to the dispute to an institution that is involved there, the IBRC, seems to be something that is inappropriate for the Department to do, which I reject.

Deputy Mary Lou McDonald: The allegation of Mr. Moran's awkwardness in respect of these documents requested under FOI, is presumably one of the allegations contained in this dossier or file that is doing the rounds. Is that right?

Mr. John Moran: I am not aware that anyone has described or accused me of being awkward with respect to the FOI. What I stated at the beginning of this hearing was that some of the documents that have not been released, containing-----

Deputy Mary Lou McDonald: No, I understand that.

Mr. John Moran: Please let me finish. Some of the documents that have not been released contain commercial information which were offers made to acquire assets that indirectly at least belong to the taxpayer. Our objective in the Department, which I am sure is shared by this committee, is to secure the best available price for those assets. It seems to me that it is appropriate in those circumstances to ensure that if there is interest in those assets, we pass that on to the relevant deciding authorities, which in that case is the board of the IBRC.

Deputy Mary Lou McDonald: No. I thank Mr. Moran for that. The reason I am raising the FOI issue with Mr. Moran in that way is that certainly when this was aired at Leaders' Questions, the inference was that there was malpractice as regards NAMA. Those allegations, which Mr. Moran refutes, have been well rehearsed publicly. There was the allied issue of awkwardness in respect of the Department and these particular documents, although Mr. Moran was not named in person. Therefore the whole thing was packaged in that way.

Mr. John Moran: Let me try to repeat again that as regards the Department, of which I am the Accounting Officer, I have a responsibility to protect the State in respect of the documents I release.

Deputy Mary Lou McDonald: I think Mr. Moran is missing my question.

Mr. John Moran: When an independent process, which I am not supposed to interfere in,

reaches a conclusion that documents should not be released under the FOI, I think everybody would agree that it is only appropriate that I respect that process fully and do not try to interfere with it. We are now in a situation where the party that conducted the FOI request does not agree with the conclusions. The legislation provides for how that should be dealt with and the commissioner needs to reach his own conclusion. I have stated on the record that when he reaches his conclusion, and if those documents can be released, then I think they will categorically explain why it is that the Department felt it appropriate to make sure that the offers for those assets were passed to the bank in question.

Deputy Mary Lou McDonald: Does Mr. Moran think that Deputy Micheál Martin did not understand all of that or had not briefed up on FOI?

Mr. John Moran: I was not there for those questions and I did not see the transcript, so I am not going to comment on that.

Deputy Mary Lou McDonald: Mr. Moran might read it. It would make interesting reading for him.

Deputy Áine Collins: I would like to welcome the witnesses. It has been a good exercise in clearing up the whole valuation process concerning how assets were transferred to NAMA in 2009. I wish to ask Mr. McDonagh to clarify something, although he may have answered it already. Of the 62 staff who have left, did any have complaints, grievances or issues with NAMA?

Mr. Brendan McDonagh: Like any organisation, when one tries to ramp up from having four or five staff at the start of NAMA to over 300, in those 62 people there were probably - I do not have the figures with me at the moment - five or six staff who did not work out. We would have asked them to leave the organisation, but it probably did not work on both sides to be honest.

Deputy Áine Collins: Were there specific reasons for that? Was it that their skills did not match or their attitude was inappropriate?

Mr. Brendan McDonagh: Yes. They just did not fit in personality wise. Their work was not to the standard that we thought was acceptable. There was a mutual agreement that they would leave the organisation.

Deputy Áine Collins: There was mutual agreement.

Mr. Brendan McDonagh: Yes.

Deputy Áine Collins: They did not file a legal process against NAMA or anything like that?

Mr. Brendan McDonagh: No. There is usually negotiation. As part of the process some people, if they had rights, negotiate on that basis.

Deputy Áine Collins: Of course. As we do not know the source of the information that has come out in the media - and I have not seen the file or dossier - was it possible that any of those five people who had a grievance or had left, would have had the information that has come out in the media?

Mr. Brendan McDonagh: No. They were not in roles where they had access to that infor-

mation.

Deputy Áine Collins: Okay. That clarifies that. When NAMA is selling assets, how does that process happen?

Mr. Brendan McDonagh: In terms of property sales, NAMA itself has very little property on its balance sheet. We have about €7 million worth of property on our balance sheet which we got from the Dublin Docklands Development Authority as part of a settlement of a guarantee it gave. If we exclude those properties, most of the properties are held by the debtor or by a receiver. Our process is that when an asset is agreed to be put up for sale, it is openly marketed. An agent is appointed and it is offered to the open market wherever possible. We would have a small number of instances where it cannot be offered to the open market because there may be some pre-emptive legal agreements that existed or some legal rights whereby the existing tenant has the right to purchase, but there are very few such instances. Nearly all purchases are openly marketed.

Deputy Áine Collins: Mr. McDonagh said there is an agreement to put the assets up for sale.

Mr. Brendan McDonagh: Yes.

Deputy Áine Collins: Who is involved in that agreement process?

Mr. Brendan McDonagh: If we are working consensually with the debtor, it is an agreement with the debtor and NAMA as part of the consensual work-out that a certain number of assets will be put up for sale during the debtor's work-out plan with NAMA.

Deputy Áine Collins: Would Mr. McDonagh normally set a portfolio together or would it depend on the commercial situation?

Mr. Brendan McDonagh: It depends on the commercial situation. We have sold portfolios of loans and we have sold portfolios of individual properties across a number of debtors or receivers. Generally, however, the majority of transactions are basically bilateral - the debtor and NAMA agreeing that this asset will be put up for sale. An agent will be appointed and it will be openly marketed.

Deputy Áine Collins: When that process has been completed, what happens to the money that NAMA receives?

Mr. Brendan McDonagh: Effectively, the money comes in to NAMA and it is applied against that debtor's debt.

Deputy Áine Collins: Towards it?

Mr. Brendan McDonagh: Yes, repaying his debt.

Deputy Áine Collins: What if tax was owed by the debtor?

Mr. Brendan McDonagh: If there is any tax due as part of the sales transaction and it is legitimately owed, that is deducted from the sales proceeds.

Deputy Áine Collins: What does "legitimately owed" mean in this instance?

Mr. Brendan McDonagh: If there were a sale of a new house, for argument's sake, and

VAT is due on that, then the VAT is remitted to the Revenue Commissioners.

Deputy Áine Collins: If a debtor had rental income, is the VAT on that income paid over or is it part of the overall gross takings of NAMA, the National Asset Management Agency?

Mr. Brendan McDonagh: Effectively, the agreement is that if the rental income is mandated to NAMA and there is VAT or other tax due on it, then we allow the debtor to retain certain proceeds out of that to pay to the Revenue Commissioners.

Deputy Áine Collins: Is it definitely paid over? How does NAMA ensure it is paid over?

Mr. Brendan McDonagh: We have appointed financial monitors for most of our debtors to make sure this happens. If a debtor does not pay over VAT to the Revenue Commissioners, then with a former head of Revenue as chairman of NAMA, it would be considered one of the worst sins.

Deputy Áine Collins: I am glad to hear that.

One issue raised with me by people working in or who have ended up in NAMA relates to the economic value of commercial property. As Mr. McDonagh said earlier, values in this sector in Dublin have gone up 25% in the past year. Are we selling assets too early?

Then there is the issue of the overall economic recovery, one of the reasons NAMA was established in the first place. The agency holds economically sensitive and valuable assets which will be influential for future business growth across a range of sectors. When the agency is selling an asset, does it vet that side of it against the sale price?

Mr. Brendan McDonagh: Yes. One must understand that as part of the troika programme, we had to pay off €7.5 billion of our senior debts. Accordingly, we had to generate that cash. The board took a deliberate strategy at the start that as 45% of our assets were overseas, we would concentrate on selling those first. Liquidity and the best prices were overseas, particularly in London, and we did well in those transactions. We decided to hold back on floating in the Irish market. We let the debtors manage the assets to maximise rentals. As the market is recovering and there is much interest in buying Irish assets, we have increased the flow of supply of stock to the market.

Deputy Áine Collins: I have people in my constituency who have complaints about NAMA, some are working through processes with the agency, but they feel they have nowhere to voice their concerns or will be treated fairly if they make a complaint. That is not a healthy environment. Now that we are five years on with NAMA, should we make a separate complaints procedure available?

Mr. Brendan McDonagh: Of 800 debtors involved with the agency, a remarkably high number of them write to me personally when they have a complaint about a case manager. The Deputy's constituents who have complaints about NAMA are more than welcome to write to myself or the chairman. We will look into the cases. We are not post boxes, passing it on to someone else. Everyone who works in the agency knows I am on the floor, at people's desks finding out what is going on. The chairman is also that type of person too. Sometimes, there are genuine grievances. Other times, there are cases of people wanting to hold on to their asset but we are telling them this is the time to sell it.

Deputy Áine Collins: I appreciate that. However, and with the greatest respect, because of

the nature of NAMA, the last person to whom someone with a complaint might want to go to is Mr. McDonagh or the chairman. There should be a procedure in place for those with grievances, separate from the agency. NAMA, when it was first established, had much power which might have been necessary. However, as it has evolved, this aspect of its processes needs to be examined.

Mr. Brendan McDonagh: We are big believers in arbitration. We have used it in several cases in which we had disagreements with debtors. The Commercial Court, particularly Mr. Justice Kelly, favours arbitration over court proceedings. If there is an issue, whether legitimate or not, the chairman and I want to know about it. Sometimes there can be a personality clash between a case manager and a debtor. Both sides might be not be at fault as not everyone gets on in life. In such instances we tend to rotate case managers. There is no downside for anyone writing to us because we prefer to know what is happening. We insist all our people, while they might not agree with a debtor, must act professionally with him or her.

Deputy Áine Collins: While I accept that the nature of the agency's work can lead to people feeling they have a grievance, those who have contacted me with a complaint about the agency will not give me further information about it because they feel they will be treated unfairly by the agency. Whether it is founded or not, it is out there. I have nothing personally against Mr. McDonagh, Mr. Daly or any NAMA staff, but if that feeling is out there, it needs to be addressed in the public interest.

Mr. Brendan McDonagh: I accept that but we do not operate that way. If someone has a genuine grievance, they should bring it to my attention. The majority of our debtors are not shy about writing to the chairman or me. There has never been any after-effect of doing so either.

Deputy Áine Collins: Some of the cases I have do not necessarily involve debtors. Some are people working out processes with NAMA who are not happy with the speed or way things happen with the agency. When they compare it to processes with ACC or Ulster Bank, they see far more straightforward processes.

Mr. Brendan McDonagh: We are operating on behalf of the taxpayer and under certain processes and procedures. Maybe, not everyone likes these processes or procedures. We have them to ensure we have consistency and there is an audit trail. We accept that certain people do not like this, but that is the way we do business. The time taken in NAMA for making normal decisions is down to an average of four days, which is quite remarkable. We have made 35,500 decisions since the first loan was transferred to us on 31 March 2010. That is a lot of decisions to make and one needs a process around it.

Deputy Áine Collins: I appreciate that, of course.

Mr. Brendan McDonagh: I accept the Deputy's point, but I assure her that if anybody thinks things can be done better, I am all for improving them.

Chairman: Let me clarify some points arising from what we have heard this morning. Again, I go back to my opening remarks which were aimed at ensuring NAMA and the Department of Finance would address many of the issues in the public domain to allay fears, restore trust and limit the damage, if any damage had been done. Mr. Daly has dealt with this in very strong terms in the context of how he feels about the matter. For the purposes of clarity, the number of internal complaints received by NAMA was five in four years.

Mr. Frank Daly: Two were internal complaints about staff that we referred to the Garda.

They are the two cases under investigation. Two were about debtors which we referred to the Garda because an incomplete statement of affairs had been given.

Chairman: That is disclosure.

Mr. Frank Daly: Yes. The other was an internal complaint; there was a complaint that was investigated and the board reviewed the outcome and determined that the it was unfounded.

Chairman: There was no basis for the complaint.

Mr. Frank Daly: No.

Chairman: Who would have made the complaints? How did they arise? Does NAMA detect complaints in its processes? Is it by a member of the public or somebody else who makes a complaint? Did NAMA discover the complaint in each of these five cases? How did they come to light?

Mr. Frank Daly: I need to be careful because four of them are in the legal process. In respect of the two internal complaints that are with the Garda, the case involving Mr. Farrell has been rehearsed in detail.

Chairman: Therefore, there are two employees involved.

Mr. Frank Daly: The other employee was a debtor who made a complaint about a particular individual. That is the other case with the Garda. The other one arose essentially from our own inquiries internally.

Chairman: Was there ever a case where another file relevant to somebody else was leaked or investigated by NAMA? I am not talking about Mr. McKillen. I just want to clarify a point.

Mr. Brendan McDonagh: If we were to find any document has left the system unauthorised, it would be fully investigated.

Chairman: Will Mr. Daly answer that question? Did anyone ever make a complaint to him about a document being passed elsewhere?

Mr. Frank Daly: To me.

Chairman: Yes.

Mr. Frank Daly: Yes; that was the second case to which I referred.

Chairman: The second case; therefore, it is one of the two.

Mr. Frank Daly: It is the second case under investigation.

Chairman: Did any staff within NAMA, the other thing about which we read, ever purchase a property or have the benefit of a property?

Mr. Frank Daly: We are aware of one case - the Enda Farrell case.

Chairman: It is the same case.

Mr. Frank Daly: Yes.

COMMITTEE OF PUBLIC ACCOUNTS

Chairman: Would Mr. Daly and Mr. McDonagh like to comment on what has been written in the media about their request relating to properties?

Mr. Frank Daly: Again, I have not seen it, but I am told that somewhere in this dossier there is one line that reads, "I think Frank Daly enquired about a property in Wexford." That is all. I never knew Mr. Farrell and, to my knowledge, never met him. I certainly have no recollection of ever inquiring about a property in Wexford. What does inquiring about a property mean? There are people who come to me to ask me whether we have properties in Cork or Dublin.

Chairman: I am just asking these questions because they are being asked.

Mr. Frank Daly: Let us be clear - I have no recollection of ever inquiring about a property in Wexford.

Mr. Brendan McDonagh: I do not think it has been written, but it has been mentioned to me that one of the allegations is that my niece bought a NAMA property. I have three nieces living in County Kerry and can assure the committee that none of them has bought a property.

Chairman: At the beginning, I asked about the emails because the matter had been raised in the Chamber and to give Mr. Moran the opportunity to clarify the background to it. He has done this. What concerns me about the documents is the fact that he said it might be appropriate at some stage in the future when the documents become less commercially sensitive to release part of the information. He has outlined the background and I am satisfied with the response. How many years will have to pass before documents like these become less sensitive and can be released?

Mr. John Moran: There is no particular answer to that question because it depends on the specific documents involved. If I did not come across clearly, I am happy to repeat that the Information Commissioner would like to re-engage with the Department because the matter is on appeal to the commissioner.

Chairman: For how long has it been on appeal?

Mr. John Moran: I think since April. If a request or an approach is made to re-engage with the Department, we can try to expedite any information we can provide, which will probably involve communications with the special liquidator in order to accelerate any decision the commissioner would like to make. I have said I have no role in that decision. I do not think it would be appropriate for me to remake that decision because I have no statutory role in that regard. I have said that owing to the concerns raised in the past couple of days I asked to see the file to look at the documents. People may recall that at the time of the FOI request last year loans were held by a different bank; they are now in the hands of a special liquidator who is following a very different and much more public process for the sale of the loans. Some of the information in the e-mails passed to the Department to make sure it was treated fairly is less sensitive now but that is not my decision.

Chairman: The reason I ask is we spoke to Mr. Moran before about some banking documents which had been heavily redacted. They continue to be of a sensitive nature. That has been ongoing for years. Will the same apply in this case? Will we have this type of issue with these documents such that it will go on for years and years and much of the information will not be put into the public domain to clarify matters. Mr. Moran has answered that question. Are all of the FOI requests from the one person or company?

Mr. John Moran: I am a little confused. I think we talked about it earlier because we believe the FOI request referred to in the statements in the House is a request from Mr. Paddy McKillen. The media report suggested it had come from somebody else. In respect of the FOI request for 19 documents, some of which were not released for commercial reasons and some of which were not transmitted because they were already in the public domain, we assumed that this was the same request and that it had come from Mr. McKillen.

Chairman: To recap, there were 19 documents.

Mr. John Moran: There were 19 documents, of which the last three-----

Chairman: Were there 19 FOI requests?

Mr. John Moran: There were 19 documents in the FOI.

Chairman: There was one FOI involving 19 documents.

Mr. John Moran: That is right.

Chairman: Of those 19 documents, how many have been released?

Mr. John Moran: Six were released, including the one that has been subject to considerable discussion because it came to me. Three were parliamentary questions and were already in the public domain. I would be happy to provide copies to anyone who is interested. The remainder related to a number of approaches to the Department regarding offers to purchase various assets held by IBRC or other entities, as well as communications around the process and people's views of the process, which were commercially sensitive at a time when the assets were still held by the entity making the determination about which assets should be sold.

Chairman: Can we have a copy of the information that was released and the parliamentary questions?

Mr. John Moran: Yes.

Chairman: Mr. McDonagh made reference to Mr. McKillen in the context of the NAMA board's decision not to acquire his loans. He outlined the information he would have possessed in regard to Mr. McKillen. What is NAMA's relationship to Mr. McKillen and what is the extent of the information it has on him? I want to get an idea of what is being discussed.

Mr. Brendan McDonagh: As part of the National Asset Management Agency Act 2009, in the pre-acquisition phase each of the banks was obliged to provide NAMA with a list of eligible assets and loans that would be eligible to come into NAMA. All five institutions provided us with that information. This information included a list of loans between Mr. McKillen and a number of institutions. Effectively, this was a list of his loans across the institutions and the balances outstanding at a point in time. Mr. McKillen took a court action to object to his loans being acquired by NAMA which went all the way to the Supreme Court. In July 2011 the NAMA board made a fresh decision not to acquire Mr. McKillen's loans, as directed by the Supreme Court. The information was provided to us by the financial institutions as part of their obligations under the 2009 Act.

Chairman: Is the information fairly considerable?

Mr. Brendan McDonagh: It is not considerable information. Effectively it comprises lists

of loans with each institution. Prior to making our decision not to acquire the loans, each of the banks had to apply to be designated by the Minister as participating institutions under the Act. Until such time as the loans were formally acquired by NAMA, the banks were obliged to refer credit decisions relating to them to NAMA under a pre-acquisition framework provided for in section 71 of the Act. If credit decisions were attached to Mr. McKillen's loans, they would have come to NAMA before we made the decision to acquire them.

Chairman: In respect of the same individual, is Mr. Moran saying the Department had no connection with IBRC?

Mr. John Moran: The relationship with IBRC is set out in the relationship framework. Decisions on commercial matters are to be taken by the management of the bank concerned and, ultimately, by its board. Our interest is to ensure that the institutions are properly run. Where we consider that information made available to us would be helpful to the management of those institutions, we pass it on to them. In the disposition of any assets of the State, whether held directly or indirectly, we have an obligation to secure the best price for the taxpayer.

It appears there are a lot of unfounded allegations about partiality in respect of the disposition of the assets. I share some of the concerns expressed by my colleagues about that. These are loans in respect of which money was advanced to people who have had the ability since the beginning of this process to buy back the loans at the prices advanced to them. To the extent that anybody would like to buy loans at a discount, that is a cost to the taxpayer. My interest, which is shared by my colleagues and the management of the various institutions held by the State, is to minimise that discount to the extent possible. We are going through a process, as part of the special liquidator process, which can be cut short at any moment and by any borrower who pays back his or her loan to the taxpayer. If borrowers decide to go through the process, they have an open and equal opportunity to participate in buying their loans back, in most cases at a discount and, therefore, at a cost to the taxpayer. It is important that the process takes place in a way that allows everybody equal access to information and equal opportunities to make the best bids they can. That is how we will discharge our responsibility to protect the taxpayer.

Chairman: In protecting the taxpayer, would Mr. Moran, as Secretary General of the Department of Finance, or his officials be involved in influencing individual cases or loans?

Mr. John Moran: We have absolutely no reason to influence the decision. My interest is in ensuring that anybody who wants to purchase the assets has access to the information required to make a proper decision and offer the State the best price. This is why we have spent so much time on the liquidation process to ensure it is fair to all potential purchasers.

Chairman: The Department's interest then, and its interest now -----

Mr. John Moran: Have been the same.

Chairman: ----- do not extend to influencing the outcome of individual cases.

Mr. John Moran: Absolutely. We do not think it is fair to influence a purchase or sale to go to anyone.

Chairman: When the assets to which the commercially sensitive e-mails refer are gone, the information is no longer sensitive and can be released.

Mr. John Moran: The passage of time is considerably aided by events that occur along

the way. One of those is that the assets may no longer be owned by the State and I can see a strong argument in this regard. The special liquidator or others may, however, decide that if the acquirers will be participating in bids for future assets, they may not want information of that nature to be released because it could harm the disposition of further assets. It is not my decision and I am happy to go with the decision as it is.

Chairman: Mr. Moran appears anxious to get information into the public domain to help the understanding of NAMA, the loans and the Department of Finance. He is dealing with FOI requests but he has no difficulty in allowing the information to be released. I do not refer to specific information. I am referring to information from the Department on its role and activities in respect of NAMA. He is happy to speak on that subject and help people understand it.

Mr. John Moran: There is an unfounded allegation that the information we are unable to release suggests partiality on the part of the Department. I have already refuted this allegation and I continue to deny it. Once released, the documentation will show that was not the case.

Chairman: I have one question on the rents. There was an issue of rents being collected but not banked and another one about the multiple of rents used and the value of the property. What is the extent of the knowledge that developers, buyers or interested parties would have on the rents being paid by current occupants of buildings in the NAMA portfolio?

Mr. Brendan McDonagh: If the debtor is on the consensual workout with us, he or she would have full knowledge of the rents coming in and the incoming and outgoing funds. If a receiver is in place, the receiver is obliged to file returns as part of the receivership process, to show books of account. There is no secret about it. The debtor knows.

Chairman: How is that information shared within NAMA? It is known by an individual dealing with the portfolio-----

Mr. Brendan McDonagh: Within NAMA there is a lead case manager and a backup case manager for every debtor, so nobody has proprietary information. As part of a debtor's business plan, and as part of our impairment process, each year we must produce projected cashflows all the way out to when the assets are all disposed of. As part of that we would know the income coming in on those assets. In the meantime we project that as part of the cashflows. It is a factual situation. If the building of 100,000 sq ft. is let for €35, the gross income is €35 multiplied by 100,000. Then one examines the costs of insurance-----

Chairman: That information is factual.

Mr. Brendan McDonagh: Yes.

Chairman: Sometimes NAMA's properties and rents will not relate to a square footage but to something else, such as a deal that must be done because NAMA wants to rent the building. Who knows that?

Mr. Brendan McDonagh: The asset recovery manager who is dealing with the debtors is expected to know everything about his or her debtor connection. It depends on the value of the lease. There is a different level sign-off for low value leases but there is also a two person sign-off on every approval and transaction. A high value lease would probably come to my desk and I would have to sign it along with the head of asset recovery. A lower value lease would be signed by the deputy head of asset recovery, and it cascades down through the organisation.

Chairman: To whom did the two people in question report to directly when they were with NAMA?

Mr. Brendan McDonagh: As I said earlier, Mr. Farrell reported directly to Mr. John Mulcahy, then head of portfolio management, now head of asset management. It was a particular project role in terms of the acquisition. The second person reported to an asset recovery team leader who heads up this nine person team.

Chairman: Did Mr. McDonagh conduct an internal review of NAMA recently?

Mr. Brendan McDonagh: In September 2011, the Minister for Finance asked Mr. Michael Geoghegan, former global chief executive of HSBC, to conduct a review of NAMA's operations, and he made a number of recommendations, as a result of which we reorganised NAMA.

Chairman: On foot of all this business-----

Mr. Brendan McDonagh: In terms of information?

Chairman: Yes.

Mr. Brendan McDonagh: After we became aware of Mr. Farrell's activities, we had a review of all our controls and processes done by Deloitte and it made a series of recommendations to the board, which the board accepted. We published a report on that and it is on our website under publications 2012.

Chairman: Regarding the two individuals and what transpired after that, did someone independent investigate that internally?

Mr. Brendan McDonagh: Yes. Deloitte investigated the Mr. Farrell situation and we also had legal input from the legal firm Arthur Cox. Regarding the second one, a review was done by the NTMA's head of compliance and IT security department, which searched the files. There was no electronic record. We have made all that information available to the Garda.

Chairman: Were those internal investigations arising from the complaint carried out before or after NAMA notified the Garda about this?

Mr. Brendan McDonagh: In the case of Mr. Farrell it was parallel because we appointed Deloitte and Arthur Cox to investigate as soon as we became aware of it. In the second case we received an allegation from a debtor who gave us a name and within seven business days we reported it to the Garda.

Chairman: I presume these documents are part of the investigation.

Mr. Brendan McDonagh: Yes.

Chairman: Regarding the matters raised in the Seanad and the dossier or files that are floating around, Mr. McDonagh is aware of the content because some of it has been reported in the newspapers and there is hearsay. Have any of those documents referred to in the Oireachtas been handed to the Garda?

Mr. Brendan McDonagh: We understand Senator Darragh O'Brien has passed a file to the Garda but we have not seen it. Nobody has given it to us.

Chairman: If those files, or any files, have been passed to the Garda and there is a special

liaison officer there, is it not strange that there has not been more contact or a more definite position from NAMA on it? People would expect that with so much being talked about, true or false we do not know, the liaison garda would be in regular contact with NAMA by now, that Mr. McDonagh would know what he or she has and is looking for and that there would be an ongoing investigation. From what Mr. McDonagh said this morning, he thinks it is the garda who is in contact with-----

Mr. Frank Daly: I understand Senator Darragh O'Brien has handed these papers to the Garda only in the last couple of days, so it is early days.

Chairman: It is a major issue and has been raised. I will not go through the comments made in the Seanad, and not just by Senator Darragh O'Brien. It has been raised as an issue that is central, as Mr. McDonagh rightly acknowledged, to the economy and the State. I would have thought that when the papers were handed to the Garda, it would have to examine them, but surely it would have contacted NAMA before now. Certainly, regarding all the other information in the media, and if there is a liaison officer appointed, would Mr. McDonagh not have expected that the Garda would have been in touch with him?

Mr. Brendan McDonagh: We have not been told who the liaison officer is, as we told the committee earlier this morning.

Chairman: Does Mr. McDonagh not find that strange? It has been talked about in the media, the public is taking comfort from that, yet Mr. McDonagh does not know who that liaison officer is. I find that strange.

Mr. Brendan McDonagh: We are working completely in the dark because we do not even know what is in the file and nobody has contacted us about this file which has been lodged by Senator Darragh O'Brien.

Chairman: Has Mr. McDonagh in turn-----

Mr. Frank Daly: In fairness to the Garda, it received this only two days ago.

Chairman: When was the liaison officer appointed?

Mr. Brendan McDonagh: We do not know who the liaison officer is because we have not been told by the Garda.

Chairman: Has NAMA rung and asked to find out? Are the witnesses curious about who is looking over their shoulder? I would want to know.

Ms Aideen O'Reilly: I might be able to provide some detail. With regard to referrals to the Garda where NAMA is the complainant, I and certain members of my team have regular contact with investigating officers in the bureau of fraud investigation and I also have regular contact with the chief superintendent who heads up the unit. He is fully briefed on all complaints NAMA makes to the bureau which are under active investigation. Our role as complainant is to make the complaint and to continue to provide information as and when requested by the bureau, and this continues.

With regard to the so-called file or dossier, we understand from media reports this may have been given to the Garda or may have been the subject of a complaint to the Garda. In such a situation I would not necessarily expect the Garda to contact us because we are not the complainant. On receipt of any complaint, gardaí set out to investigate in accordance with their own

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protocols and we would not necessarily expect to be notified by them.

Chairman: How many complaints are with the fraud section?

Mr. Brendan McDonagh: Four, comprising two internal and two debtors.

Chairman: NAMA is in constant contact with the Garda on these issues but has not heard anything arising from the latest round of material out there.

I thank the witnesses for coming before the committee at short notice. We have asked various questions and received the clarification necessary. It is something we will return to in the new year. I wish those in the Public Gallery, the media and committee members a happy Christmas and I thank them for their work and co-operation.

The witnesses withdrew.

The committee adjourned at 2.25 p.m. until 10 a.m. on Thursday, 16 January 2014.