

DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Déardaoín, 29 Meán Fómhair 2016

Thursday, 29 September 2016

The Committee met at 9 a.m.

MEMBERS PRESENT:

Deputy Bobby Aylward,	Deputy Marc MacSharry,
Deputy Peter Burke,	Deputy Mary Lou McDonald,
Deputy Shane Cassells,	Deputy Josepha Madigan,
Deputy Catherine Connolly,	Deputy Noel Rock,
Deputy David Cullinane,	Deputy Róisín Shortall.
Deputy Alan Kelly,	

DEPUTY SEAN FLEMING IN THE CHAIR

BUSINESS OF COMMITTEE

Business of Committee

Chairman: The committee is in public session. Apologies have been received from Deputy Alan Farrell. The first item on the agenda is the minutes of the meeting of 21 September last. Are the minutes agreed to? Agreed. Are there any matters arising from the minutes?

Deputy Mary Lou McDonald: I would like to note one matter. Maybe it is not strictly a matter arising, but it is a matter that arises. I refer to the slate of witnesses that has been agreed so far for the hearings we are going to have. Obviously, we will add to that we as proceed. The question of securing documents remains an ongoing process.

Chairman: I am not having a discussion on this. The clerk has circulated a list of documents he believes we will require.

Deputy Mary Lou McDonald: Yes, I have that.

Chairman: People have been asked to add anything they wish to that. I decided to wait until after today's meeting before requesting documentation from various State agencies because I did not want to be in communication with them in advance.

Deputy Mary Lou McDonald: That is absolutely fair enough. I ask for this committee to be given an opportunity to pause for reflection after today's meeting.

Chairman: Fine.

Deputy Mary Lou McDonald: We should reflect on matters that will arise-----

Chairman: Our work programme.

Deputy Mary Lou McDonald: -----and individuals and papers that we will seek.

Deputy Alan Kelly: It is not locked down.

Deputy Mary Lou McDonald: That is precisely what I am trying to establish.

Chairman: We have agreed the first few weeks only.

Deputy Alan Kelly: We can review it after today.

Chairman: We will.

Deputy Mary Lou McDonald: I thank the Chair.

Deputy David Cullinane: I would like to raise a separate issue.

Chairman: Does it arise from the minutes?

Deputy David Cullinane: Yes. It relates to this meeting and a discussion that flows from our last meeting. The issue is whether any members of this committee have received correspondence or calls from NAMA in relation to briefings. There was some reporting to that effect. Did any member of this committee-----

Chairman: The Deputy wants to know whether any member had a briefing.

Deputy David Cullinane: I want to know whether any member was offered a briefing by

NAMA.

Chairman: I have made it publicly clear that during August I had three, four or five phone calls-----

Deputy David Cullinane: I am asking about members other than the Chair.

Chairman: -----with the recognised official-----

Deputy Alan Kelly: I had a phone call.

Chairman: I will just complete what I have to say. I spoke to the recognised official in NAMA who would deal with us. Those calls were about timing. I was trying to agree a date. I did not even know whether the report would be published. We had a bit of toing and froing. He wanted to know whether we wanted any information. I said we would wait until the meeting. I did not have any discussion other than discussions on what I would call logistical matters.

Deputy David Cullinane: Was the Chair offered a briefing?

Chairman: I was asked whether we wanted to have a meeting. I said there was no need for a meeting. The meeting did not specify anything.

Deputy David Cullinane: At least one other member was offered a briefing. I refer to an Teachta Kelly. Is that right?

Deputy Alan Kelly: I have made that quite public. I referred the person who made that offer to the Chair.

Deputy David Cullinane: Nobody else received such an offer.

Deputy Alan Kelly: I think-----

Chairman: Deputy Kelly is the Vice Chairman of the committee. Perhaps that was the reason. I might have been away or something.

Deputy Alan Kelly: I referred the person in question to the Chair. I did not hear anything back.

Deputy Josepha Madigan: Was NAMA offering this meeting to everybody or just to certain individuals?

Chairman: I took it that I was being contacted as the Chairman of the committee because I was trying to arrange meetings, secure the availability of witnesses and organise our timetable. I took it that the Chairman was being contacted about how the committee was going to proceed. I took three or four phone calls and then the secretariat eventually wrapped all the details up. I did not see any issue. I thought I was being contacted as normal as the Chair. I was working in a vacuum because I did not know whether the report would be out. It required a bit of toing and froing. That is all. We will move on. I do not think there is any issue here. There are no matters arising from the minutes. The next item is routine correspondence.

I just want to say we are joined today by the Comptroller and Auditor General, Mr. Seamus McCarthy, who is a permanent witness to the committee. He is accompanied by three officials from his office: Mr. Andy Harkness, who is the secretary and director of audit; Mr. John Rior-dan, who is a deputy director; and Mr. Tom Malone, who is an assistant principal. I mention

that by way of information. They will be speaking shortly.

We are completing our routine correspondence item. Correspondence items 80A (i) to (viii) are briefing documents from NAMA in relation to today's meeting. Is it agreed to note those? Agreed. The next item is correspondence 81A and 82A, opening statements from Mr. Brendan McDonagh, chief executive officer of NAMA, and Mr. Frank Daly, chairman of NAMA. Is it agreed to note them? Agreed.

The next item is correspondence 48B, correspondence from Professor Brian Norton, president of Dublin Institute of Technology, providing information on non-competitive procurement. This was deferred from last week. I suggest we note it. It is a document of 100 pages and members are welcome to read it. It can be raised in any forum.

The next item is correspondence 70B, a follow-up letter to our meeting on 21 July from Mr. Conor O'Kelly of the National Treasury Management Agency, NTMA, providing information on the Ireland Strategic Investment Fund, primary care centres and a breakdown of legal costs incurred in the State Claims Agency. Is it agreed to note it? Agreed. People can take that up themselves.

Deputy Catherine Connolly: I raised issues when the presentation was made. The witnesses stated they would come back on the issues of climate change and investment policy in that regard. Where is that? Will we get an opportunity to look at it?

Chairman: The Deputy may read the correspondence and she can raise the issue again the next day if it is not adequate.

Deputy Catherine Connolly: Great. Thank you very much.

Chairman: The next item is correspondence 71B, correspondence from Mr. Robert Watt, Secretary General at the Department of Public Expenditure and Reform, providing a note in respect of a look-back audit on all public private partnerships since 2003. A report on the latter is also included. Is it agreed to note this? Agreed. If people want to raise it again in future, they may do so.

The next item is correspondence 76B, correspondence from Mr. Robert Watt providing a follow-up on the wards of courts fund. There is a review of the fund's performance between 2007 and 2009 and the committee will receive a copy. I hope that will be during October. Is it agreed to note the item? Agreed. We look forward to receiving that report. Related correspondence is 14B. Is it agreed that the clerk will send a copy of the correspondence to interested individuals who have written to the committee on the topic since the committee has been in place? Agreed. I look forward to receiving the report in October, when we will discuss it again.

The next item is correspondence 77B, a letter from Inland Fisheries Ireland providing an information note setting out the reasons for the non-collection of rateable debts. It appears that a significant part of the reason for non-collection of debts is because the valuation of fisheries is outdated and was last carried out at the turn of the 1900s. I propose that we write to the Valuation Office to be kept abreast of any future revaluation of fisheries assets. Likewise, I propose we write to the Department of Communications, Climate Action and Environment seeking to be kept abreast of any proposed changes in legislation on this issue. Is that agreed? Agreed. If people wish to raise the matter again, they are free to do so.

We have an e-mail from Deputy Josepha Madigan regarding the Olympic Council of Ire-

land. Does she wish to withdraw it?

Deputy Josepha Madigan: Yes.

Chairman: It was an e-mail sent during the summer. We will note it and move on.

Correspondence 72C is a letter from Mr. Seán Ó Foghlú, Secretary General of the Department of Education and Skills on the lateness in the laying of audited accounts of An Chéim, a body providing shared services to institutes of technology, which is being wound down. That is why we are late receiving the accounts. We have taken the step to write to the parent Departments of all bodies that have not had accounts laid before the Houses within the required timescale. Is it agreed to note that? Agreed.

The next item is a letter from Mr. Gerard O'Leary, director of the office of environmental enforcement at the Environmental Protection Agency. Mr O'Leary provides an update on a matter raised by an individual relating to dumping on his land in County Meath. I propose we forward a copy of this correspondence to the individual in question. Is this agreed? Agreed. Correspondence 78C is a letter from an individual on the difficulties with Roscommon County Council regarding two adjacent grave spaces and planning permission. As this has to do with a local authority, it does not fall within the remit of the committee. I propose that we write to the individual suggesting that she contact the county manager or chief executive officer directly or appeal to the Ombudsman if she is not happy with the decision of the council. The person may also check whether it is a planning issue with An Bord Pleanála. As the communication seems to point to customer service concerns, I propose we direct her in that matter. Is this agreed? Agreed.

The next item on the agenda relates to statements and accounts received since our last meeting. They are on the schedule and we can just note each of them. They are the Health Information and Quality Authority 2015 clear audit report, the Credit Institutions Resolution Fund clear audit report, the Labour Relations Commission clear audit report up to 30 September 2015, the Irish Auditing and Accounting Supervisory Authority clear audit report, the Equality Authority clear audit report, the Human Rights Commission clear audit report and the Church of Ireland College of Education teacher training college report. Attention is drawn in that report to the deferred pension funding, which is normal for third level colleges. It is a standard reference in the audit report for that issue.

The next report relates to An Chéim Computer Services Limited, with the accounts covering 2011 to 2014, inclusive, and to August 2015. That organisation is now being wound down, leading to a delay. They were clear audit reports but some of them were very late coming. There is also the audit report for St. James's Hospital board. There is a note from the Comptroller and Auditor General indicating that all the testing of purchases in 2015 found that 1.6% of the expenditure examined related to goods and services where previous contracts had expired and had not subsequently been put to tender. Overall expenditure in such goods and services in 2015 amounted to €903,000. Here we go again. It is a common theme and it is something we will return to on another day. The last set of accounts laid since the last meeting relates to the local loans fund relating to the making of loans to local authorities. Again, it is a clear audit report. We note all those and if a member has a query about them, he or she is free to look up the accounts and raise any matter at a subsequent meeting.

A copy of our work programme has been circulated to members. This includes a series of planned extra dates in order to allow us to examine the Comptroller and Auditor General's re-

port on Project Eagle more fully. Some of these are not yet confirmed. Most of these extra days will be on a Tuesday morning and where possible will begin a little later in order to facilitate members travelling to Dublin. These may be scheduled for 9.30 a.m. or 10 a.m. Does anybody wish to comment on the work programme? It is a draft and we can discuss it at the end of the meeting to see where we are going with possible dates. We have meetings scheduled in any event with representatives of the Department of Social Protection. We will have our normal Thursday meetings as well. The Minister for Finance will be before us next Thursday and after that we will have the Revenue Commissioners and the Department of Social Protection.

I might ask the Comptroller and Auditor General to comment on his annual report with respect to the 2015 audits, as it would normally be issued at this time.

Mr. Seamus McCarthy: Yes, it is due for publication tomorrow with the appropriation accounts for all Votes.

Chairman: The annual document from the Comptroller and Auditor General, which I am sure will highlight some interesting facts across all Departments, will come tomorrow. We will wait for that and people will want to discuss it as well. I also wish to point out that the secretariat is in the process of creating a folder on the documents database for material on Project Eagle. It was put up in the past few days and I have had a quick look at it. There are 40 or 50 documents in it already, amounting to more than 1,000 pages of material if people choose to read it all. We will add to that database every week and people may access it through the Oireachtas network, printing whatever interests them.

Special Report No. 94 of the Comptroller and Auditor General: National Asset Management Agency Sale of Project Eagle

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

Chairman: As there is no other business, we will proceed to No. 7, the examination of the Comptroller and Auditor General's Special Report No. 94, the National Asset Management Agency, NAMA, sale of Project Eagle. Session A is with representatives of the Comptroller and Auditor General and a later session will include people from NAMA. The meeting will be in two parts and because of the size of the report and significance of the conclusion, during the first part of the meeting the Comptroller and Auditor General will present his report to the committee, with the committee having an opportunity to put questions to him on the considerable detail in the report. Following this, representatives of NAMA will be before the committee.

I wish to advise the witnesses that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. However, 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 qualified privilege in respect of that evidence. They 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 any person, persons or entity by name or in such a way as to make him, her or it identifiable. Finally, members are reminded of the long-standing ruling of the Chair to the effect that they should not comment on, criticise or make charges against a person outside the House or an official by name or in such a way as to make him or her identifiable.

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I invite the Comptroller and Auditor General, Mr. Seamus McCarthy, to make an opening statement on his Special Report Number 94: National Asset Management Agency's sale of Project Eagle. I remind everybody to please turn off their mobile phones. I ask members, witnesses and the people seated in the Gallery to switch their phones to flight mode. I call Mr. McCarthy.

Mr. Seamus McCarthy: I thank the Chairman.

The Project Eagle loan sale was completed in June 2014 and, therefore, was reviewed as part of the 2014 audit of NAMA's financial statements. The audit noted that NAMA had incurred a large loss on the sale and that the sale process had been compressed. In addition, we had a concern about the circumstances of PIMCO's withdrawal from the sale competition. I decided, therefore, that, following completion of the 2014 audit, the sale should be examined in more depth in the context of a report I was then planning on NAMA's progress over the period 2013 to 2015 - referred to as a section 226 report - as required under the NAMA Act. At a meeting of the PAC with NAMA in mid-July 2015, I informed members of my intention to examine the Project Eagle sale. On foot of the likely time required to produce the section 226 report, I decided to carry out a parallel examination of the value for money achieved on Project Eagle. This allowed me to report separately on the sale. The key issues examined in the report reflect the concerns raised at the July 2015 PAC meeting. I should point out that my focus is entirely on assessing and reporting on the performance by NAMA of its functions. Any references to any third party, whether named or not, are incidental to that purpose.

NAMA recorded a loss of £162 million in 2014 as a result of sales relating to its Northern Ireland debtors. Most of this related to Project Eagle. Losses of £478 million on the Northern Ireland loans had already been recognised in earlier years, reflecting deterioration in market conditions since November 2009. That was the market value reference point used by NAMA when it bought all its loans.

The process of selling some of the Northern Ireland debtor assets was already in progress when the PIMCO approach was made to NAMA. Those sales continued, and NAMA had sold about one eighth of the assets by the time the Project Eagle portfolio sale was completed. NAMA incurred a loss of 1% on average on those asset sales compared to a loss of 13% on the Project Eagle loan sale. The key choice for NAMA, following the PIMCO-Brown Rudnick approaches in 2013, was whether to continue with its planned workout of the Northern Ireland debtor loans through disposal of the assets over time or to put the loans on the market in a single portfolio sale. Prior to other loan portfolio sales, NAMA obtained current market valuations of the property assets from its loan sale advisers. This did not happen with Project Eagle. In assessing the proposal from PIMCO, NAMA relied on its existing cashflow projections for the assets. These indicated the net cash amounts NAMA projected it would receive from working out the loans, through sales of the assets, as currently planned. Using NAMA's standard methodology and assumptions, the net present value, or NPV, of the Project Eagle cashflows as at the end of 2013 was an estimated £1.49 billion.

The board decided that it would be willing to sell the loans at a minimum price of £1.3 billion, as recommended to it by the NAMA executive. The difference between that minimum price and the projected net present value was around £190 million in net present value terms. As a result, the decision to sell the loans in a portfolio, as opposed to continuing with the loan workout as planned, involved a significant probable loss of value. In the paper to the board in December 2013, NAMA pointed out that, in formulating a bid, the purchaser of a portfolio of non-performing loans would expect to discount the current market value of the underlying property collateral assets by at least 10%. NAMA did not have a current valuation of the prop-

erty assets to which to apply this discount. In the end, there are many strategic and commercial reasons why NAMA might prefer an early loan sale over a medium to long-term loan workout. That is a business decision for NAMA, and is something I express no opinion on. In fact, it falls into the realm of a policy area and I am prohibited from commenting on policy.

The possibility of a sale of the Northern Ireland loans came about as a result of a reverse inquiry, with PIMCO presenting an offer on the basis that there would be a closed sale process. NAMA's response was that any loan sale would have to be conducted using an open sales process in line with its policy. NAMA's policy is consistent with the standard market approach to loan portfolio sales. If implemented, this should provide reasonable assurance that the best price currently achievable in the market is obtained. As figure 4.1 of the report illustrates, NAMA fully implemented its own policy for Projects Tower and Arrow but not for Project Eagle.

The report sets out in detail the evolution of the sales process, as circumstances changed. Key features are: the limited role of the loan sale advisers, Lazard; the staggered process of admission of potential purchasers to the competition; the limited information about the loans and assets; the short time allowed to the firms; and prohibition on the firms using property valuers in Northern Ireland or having contact with the debtors. A number of the firms indicated that they had issues with the sale process rather than with the quality of the assets themselves. At the end of the bid process, Lazard reported to NAMA that the Cerberus bid was the better of the two received. It later provided an assurance letter to NAMA, which stated that "having regard to the information available to us and NAMA's objectives, the sell-side process for the transaction was appropriate for the sale of a loan portfolio of this nature". Taking this restricted statement together with the limitations imposed on the sale process and the absence of up to date property valuations, I feel I do not have sufficient assurance that a different marketing strategy, or different timing of the sale, could not have resulted in NAMA achieving a higher price from the sale of the loans.

In terms of conflict of interest issues, I want to emphasise that the report focuses exclusively on the actions of NAMA and not on the actions of individuals or third parties. Over time, Mr. Cushnahan declared to NAMA his involvement as an adviser to six NAMA debtors, mainly on a non-fee basis. We found that the loans of those debtors represented approximately half the value of the Northern Ireland loan book. A concern, therefore, arises as to whether NAMA should have considered if it was appropriate that he would engage in discussion of its Northern Ireland strategy in general and of the PIMCO proposal.

In March 2014, NAMA learned from PIMCO of the existence of an alleged success fee arrangement involving Brown Rudnick, the managing partner of Tughans and Mr. Cushnahan. NAMA subsequently learned of the existence of a success fee arrangement involving Cerberus, on one hand, and Brown Rudnick and Tughans, on the other. NAMA sought and relied on an assurance from Cerberus that no fee or payment was payable to anyone connected with NAMA. Having examined the matter in detail, my view is that the allegations of Mr. Cushnahan's involvement in a fee-sharing arrangement warranted more action by NAMA when the issue came to light.

If I may, Chairman, before I finish I would like to explain a little about how the work on this examination was undertaken given some public comment in that regard. The team I appointed to carry out the examination are all qualified accountants with significant audit and evaluation experience, including the audit of NAMA. The examination was led by Mr. Riordan who is here with me today. He has worked on all my office's examinations of NAMA since its incep-

tion. When the 2014 NAMA audit concluded, we transferred the audit manager and another staff member to the examination team. They became available to start work on the examination in June 2015. I am satisfied that the team tasked to carry out the Project Eagle examination had the requisite skills, knowledge, experience and expertise to do the required work. Contrary to what has been stated elsewhere, my office did not seek external expert assistance to carry out the Project Eagle examination. We did, however, seek to secure a contractor to provide supplementary resources, with requisite skills and experience, to carry out reviews for us as part of the planned section 226 examination. Specifically, I wanted to examine the level of returns NAMA has achieved through the disposal of loans and what it expected to achieve through investment in assets it continued to hold, based on a sample of approximately 50 cases. Given the likely volume of work involved, we published an open request for tenders on 29 June 2015. Despite a reasonable level of inquiries, we got just one tender proposal, from a firm based in London. The proposal disclosed that one of the firm's principal team members had a conflict of interest. As a result, I did not consider it appropriate to appoint the firm to carry out the work.

When we complete our analysis and field work, our standard approach is to present the findings to the public bodies concerned and ask them for a formal written response. Where evidence presented to us shows a change is required, we gladly make that change. If comments or points of view presented by an audited body are relevant but not supported by evidence, we represent those comments as the audited body's views in the report, so readers of the reports have both sides of the argument to hand. I am satisfied that I have done that with this report.

In addition to the input we receive through audited bodies' comments on reports, we undertake quality assurance processes for examinations, as required. For this report, we applied more than the usual testing and challenge because of NAMA's strong objections to the findings. We arranged, on a collegial basis, with our sister organisation, the UK National Audit Office, NAO, that two senior managers from its financial markets unit would review and challenge the draft report. Both had market experience before their employment with the NAO. As it happened, they were also just at that time finalising a report on the UK Government's sale of former Northern Rock financial assets. In April 2016, they challenged my team on the findings and provisional conclusions of the draft report and provided useful information and suggestions which we took on board. In May 2016, I asked for a further and deeper challenge process, which was undertaken by a former secretary and director of audit of my office. He was involved in setting up and overseeing the audit of NAMA until 2012 and has also served as a member of the audit board of the European Investment Bank. We asked him to examine all the evidence we were using regarding Project Eagle and the written responses from NAMA and to consider if the conclusions were appropriate, given the evidence. His advice and suggestions were also taken on board in further refining the report. These processes were a process of assurance for me. Ultimately, as the Comptroller and Auditor General, I must draw the conclusions and make the report.

I hope this gives the committee an insight into the manner in which the report was prepared. I thank it for its attention.

Chairman: I appreciate that opening statement. The first speakers today will be Deputy Connolly followed by Deputy Burke.

Deputy Catherine Connolly: I thank Mr. McCarthy. Has he ever been challenged about any of the reports he has produced previously in the manner in which he has been challenged publicly by NAMA?

Mr. Seamus McCarthy: No, certainly not to that extent. However, there is always a process of challenge from an audited body. What we seek to avoid is disagreement, and certainly disagreement over facts. There might be a disagreement as to the opinion that would be taken about the facts, but we work very hard to eliminate any disagreement about factual matters. As I said, where a different view is taken by the public body, we try to represent that to ensure that when the report is finished, the two sides of the argument are presented. I tried to do that here as well and to represent NAMA's objections. The Deputy will see that those objections are included in the report.

Deputy Catherine Connolly: I will come to that shortly. The opening statement from Mr. Brendan McDonagh today puts it in a nutshell. It states that the witness had a misplaced attachment to an accounting value rather than to the real accounts in the market. I will return to that. There is no doubt about what NAMA thinks of the witness's assessment. Mr. McDonagh believes that the Comptroller and Auditor General's report involves the mechanistic and rigid application of a spuriously precise and abnormally low discount rate to cashflows which are assumed, unrealistically, to be fixed and certain. There are many other comments of that nature, which I will return to and to which I am sure the other members will refer.

With regard to the process, many of the statements made by NAMA in public and many of its statements to the committee, culminating with its statement today, basically say that the witness did not have a clue, did not seek external advice, had no experience - I do not mean this personally but am simply putting its argument - that he failed to seek extra staff from outside and so forth. Will the witness deal with the issue of no external advice?

Mr. Seamus McCarthy: In the past my office has used external experts where we believed that was required. In our work with NAMA, for example, where it had undertaken or commissioned property valuations, we commissioned the Valuation Office to look at those valuations, because obviously it is more expert in what is required to do that. In this case, there were no property valuations to examine.

Deputy Catherine Connolly: I wish to clarify that. Is the witness saying that NAMA had no property valuations that his office could examine and on which it could comment?

Mr. Seamus McCarthy: It undertook no additional property valuations before it sold the Project Eagle loans.

Deputy Catherine Connolly: What property valuations was it using?

Mr. Seamus McCarthy: In most cases the property valuations it would have had would have been property valuations as of November 2009. Those were included originally in the cashflow projections that it established from the beginning and which, in fact, it used to figure out the price it paid for the loans when it bought them. Subsequently, NAMA's asset managers would have looked at those values. In some cases they might have received new valuations, for example, in 2012 or 2013, so those would have been fed into the cashflows, but in other situations they would have reduced the cashflows to reflect trends in the market. It is market information as opposed to specific valuations for individual properties. That was all fed into the cashflow and those types of adjustments to the cashflows are examined every year by our office in the course of the audit. We were always tracking the work it was doing. In fact, we involved the Valuation Office again at the end of the audit of 2013 to look again at how NAMA was managing that process of adjusting values for properties in the cashflow.

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The Deputy, quoting Mr. McDonagh, mentioned treating it as certain future amounts. No amount in the future is certain. Events can change and any projection is always subject to an element of uncertainty. If a cashflow projection is to be useful for decision-making purposes, it should reflect the best estimate there can be at a point in time.

Deputy Catherine Connolly: We will return in detail to the figures. I am just seeking to outline what NAMA is saying and what the Comptroller and Auditor General is saying in return. The witness has been very clear in his report. When NAMA says the Comptroller and Auditor General did not get any outside advice, Mr. McCarthy is responding that NAMA did not get any outside advice at the time and did not value. Is that correct?

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: That is the first matter.

Mr. Seamus McCarthy: That is on the valuation of property.

Deputy Catherine Connolly: I understand that. We will get an opportunity to return to the detail. Second, NAMA states repeatedly that the Comptroller and Auditor General sought external advice because he recognised that he did not have the expertise for this project. Am I correct to understand from Mr. McCarthy's statement today that this is not correct and that it was in a general nature that he was seeking external advice? Will he clarify that?

Mr. Seamus McCarthy: What I was seeking was additional resources. We had done a section 226 report-----

Chairman: Please explain for the public what a section 226 report is.

Mr. Seamus McCarthy: Section 226 of the NAMA Act requires me every three years to carry out a review of NAMA's progress in the achievement of its objectives. It is a comprehensive look at what NAMA is trying to do and my assessment of how far they have progressed in that. The first one related to the years, 2010 to 2012; the second covered the period, 2013 to 2015, inclusive.

Deputy Catherine Connolly: Did Mr. McCarthy seek advice and outside assistance in respect of that general work programme?

Mr. Seamus McCarthy: The first one we carried out in-house and it was presented in 2014. On the second one, I wanted to expand the work and I needed additional resources to do it, specifically in looking at the returns NAMA had achieved on its disposals and on its investments. It was additional resources. Obviously, I would want to get resources that had requisite skills and expertise for the process.

Deputy Catherine Connolly: NAMA criticised the Comptroller and Auditor General for not engaging with them on a reasonable basis. Will Mr. McCarthy clarify the process of engagement with the agency from the beginning of this report?

Mr. Seamus McCarthy: We wrote to them at the beginning to tell them we were carrying out-----

Deputy Catherine Connolly: When was that?

Mr. Seamus McCarthy: In September 2015. We wrote to inform them that we would do

a separate value for money examination of Project Eagle. The engagement then between the team and NAMA went on over the period up to December. We ended then with a statement of facts and evidence, which we sent to NAMA on 8 January 2016. It did not have any conclusions in it. It was basically, “Here are the results of our field work”. We asked them for their comments. The team met with NAMA officials. They went through that. We drafted the report taking account of what they had said to us and then there were a total of four drafts of the report.

Deputy Catherine Connolly: Did all of those drafts go to NAMA?

Mr. Seamus McCarthy: Yes, they did.

Deputy Catherine Connolly: Did they go to the Department of Finance?

Mr. Seamus McCarthy: Drafts 3 and 4 went to the Department of Finance.

Deputy Catherine Connolly: So drafts 1 and 2 went to NAMA only. Were they allowed to comment on both of those and recommend changes?

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: Did Mr. McCarthy’s team take on board those changes?

Mr. Seamus McCarthy: We took on board many changes.

Deputy Catherine Connolly: Was there an active engagement with NAMA?

Mr. Seamus McCarthy: Yes, and I have set out the process of engagement in chapter 1.

Deputy Catherine Connolly: Was NAMA unhappy from day one with the statement of facts?

Mr. Seamus McCarthy: I would have to say “Yes”.

Deputy Catherine Connolly: They were unhappy?

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: NAMA got expert advice from four experts, which they say backs up their figures. When was that expertise procured or received?

Mr. Seamus McCarthy: Appendix D is advice received by NAMA in January 2016. It is general advice.

Deputy Catherine Connolly: Who was that from?

Mr. Seamus McCarthy: It was from three loan sale advisers.

Deputy Catherine Connolly: Was this advice retrospectively obtained?

Mr. Seamus McCarthy: Yes, on a general point as to what level of discount a potential purchaser of non-performing loans might apply and the process around how they would arrive at putting together a bid.

Deputy Catherine Connolly: Was all the advice received after the event?

Mr. Seamus McCarthy: Yes. It was January 2016.

COMMITTEE OF PUBLIC ACCOUNTS

Deputy Catherine Connolly: Has the Comptroller and Auditor General's office any difficulty with that advice? Does Mr. McCarthy disagree with it?

Mr. Seamus McCarthy: No, there is nothing in it that I have a disagreement with. The second piece of advice is included in an annex around pages 58 to 60. It is a letter NAMA asked for on 11 May 2016. Again, it is general; it is not a specific comment regarding a part of the report. It is a general comment on the distinction between the carrying value of distressed loans for accounting purposes and an indication of what the market value of those loans might be.

Deputy Catherine Connolly: Mr. McCarthy clearly set out that he has no opinion on the decision to sell the property and it was up to NAMA. Is that correct?

Mr. Seamus McCarthy: Yes. If it were decided that NAMA wanted to sell this for whatever strategic or commercial reasons they saw proper, I could not question that.

Deputy Catherine Connolly: With regard to the Comptroller and Auditor General's findings, NAMA has zoned in on the difference between the valuations of the property or the absence of them, which we will come back to in due course. The other findings relate to a conflict of interest and no proper record keeping, which are two major issues. Will Mr. McCarthy deal with those?

Mr. Seamus McCarthy: The conflicts of interest issue is dealt with in chapter 5 of the report.

Deputy Catherine Connolly: Mr. McCarthy gave an entire chapter to that out of 160 pages.

Mr. Seamus McCarthy: Yes, because there were concerns around it.

Deputy Catherine Connolly: What were Mr. McCarthy's concerns? I acknowledge he has outlined them in written form for the committee but I would like him to elaborate on them.

Mr. Seamus McCarthy: The circumstances relating to what happened and the withdrawal of PIMCO were known last July. The issue would be if there was a possible influence by somebody in NAMA or on a NAMA committee on the sale price. Mr. Cushnahan is alleged to have been involved in a success fee arrangement with PIMCO and with others with PIMCO and this was discovered in March 2014. Subsequently, when PIMCO withdrew, and there was a question mark around the process whereby PIMCO withdrew, two of the parties to that success fee arrangement became advisers to Cerberus, which were the eventual buyers of the loans. I wanted to look at the decision-making around that information having to come to NAMA and whether the appropriate actions had been taken in light of obligations on NAMA and on the individuals under the Ethics in Public Office Act and NAMA's own code of conduct and its own Act.

I have laid out the detail in it. My concern was that NAMA took quite a narrow view of what it was obliged to do by law and did not necessarily probe deeper into the issue and take more positive action. For example, there was no follow up with Mr. Cushnahan.

Chairman: Is Mr. McCarthy a member of the Standards in Public Office Commission, SIPO?

Mr. Seamus McCarthy: Yes, I am.

Chairman: Mr. McCarthy, therefore, made this report on the one hand but there was also a report to SIPO, of which he is a member. He should be careful not to say anything in respect of his conclusions. He might have to exempt himself from the SIPO discussion because he is involved. I want to put that on record in case people raise it afterwards. Mr. McCarthy might just clarify his role.

Mr. Seamus McCarthy: I have clarified in my own opening statement that I am drawing no conclusions about the actions of individuals. Matters will be before me as a member of SIPO. I had to take that into account as well when I was drafting the report. My focus, therefore, totally in this chapter is on what NAMA did or what they could have done in respect of events that they became aware of.

Deputy Catherine Connolly: I have been a little unfair in the sense that there is a third issue. Mr. McCarthy found problems with the sales process that led to the end result. I am rigidly sticking to what he has found. I note he has not drawn conclusions. He has raised concerns and I am asking about them. He said the withdrawal of PIMCO and the circumstances around that were a serious concern for him and the way NAMA dealt with that and the follow-up and making more inquiries. I understand they did not write to Mr. Cushnahan.

Mr. Seamus McCarthy: No, they did not write to Mr. Cushnahan at that time to seek an explanation. There is a provision in the Standards in Public Office Act 2001 that allows for somebody who receives a declaration to write and seek clarification or further explanations, but that was not done.

Deputy Catherine Connolly: Was that followed up?

Mr. Seamus McCarthy: No.

Deputy Catherine Connolly: Incidentally how many documents did the team from the Office of the Comptroller and Auditor General look at during the course of this investigation?

Mr. Seamus McCarthy: Thousands, certainly.

Deputy Catherine Connolly: Was the figure of 40,000 mentioned?

Mr. Seamus McCarthy: We asked NAMA to identify all the documents that had any bearing on Project Eagle. That figure came to 40,000.

Deputy Catherine Connolly: Again NAMA has stated in a briefing document or statement that the Office of the Comptroller and Auditor asked for and was given a limited number of documents to examine. Is that accurate?

Mr. Seamus McCarthy: We did not go through 40,000 documents. What we did is we targeted particular kinds of documents and we set out the criteria for the test. NAMA extracted from the 40,000 population of documents, a smaller number, which I think was about 2,000 documents.

Deputy Catherine Connolly: I digressed. Going back to the process of the sale, leading up to the PIMCO withdrawal, am I correct when I say the Comptroller and Auditor General highlighted serious issues in relation to the sales process itself? Perhaps, I should make a statement and Mr. McCarthy can correct me if I am wrong.

The board of NAMA looked at the sales process on 13 December 2013, and again in January

2014 and considered whether it should be a closed or open sale. Is that right?

Mr. Seamus McCarthy: Correct.

Deputy Catherine Connolly: The board opted for an open sale. Is it fair to say that the nature of the open sale was somewhat unusual in that the board set very limited-----

Mr. Seamus McCarthy: The phrase the board used was that it would be focused and time bound, an open process.

Deputy Catherine Connolly: I think at the board meetings it was mentioned in the paper that it would look for a limited number of bidders. Is that correct?

Mr. Seamus McCarthy: There was a paper to the board on 8 January 2014. In December the board asked for a proposal from the asset recovery unit for a competition that would be limited and targeted. The proposal that came back to the board was that they would immediately appoint loan sale advisers, that the loan sale advisers would look for a minimum of two other large investment firms that might be interested in the properties and invite them to look at the portfolio and to mount a bid, and that the process would be completed by 31 January 2014.

Deputy Catherine Connolly: Am I correct when I say that between the board meeting in December and January, NAMA had come to the conclusion that this whole sale process should be completed by the end of January, that it should be opened up to at least two or three other bidders?

Mr. Seamus McCarthy: Just to be clear, that was the proposal that was put to the board by the NAMA executive. It was not what the board decided.

Deputy Catherine Connolly: What did the board decide?

Mr. Seamus McCarthy: The board decided to appoint Lazard, that the sale would be a focused and time bound process but that it would take into account the advice that Lazard would give as to the number that needed to be involved and the timeframe that would be allowed to carry out the bids.

Deputy Catherine Connolly: To be clear, am I correct that prior to that PIMCO had already been involved for a number of months with NAMA?

Mr. Seamus McCarthy: Yes, the initial PIMCO approach was in September 2013. At a meeting of the board in October, it was agreed that PIMCO could start a process of examination of the top assets in the portfolio as at that time. That commenced and PIMCO was given access to a data room at the beginning of November 2013.

Chairman: Deputy Connolly has two minutes remaining in her opening slot.

Deputy Catherine Connolly: PIMCO was in from November and had an advantage before the process started in January with the appointment of Lazard. Is that correct?

Mr. Seamus McCarthy: PIMCO certainly had a headstart.

Deputy Catherine Connolly: They had a headstart. In respect of Lazard, what fee was paid to Lazard?

Mr. Seamus McCarthy: The total fee was of the order of £4.5 million sterling. I can get

the exact figure for the Deputy.

Deputy Catherine Connolly: Did Lazard become involved in January 2014?

Mr. Seamus McCarthy: Yes, towards the end of January 2014.

Deputy Catherine Connolly: Will Mr. McCarthy tell us about the statement of assurance given by Lazard in respect of the sales process?

Mr. Seamus McCarthy: Yes. In regard to the statement of assurance, there is a significant quote from it in the report. The assurance in my view is not an absolute assurance that the price that NAMA had got from this competition is the best price, reasonably available in the market. It is an assurance that the better of the prices from the competition that Lazard ran is the Cerberus Capital Management one and that the process that was undertaken for the sale was appropriate, given NAMA'S objectives and the information that was available to Lazard at that time.

Deputy Catherine Connolly: Is that the information that was made available to Lazard?

Mr. Seamus McCarthy: The information that was available to Lazard.

Deputy Catherine Connolly: Chairman, I am coming to a conclusion. I have two matters. Lazard was never informed that PIMCO had withdrawn because of a success fee arrangement between three individuals.

Mr. Seamus McCarthy: Lazard was not informed of that issue.

Deputy Catherine Connolly: Lazard continued with a process with two bidders after PIMCO withdrew, without being informed why PIMCO had withdrawn?

Mr. Seamus McCarthy: PIMCO told Lazard it was withdrawing from the competition on the basis that the assets were not for them. I think that is the phrase that was used.

Deputy Catherine Connolly: The advisers to PIMCO, the solicitors from London and Belfast, then moved on to Cerberus Capital Management. Is that correct?

Mr. Seamus McCarthy: Yes, that is correct.

Deputy Catherine Connolly: Cerberus Capital Management was one of two bidders who remained?

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: Finally, a number of bidders has been mentioned. NAMA stated there was no interest in the market. I looked at the process. Lazard approached three bidders when the process opened, one of which came forward. Is that correct?

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: Subsequently three more bidders were approached-----

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: -----and two came on board. Two were interested.

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: Subsequently in February when there was a leak in the newspapers about the sale of Project Eagle, Lazard was told by the board of NAMA to go back and see if there were any more credible investors.

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: Of the ten, only two were allowed and the other eight were disregarded. Am I correct when I state that the report of the Comptroller and Auditor General states that it was not that there was not an interest in the market, it was because of the process, which was so limited, time based, focused and access to data was limited and that a lot of these credible investors could not get a chance to take part in the process-----

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: -----and that one in particular, PIMCO had an advantage. One firm made a statement that PIMCO has been in this already, has a great advantage and we will be at a disadvantage and we will not take part. Is that correct?

Chairman: We are going to move on. The point is well made.

Deputy Peter Burke: I thank the Chairman.

Chairman: Deputy Burke has 15 minutes

Deputy Peter Burke: May I ask Mr. McCarthy to give a brief overview of the skillset of the personnel who are involved in this inquiry? Will he give us an idea of what private sector experience his staff have? The Comptroller and Auditor General mentioned that the staff have been working on NAMA for a significant period and that they have significant audit experience. What other experience have they?

Mr. Seamus McCarthy: The staff of my office are career civil servants. We do not have market experience but we are the auditors of the Health Service Executive. We do not have experience of medical practice or the business of many of the entities we audit. The staff have built up experience over the years. Mr. Andrew Harkness who is responsible for the audit of NAMA and the oversight of this report has been engaged in the audit of public bodies for many years. He is also responsible for the audit of the NTMA, the Central Bank and is currently a member of the audit board of the European Stability Mechanism. Mr. John Riordan has many years experience of auditing. He was involved from the initiation of NAMA, both in the audit and in a special report we undertook in relation to the acquisition of loans and that included the valuation of those loans. Subsequently, we look at the process for the management of the debtors. He produced the progress report, under section 226 of the NAMA Act, on all aspects of NAMA's activity. Mr. Tom Malone who was the senior auditor who had been on the audit and was moved to carry out the examination has a masters in strategic management. I do not believe that we were without relevant qualifications in respect of the work we were planning to do.

Deputy Peter Burke: Mr. McCarthy mentioned his role in auditing the health service. Would it be common for his office to engage experts in assessing difficult decisions within the health service which are made or on which it adjudicates?

Mr. Seamus McCarthy: When we have dealt with matters of medical scheduling or the operation of an emergency department, for example, we have used people who have experience in such areas to inform our reports.

Deputy Peter Burke: Would Mr. McCarthy accept that auditors are experts in accounting and audit and that it is quite common throughout the audit industry to use experts in areas like valuation of land and property and assessment of loan impairment values? It is a question of being sure the process they are undertaking is correct. Mr. McCarthy has made it reasonably clear in his report that there is a significant probable loss to the taxpayer. He is hanging his hat on that assertion. Essentially, he has to have evidence to support that. I do not think we can go back to the default discount rate that NAMA has been using for other projects. Does Mr. McCarthy accept that in order to support his assertions, he has to have evidence that this rate is correct for this specific project?

Mr. Seamus McCarthy: Regarding the use of 5.5% discount rate, I remind the Deputy that in June 2013, NAMA itself considered what sort of rate it should use for assessing this exact kind of issue - the disposal or holding of an asset. At that stage, it was defending the appropriateness of the 5.5% figure for these kinds of general analyses. It had been using that figure against a background in which its cost of capital had already decreased significantly from the time it took on the loans. After this matter was considered by the board, it was concluded that NAMA should use a range of discount rates when it is doing this kind of analysis. NAMA used the 5.5% rate in its cashflow analysis of Project Eagle, which was presented to the board in December. It used another rate of 2.5% as a kind of a variation when it wanted to see how sensitive the results were. There is no indication that NAMA was questioning the appropriateness of using the 5.5% rate at that time.

Deputy Peter Burke: I have another question about the relationship between the discount rate used in the report and the composition of assets. We are saying that a discount rate of 5.5%, which largely covers property in rural Northern Ireland and regional Britain, is equivalent to the rate that should be used to discount high-end property, shopping centres and property in central London. Does Mr. McCarthy not think there is a concern regarding the quality of the property and the rate used? In a way, one could understand the reasons behind the use of a greater discount rate. Mr. McCarthy has already said he has no major disagreement with what the other experts have said, admittedly retrospectively, in the reports they have circulated here.

Mr. Seamus McCarthy: In the points being made by the experts and even by KPMG, they are focused on how a purchaser of loans values those loans. If one reads through their reports, one will see they are talking about the discount rate that a purchaser might use. Their argument is that the rate needs to reflect the purchaser's cost of capital. A private sector purchaser of loans of this nature will have a significantly higher cost of capital than NAMA. This was acknowledged in the paper produced by NAMA in June 2013.

Deputy Peter Burke: Nevertheless, business risk is obviously going to be a component in valuing a discount rate. The cost of funds to a company is a key aspect----

Mr. Seamus McCarthy: Yes.

Deputy Peter Burke: In light of the business risk that is inherently present in the composition of the assets, and given the role of the Office of the Comptroller and Auditor General in assessing these matters, does Mr. McCarthy not think it would have been prudent to tender for expertise? I know he has said he is looking for additional resources to assist his office in preparing a section 226 report.

Mr. Seamus McCarthy: Yes, that is right.

Deputy Peter Burke: In light of the very specific nature of this analysis - it takes great expertise to assess a discount rate for a particular portfolio - does Mr. McCarthy agree that, in retrospect, it was a mistake not to engage an expert in this field?

Mr. Seamus McCarthy: Discounted cashflow analysis is a very standard procedure in economic decision-making. It is used in many disciplines and areas. It is used in pension evaluation and in areas like public private partnerships. The whole financial modelling of public private partnerships is based on this kind of discounted cashflow work. Over the years, my office has done reports on these matters. We have examined those cashflows in detail. It is a standard methodology. We have been examining these cashflows and dealing with the process of discounting for accounting and loan valuation purposes since this started. I think the question of whether a different discount rate, perhaps as high as 10%, would have been appropriate was tabled in June.

Mr. John Riordan: Yes, in June of this year.

Mr. Seamus McCarthy: It was put to us by NAMA in June of this year. We did not have a debate about it until then.

Deputy Peter Burke: Does Mr. McCarthy believe his office had adequate time, on foot of the new information, to adjudicate on the new rate?

Mr. Seamus McCarthy: I would certainly accept that there could be a debate about it. The difficulty was that the explanations which were being provided for the appropriateness of that seemed to relate to things that, in many cases, had already been taken on board in the impairment exercises that were done after the loans were taken on. The quality of the assets was referred to as "poor" during the process of taking on the loans. I remind the Deputy that the extensive exercise through which NAMA went in the beginning resulted in much heavier discounting of the value of the loans. This reflected where they were and corrected the mistakes that had been made by banks in accepting much higher valuations than were appropriate. Having taken the price out at the beginning, and then having provided for impairments because the markets were falling thereafter, there was a danger of double-counting if a very high risk rate was built into the discount rate. In such circumstances, loans might have ended up being assessed on the basis that they were worth less than they may actually have been worth.

Deputy Peter Burke: Is Mr. McCarthy happy with the process he undertook in advance of making a clear statement that there has probably been a loss of £190 million? Given that this is such a complex area, it is a very significant figure for him to hang his hat on.

Mr. Seamus McCarthy: It is a very significant figure, but it is a very large portfolio. In 2013, this loan portfolio had a rent roll of approximately £100 million and had many assets. An attempt has been made to characterise these assets in the north of England or Scotland as being of a poor quality, but their quality is not that poor. They actually have value. The day the sale of the loans goes through, access to the value of those assets is gone as well. One loses some value as soon as that decision is made. Nobody is disputing that if one chooses to have a loan portfolio sale, rather than working that portfolio out, the market will expect to discount those loans and will not pay one the equivalent asset value for them, and there is a loss as a result. I am certainly not disputing that. Everybody in the market will agree with the advice NAMA got from external advisers, even subsequently, which was that it could expect to take a loss. That is what the figure of £190 million relates to. It is based on projections and expressed in net present value terms. If one looks at the cashflow, NAMA was projecting forward to 2020 that it would

end up with a net £1.675 billion in cash. It is a question of how to evaluate the choice to give up the expectation of getting a net £1.675 billion. In other words, what price would one take today for it? That is what discounting is designed to achieve.

Deputy Peter Burke: Does the Comptroller and Auditor General accept that it is reasonable to have a debate on the 5.5% discount rate being overambitious? We have examined the composition of the rate and listened to the commentary on it. Other highly reputable experts in the field were involved. This is obviously a very difficult area to assess. As Mr. McCarthy set out, the methodology applied to cashflows and discounting is straightforward. However, the issue becomes complex when one is changing and assessing business risk. It is reasonable to have that debate. We cannot say the probable loss is set in stone.

Mr. Seamus McCarthy: No, it is not. I think there is a probable loss. Everybody accepts that instead of working out if one sells through a loan portfolio, there will be some loss. NAMA's cashflows which we regularly examine for financial accounting purposes and which we examined in this case also are based on plans. These are things NAMA was expecting to do.

The point being made in the advice is mainly focused on what discount a purchaser will seek. On the 5.5% discount rate, it is about how NAMA should look at a future cashflow if it is working out assets. I did not see any advice specifically stating this was the kind of rate that NAMA should be using. The only place it is actually discussed is in the paper the NAMA executive put to the board in June 2013. It decided that it would continue to use 5.5% as its standard rate and it did use it when the issue came up in December.

Deputy Peter Burke: I wish to focus on the Comptroller and Auditor General's previous audits of NAMA because this is a very important issue. Mr. McCarthy can confirm that he is a permanent member of NAMA's audit committee. Is that correct?

Mr. Seamus McCarthy: No, staff from my office attend meetings of the audit committee.

Deputy Peter Burke: Do they attend every single audit committee meeting?

Mr. Andy Harkness: We attend most of the audit committee meetings.

Deputy Peter Burke: Will Mr. McCarthy provide more detail? NAMA is a large State institution charged with delivering large numbers of loans from the banks and trying to make a profit for the taxpayer. How many meetings does his staff attend each year?

Mr. Seamus McCarthy: Attendance by the auditor at a committee meeting is not by right but by invitation.

Deputy Peter Burke: Have staff from the Office of the Comptroller and Auditor General not been invited to all meetings?

Mr. Andy Harkness: I would say we attend around nine audit committee meetings every year. That would include me or my colleagues.

Deputy Peter Burke: How many meetings take place every year?

Mr. Andy Harkness: I do not have the details to hand.

Deputy Peter Burke: Therefore, there are meetings that they do not attend. Is that correct?

Mr. Andy Harkness: Yes.

Chairman: The Deputy may ask one final question.

Deputy Peter Burke: Yes, I will address one more very important point.

Paragraph 2.4 of the report shows the carrying value of the assets held in Project Eagle at 31 December 2013. It indicates a loss of 13% on the sale proceeds. Paragraph 2.4 also shows that in some cases there was a difference of in excess of 30% in the case of participating institutions which were managing the loans. In terms of the Comptroller and Auditor General's previous auditing work, part of his office's function in auditing the National Asset Management Agency involved reviewing all board minutes of NAMA. Why has this matter not come to the committee's attention before? As Mr. McCarthy will accept, the loss is significant. The opening paragraphs of the summary set out how significant it was, in that approximately £162 million was related to Project Eagle. Will Mr. McCarthy help us to understand the reason the loss did not come to attention previously in terms of processes and how it was managed, never mind conflict of interest issues?

Mr. Seamus McCarthy: The loss was booked in NAMA's 2014 annual financial statements. If one looks at it, it shows that there was actually a significant increase in NAMA's loss as compared to 2013. The loss actually has been reported.

Deputy Peter Burke: I know that concern was raised by Mr. McCarthy's office. That is the point I am trying to make. The loss has obviously been booked and raised, but in terms of the process and procedures and the significance of it, there was no concern raised about it by the Comptroller and Auditor General.

Mr. Seamus McCarthy: No, if NAMA makes commercial decisions which result in surpluses or losses, I do not comment on them. What I am saying is the financial statements in front of the committee which are to be published represent what happened in the year and give a true and fair view. However, I did have a concern about the scale of the loss, but it needed further examination that could not have been done in the course of the audit. It required an additional team to do it.

Deputy Peter Burke: And potentially additional expertise.

Mr. Seamus McCarthy: An additional team.

Chairman: The sequence of speakers will be as follows. The first speaker will be Deputy Marc MacSharry who will be followed by Deputies David Cullinane, Josepha Madigan, Shane Cassells, Alan Kelly and Mary Lou McDonald in that order.

Deputy Marc MacSharry: I will swap with Shane Deputy Cassells, if that is okay.

Chairman: No, it is not okay. I do not wish to be argumentative, but Deputies have a slot and I will move to the next person on the list if they do not take it.

Deputy Marc MacSharry: I want to contribute again later.

Chairman: Deputy David Cullinane who is next on the list notified me that he would have to slip out of the meeting. He will have an opportunity to contribute when he returns. My apologies, but I must stick to the list.

Deputy Josepha Madigan: I thank Mr. McCarthy for his forbearance thus far. I know that this is difficult, but the committee has a duty to probe the report a little further. We appreciate

his patience.

Mr. McCarthy's report suggests the sale of assets *en masse* resulted in significant losses for the National Asset Management Agency. We know this in hindsight. From my perspective, it seems there is general acceptance that more money would have been made through a medium to long-term sales process. How can we be certain that is the case? How can one arrive at that conclusion? I seek a little assurance on that point.

It is my understanding that the key information missing is that there were no property valuations in respect of NAMA. Does Mr. McCarthy believe this was the most detrimental element that was missing? Is it his view that the properties were undervalued? If that is the case, on what does he base that view in the absence of figures? In other words, how can he be confident that the properties were undervalued when there are no valuations available? I ask about this because we are talking about a loss of £190 million and I would like to know how we could possibly have saved the taxpayer money. I seek some clarification on that point.

Mr. Seamus McCarthy: Cashflows are projections of events that will happen in the future using the best knowledge available to the entity at the time. Nobody has a crystal ball telling him or her what exactly will happen and, therefore, what the result will be. It is a tool for decision making. What one expects is that the best effort will be made to say, "We have one strategy here, which is available to us, which is effectively what NAMA was set up for. It was set up to make sure we do not have to take prices from the market at any point in time. We have relatively inexpensive capital that will allow us to hold them and work them out." That was the strategy.

On the question about cashflows and whether there was an undervaluation, there may be a difficulty with an impairment exercise that is not founded on regular valuation of the property and it may not be right. We put a considerable effort into testing it to see that if changes were made, they were appropriate and only changes that were appropriate and supported by evidence to reflect what had actually happened. It is NAMA's policy - it stated this and we referred to it in the report - to take a conservative view about the future. If the market starts to feel there is an upside coming, NAMA does not necessarily respond and reflect this in the cashflows. There were a couple of issues we picked up. In the offer in December, I believe it was the letter of 4 December from PIMCO, there is a reference to an expectation that the market has bottomed out here and that they wanted to be in for whatever growth opportunity was coming. So, there is that risk with cashflows. The thing that anchors the value before one goes to a loan sale is the valuation of the underlying property. If one compares Project Eagle to Project Arrow - and in fact it is in NAMA's policy for loan sales that one gets a current market valuation - they got valuations for Project Arrow and the values that property valuers told them at that time, for those assets, were actually higher than were in the cashflows. Applying the potential purchaser's discount they still ended up with a higher value than they were projecting with their own cashflows. The anchor that is needed is the valuation of the underlying property collateral.

Chairman: I now call Deputy Cullinane. Deputy Cassells will follow. We are in a ten minute slot now and we are sticking to that.

Deputy David Cullinane: I thank the Chairman for that clarification and I welcome the witnesses. I first of all want to focus on the Comptroller and Auditor General's report and the 58 findings. I want to try to establish on what basis those findings were made and whether they were findings based on facts, documentary evidence and experience within NAMA; apologies, experience within the Comptroller and Auditor General's office which NAMA disputes. It is

fair that we have to interrogate the findings of Mr. McCarthy's report, which I am sure he would agree with.

We have some very strong comments from NAMA with regard to the Comptroller and Auditor General's organisation, which Mr. McCarthy has somewhat clarified in his introductory remarks, but I believe they need to be teased out further. In his response to the report Mr. McDonagh has said:

Because of the C&AG report's misplaced attachment to an accounting value rather than the real world market value which is ultimately what matters [that that was a mistake] ... ultimately, the fact that no external advisors were commissioned by C&AG to advise the examination meant that the report's conclusions are based entirely on opinions ... [not on fact, or on documentation or on paper trails but opinions, and I am assuming he is talking about the 58 findings] ... formed by staff who, to our knowledge, have no market experience and no expertise in loan sales.

Similar arguments are also made by Mr. Daly where he talks about Mr. McCarthy and his team carrying out a desktop review and he then questions the Comptroller and Auditor General's experience in relation to what happens in the real world. In Mr. McCarthy's opening remarks he talked about the experience of his staff. Could he explain to the committee in more detail the relationship between the Comptroller and Auditor General's office and NAMA since its inception? Even prior to this report he would have had ongoing interaction with NAMA anyway. My first question is what was the level of ongoing interaction his office had and who in the office was part of that interaction. We know there were audits every three years. I will now turn to my second question. Mr. McCarthy talked about his staff having accounting and auditing experience. However, the charge being made is that they do not have experience with regard to the market and the sell side. That is the claim being made, and because of that, Mr. McCarthy relied too heavily on his own staff who have a limited view of the world which is about accounting and auditing but not about how the market operates and how portfolios are sold etc., as NAMA would see it, and he did not then seek external advice to back up some of his conclusions. Is there something in that, from NAMA's perspective?

Mr. Seamus McCarthy: I think the Deputy may not have been in the room when I explained to the committee the experience of the members of the team. We carry out the audit of the financial statements every year and then we had three special reports, on each of which Mr. Riordan was the leader of the project. I want to make the point that auditors audit the information that is available in the organisation. In a situation where NAMA did not get property valuations of the assets in relation to the sale of Project Eagle - and this is the fact - then there are no valuations for us to audit. I cannot, and it would be unreasonable and impossible for us to decide a year or 18 months later, go back and commission valuers to value all the property to rectify what was not done by the organisation itself.

With regard to the focus of Chapter 3 of the report, it is not necessarily or exclusively an accounting issue, it is an economic analysis and evaluation issue. I am satisfied we have the expertise and experience from our work over many years in other areas including public private partnerships, investment in capital projects etc., that we have used the same techniques that NAMA uses for its cashflow projections. It is a relatively standard methodology. With regard to the sales process we were doing a compliance test. NAMA itself has set out a structure for how these sales processes are to be operated. We were looking at how many of the elements were present and how many were missing. One does not have to have considerable market expertise to know that a valuation was not received or that advice around the strategy that should

be adopted was received. I am not trying to make judgments about the strategy that NAMA adopted with regard to the way it shaped the portfolio and so on. That is not a judgment call that I am making here. If there was something contentious, if there was advice even to be analysed, then it would have been appropriate perhaps to hire other experts to give another point of view. But that was not there. It is standard procedure for a loan sale adviser to give advice on the structure of the portfolio and what way to present the assets to the market. When one compares Project Eagle, there was no such advice from the loan sale adviser so there is not anything for me to audit there either. With regard to auditing the process and if things that happened in a sale competition either did or did not happen, it is not that technical.

Deputy David Cullinane: Okay. With regard to some of Mr. McCarthy's own findings, if I can call them that, there are 38 findings or conclusions, would that be a fair-----

Mr. Seamus McCarthy: I think the Deputy might be referring to the summary.

Deputy David Cullinane: The summary, yes.

Mr. Seamus McCarthy: The summary is trying to provide, basically, a quick guide to what is in the report.

Deputy David Cullinane: Is it fair to call them findings, 58 findings?

Mr. Seamus McCarthy: Some of them may just be statements of fact as to what happened.

Deputy David Cullinane: Number 7 reads: "There is no indication that NAMA or its Board had given consideration to a bulk sale of either its loan collateral in Northern Ireland or of the loans of the debtors based in Northern Ireland prior to Brown Rudnick's correspondence in June 2013."

Number 8 states that "NAMA has stated that, although not recorded formally, it considered and rejected alternative disposal options ...". Can Mr. McCarthy just go back to prior to that, when NAMA would, at some point, have given consideration to changing its sales strategy? We know the genesis of that was the approach from PIMCO. In the Comptroller and Auditor General's report, he talks about their position at that point. This is a strategy which may be in a previous report from Mr. McCarthy, it is on page 33 of this report, is he with me?

Mr. Seamus McCarthy: Yes.

Deputy David Cullinane: It spoke about the aim of the updated strategy:

The aim was to protect and enhance the value of property assets in Northern Ireland by maximising rental income, dispose of the property in the medium to long term (2014 to 2017), prioritise the disposal of grade A commercial property in Belfast, explore opportunities for the block sale of multi-unit properties, subject to a critical assessment of value relative to individual sales.

We know that when he was before the committee relating to the Good Friday Agreement two and a half years prior to the completion of the Project Eagle sales process, Mr. Daly said there would be no fire sale of assets. Two and a half years later, everything was gone. On what is contained in page 33, in Mr. McCarthy's view, what is the difference between that and the shift in sales strategy that did occur? When he makes the assumption and finds that there was a change in sales strategy and that it was restrictive in terms of marketing, the number of bidders, information to bidders and so on and questions whether it was a truly open process, the timing

of it, the scale of it and so on, where does that sit with the strategy as outlined on page 33?

Mr. Seamus McCarthy: Prior to PIMCO's approach, the focus in relation to Northern Ireland and the focus of the Northern Ireland advisory committee was on the property in Northern Ireland. When one looks at the documents, that is what the planning was about: what will we do with what we have in Northern Ireland? Some of those assets would have belonged to or been in the control of debtors from the South who had properties in Belfast.

Chairman: Were they part of Project Eagle?

Mr. Seamus McCarthy: No, and this is the point. It was a geographic strategy with, maybe, sectoral influences in it. The change that came about with the PIMCO approach was that suddenly they were talking about the debtors in Northern Ireland. If one likes, the focus then changes to a portfolio of property, some of which is in Northern Ireland, but some of which is in Germany or the UK. I think approximately 50% of the assets were in Northern Ireland and the balance - most of it - was in the UK, with some elements in London. What I am drawing attention to is that they had been focused on it on a province basis, that is, the location of the assets, but the PIMCO opportunity offered them a possibility of dealing with all of the debtors completely. That was, if one likes, the choice they were evaluating.

Chairman: I call Deputy Cassells. Deputy Cullinane's ten minutes are up. Everybody asked me at the beginning to be strict on time. The Deputy will get another opportunity - that is guaranteed - later on this morning.

Deputy Shane Cassells: I thank the Chairman and Mr. McCarthy. Two weeks ago, when this broke in the media in terms of the work that was going to be conducted, I thought one of the most striking comments was from Sean Whelan in RTE. He referred to what was the unprecedented stand-off between Mr. McCarthy's office and NAMA, which obviously generated and captured the public attention. We have then had a series of unprecedented statements by NAMA. In that respect, considering the onslaught on Mr. McCarthy's office over the past two weeks, can he tell us how firm he remains in his assertions in respect of what has happened?

Mr. Seamus McCarthy: I am happy with the report. I presented the report I wanted to present. If I were to make one comment, clearly there has been disagreement all along the way here, but at the end of the day my duty is to examine and to report. I felt obliged to report at the end of the process. What I have tried to present here is my best assessment. The obligation is on me to give my opinion and that is what I have done in this report.

Deputy Shane Cassells: I appreciate that, and obviously the members of this committee appreciate the factual report Mr. McCarthy has put forward. What interests me is the response to it from NAMA. We will hear from and question its representatives later. However, there seem to be bully-boy tactics at play. Deputy Cullinane asked about NAMA operating in the real world and Frank Daly, in his own words, said he wanted to deal "with real bids, not hypothetical suggestions". He asks, "Does anyone truly think that in a post-Brexit environment, with the resultant fall in UK property values, we would be better off?" and states, "I doubt it". Now he is using Brexit as a cover. It strikes me as a kind of Del Boy attitude in terms of what is being put forward. This is from guys who, in terms of the disposal of assets down in this part of the country, have left very decent people with a lot of anger and frustration. Again, what are Mr. McCarthy's feelings in respect of the assertion being made against him?

Mr. Seamus McCarthy: When we undertake any engagement, we expect push-back. We

expect comment. We expect to be corrected if we are wrong and are happy to take on board any corrections. At the end of the day, we approach it from a professional perspective and try to do our work.

Deputy Shane Cassells: Mr. McCarthy stated this morning that “there [may be] strategic and commercial reasons why NAMA might prefer an early loan sale” and that it is a business decision and not something he would comment on. In response to Deputy Burke, Mr. McCarthy said that once they went for that option, there was an immediate acceptance that there was going to be a bigger discount, so Mr. McCarthy is commenting in that respect on the strategy. On the point of view of the probable loss to the taxpayer, by going down that route, they are actually going to see a loss to the taxpayer. Mr. McCarthy made the statement that, by going another route instead of working through the process, they were accepting that the taxpayer was going to take a hit.

Mr. Seamus McCarthy: Stating that if one works out the assets one will achieve one outcome and that if one sells them as a portfolio of loans one is likely to incur a reduction is an observation and not a comment about whether it was the right option to take or not. Anyone could, for whatever reasons, when strategically repositioning a business, decide that he or she does not want to be in a particular line of business and decide to get out of it, take a loss and move on.

Deputy Shane Cassells: Okay.

Mr. Seamus McCarthy: That is the business decision and I am not commenting on it.

Deputy Shane Cassells: Okay. I have a limited amount of time.

In respect of the process of sale and record keeping, Mr. McCarthy said that there were no adequate records of the key decisions for Project Eagle kept by NAMA. Is that one of the most worrying aspects of this for Mr. McCarthy in his report? It obviously gives rise to potential assertions in respect of incompetency at the worst and otherwise at best? Will Mr. McCarthy go through and explain that to us?

Mr. Seamus McCarthy: Yes, it is a significant issue for us. Our starting point in respect of evaluating the choice to sell or to work out the assets over a longer term was the paper for the board and the minutes of the board. When we looked at the paper, we found difficulties with it. When we looked at the minutes, they certainly read as referring to the analysis in the board paper and basing a decision on it. There are references in those minutes which to me seem to say one thing but NAMA says they do not mean what they say and that the basis on which it arrived at the decision to price the portfolio at a minimum of £1.3 billion was different and that it has set that out. I have explained here what it said.

I have another area of concern. If there is a considered policy that a loan sale is to be managed in a particular way, and there is an extensive guideline document within NAMA that says how loan sales are to be done, where there are departures from it, the explanation for those departures should be documented at the time so that when I come to look at them I can see exactly what was the reasoning. There is a lack of information. The only thing we have on those departures are the minutes of the board. We would have expected much more documentation on the sales process from the loan sale adviser but there is actually very little. As an auditor I am much more comfortable where I have more paper and more documents relevant to the issue that I am trying to examine.

Deputy Shane Cassells: In terms of the work of this committee, the sheer lack of a paper

trail is what really goes to the heart of this matter and probably leaves more questions than answers.

In respect of the allegations of Mr. Cushnahan's involvement, in the conclusions of the Comptroller and Auditor General, in an arrangement to share fees with Brown Rudnick, this warranted more action by NAMA when the matter came to light. Mr. McCarthy referred to those in NAMA being focused on what were their legal obligations rather than what were the options for action that should be considered. Were they walking the tightrope in terms what was legal and what was not?

Mr. Seamus McCarthy: I cannot say. No. I did not find that they did anything that they should not have done.

Deputy Shane Cassells: I am reading between the lines. Mr. McCarthy has left us hanging. He has made this statement that has captured the public imagination and brought people down a certain road. He has said those in NAMA were more focused on their legal obligations rather than what they should have been doing as part of a robust body. Mr. McCarthy has given a taste and left us hanging. What I am asking is whether they were walking the tightrope terms of what was legal.

Mr. Seamus McCarthy: No.

Deputy Shane Cassells: Opinion pieces are being written in the newspapers about - this goes to the heart of the matter - people's motivation. We can discuss the cost of the loan all day and whether there was a loss to the taxpayer. However, the real thing goes on about people's motivation in terms of the deal.

Mr. Seamus McCarthy: I will give the committee an example of the type of action those in NAMA could have taken. They could have written to Mr. Cushnahan to ask him about his involvement in respect of the PIMCO bid. They did not do it. They could have told the loan sale adviser that there was an issue around a success fee arrangement. They actually considered whether they should do that, but they decided not to do it. There are actions that they could have taken to find out more about what had happened and the circumstances around Mr. Cushnahan's alleged involvement, and they did not do those things. They were not legally obliged to do them, so there is no question that they should have done them or that they failed in some way, in my mind, but there are things that they could have done.

Deputy Shane Cassells: This is more than a massive failure on their behalf. Mr. McCarthy has alluded to that. Would Mr. McCarthy agree that it is more than a massive failing on their behalf in this respect?

Mr. Seamus McCarthy: It is a significant issue and one that NAMA has to be accountable for.

Deputy Shane Cassells: I suppose we have them here later.

Deputy Alan Kelly: I have a number of questions. I will not be repeating what was said. I will be going on from what my colleagues have said. I wish to compliment the Comptroller and Auditor General on his report. That needs to be said.

Earlier, Deputy Burke made some comments and teased out the question of the £190 million. From an auditing point of view, there is a view in respect of the work done by the Comp-

troller and Auditor General and then there is the NAMA view. There is a debate around business risk and all the variables that brings about as well. Is Mr. McCarthy absolute about the £190 million? Could that have been £140, £150, £160 or £200 million or £210 million? Is Mr. McCarthy absolute and defined on the question of the £190 million?

Mr. Seamus McCarthy: No, there is a margin around that figure.

Deputy Alan Kelly: What is the margin around that figure?

Mr. Seamus McCarthy: It is impossible really to project it or to estimate it.

Deputy Alan Kelly: If it is impossible to project the margin around it, how was it possible to create the £190 million figure?

Mr. Seamus McCarthy: It was because the cashflows had been created.

Deputy Alan Kelly: It is an auditing figure, but there is a business risk issue that could vary that figure.

Mr. Seamus McCarthy: It could vary the figure either way.

Deputy Alan Kelly: How?

Mr. Seamus McCarthy: I do not know.

Deputy Alan Kelly: Can Mr. McCarthy give us his best estimate using percentages?

Mr. Seamus McCarthy: The best way to establish what the loss of value was would have been if there had been valuation of the underlying property assets in 2013 and 2014.

Deputy Alan Kelly: That is the biggest failure here. Is that correct?

Mr. Seamus McCarthy: That is the thing that leaves us talking about-----

Deputy Alan Kelly: It is a fair assumption of this committee to hold that the £190 million is not absolute and that there could be variance either way on it. Is that fair?

Mr. Seamus McCarthy: I have referred to it as a probable loss of value. I have pointed out that if we discount the cashflows in the standard way that NAMA does, it gives a difference of £190 million relative to the price NAMA put it on the market at.

Deputy Alan Kelly: Again, this committee can assume that the £190 million is not absolute and that there could be a variance on it either way.

Chairman: In the interests of assistance, I want paragraph 386 put up on the screen. It deals with the exact reference. It will allow others to see it.

Deputy Alan Kelly: I know that, I simply wanted to establish that.

The Comptroller and Auditor General has brought new information before the committee today which is interesting. It relates to the process by which the Comptroller and Auditor General challenges himself, which is welcome. What did Mr. McCarthy find out from the UK National Audit Office and the former secretary and director of audit through that challenging process? What did that bring to light that helped in this report?

Mr. Seamus McCarthy: Certainly, an emphasis on the absence of valuation of the property assets. That was a key issue.

Deputy Alan Kelly: This committee has established that as a key component and we will debate that with NAMA representatives later. What was the time difference from the first challenge from the UK and second from the director? Was the second challenge that Mr. McCarthy put in place - which I welcome - as a result of the issues that the first challenge brought about?

Mr. Seamus McCarthy: No.

Deputy Alan Kelly: In other words, was Mr. McCarthy double-checking or was it that Mr. McCarthy took the view it was prudent to do another challenge?

Mr. Seamus McCarthy: I felt it prudent to do another challenge.

Deputy Alan Kelly: Did the second challenge bring up issues that were different to the first?

Mr. Seamus McCarthy: No, not significantly. There are obviously points of detail, perhaps clarification that we needed to put in the logic of the presentation.

Deputy Alan Kelly: I will keep going. Have NAMA representatives ever before taken issue with the expertise in the Office of the Comptroller and Auditor General?

Mr. Seamus McCarthy: Not that I am aware of, no.

Deputy Alan Kelly: Four drafts were produced. The final two were sent to the Department of Finance but there were four in total. Obviously, they continually raised issues in respect of the expertise in the office, as NAMA representatives have said publicly. Did they do that all the way through or was it something they were using towards the end?

Mr. Seamus McCarthy: Yes, they did it at an early stage. I am keen to make one comment on that. What they were talking about was us appointing experts that they could deal with.

Deputy Alan Kelly: The board of NAMA includes the former chairman of the tax authority and a number of other representatives from the National Treasury Management Agency etc. How does this make Mr. McCarthy feel? It must be unprecedented that individuals of this status who are on the board of NAMA are basically, to paraphrase what Deputy Connolly said, saying that Mr. McCarthy does not know how to do his job, which is a very strange thing to say.

Mr. Seamus McCarthy: Well.

Deputy Alan Kelly: I am not commenting on it but-----

Deputy Róisín Shortall: Auditors do not have feelings.

Deputy Alan Kelly: Auditors do not have feelings. Is that it?

Mr. Seamus McCarthy: We just try to stick with the professional thing. Let us try to deal with the facts in hand.

Deputy Alan Kelly: Sorry, I had to put it out there. I am keen to discuss the external retrospective advice of the three different organisations. For many of us in the committee, this information was brought to light subsequently. It was a retrospective, post the report or findings

and the engagement with NAMA. It is strange that the Comptroller and Auditor General agrees with those three reports. Yet they back up the views of NAMA representatives in respect of what they did. Mr. McCarthy agrees with the reports but disagrees with NAMA. To me and to many of us in the committee, that is incredible.

Mr. Seamus McCarthy: I reproduced the advice that they produced for us. As I said earlier on, it was basically explaining how a purchaser would go about assessing the value of a loan portfolio.

Deputy Alan Kelly: There is more information in it than simply the purchaser.

Mr. Seamus McCarthy: There is, but what is not there is a commentary on what was an appropriate discount rate for NAMA to use for evaluating its loan work-out.

Deputy Alan Kelly: Mr. McCarthy is saying that if they had to use that as part of their equations for analysis, they would have come to different findings. On the question that NAMA asked in respect of the three different reports, they gave the right answers. However, if they asked the right questions they would have got a different answer. Is that correct?

Mr. Seamus McCarthy: I am not sure I understand-----

Deputy Alan Kelly: In other words, Mr. McCarthy agrees with the reports because of the premise on which NAMA asked them to do the reports.

Mr. Seamus McCarthy: Yes, I am not contesting what is stated there.

Deputy Alan Kelly: That is the reason the contradiction stands.

Mr. Seamus McCarthy: It is the difference between the buyer's and the seller's perspectives. Even the KPMG report points out that there is a distinction between the buyer's evaluation of the loans they are selling and the value of the loans to them and the purchaser.

Deputy Alan Kelly: On what Mr. McCarthy is saying about Mr. Cushnahan, is it fair to say that NAMA did what it was obliged by law to do in respect of dealing with the information that came out about his role rather than what was prudent and right?

Mr. Seamus McCarthy: I think it could have done more.

Deputy Alan Kelly: In a similar way to the treatment of Mr. Cushnahan, Cerberus gave an assurance, in respect of the success fee and payments, that nobody from NAMA would be paid as a result of this. Is it fair to say that legally it was covering itself but did not extend that to other third party payments, such as a step-down payment possibility to people who had some association with NAMA? Was it covering itself legally but was not going to 100% execute the possibility that whoever had an association with NAMA would not receive a payment?

Mr. Seamus McCarthy: That may be a question that would be better put to NAMA than to me.

Deputy Alan Kelly: Within the report, Mr. McCarthy refers to the assurances given.

Mr. Seamus McCarthy: Yes, but my-----

Deputy Alan Kelly: Does Mr. McCarthy feel those assurances were robust enough?

Mr. Seamus McCarthy: They could have got more information from Cerberus about the circumstances in which Brown Rudnick and Tughans came to work for them knowing that two weeks before they had been working for PIMCO and how did that happen. There was also an obligation on Cerberus to notify NAMA or the loan sale adviser of taking on new advisers.

Deputy Alan Kelly: On Lazard's role, which is central to our discussion, it seems incredible that a company was paid £4.5 million for this project but was not asked to do any analysis or work in respect of portfolio evaluation or the sales process at the beginning, and was not provided at the end with information about the process by which PIMCO pulled out or the integrity of the process and decision making because it did not have all the information about how that had happened in the first place. It begs the question what it was paid for. Is it fair to say that the role of Lazard here and the job it was hired to do were not normal by the standards of the type of work it does, given that it was not allowed to do the work preceding the sale and post-sale analysis of the integrity of the process?

Mr. Seamus McCarthy: Lazard fulfilled the commission it was given. When that is compared with the loan sale adviser role on something like Project Arrow 12 months later, the difference is enormous. Even measured by the quantum of advice, the number of pages, it is an order of magnitude different.

Deputy Alan Kelly: That is very interesting. Compared with Project Arrow and the other one, proportionately the volume of work it executed is much smaller. Would it be fair to say that?

Mr. Seamus McCarthy: Yes.

Deputy Alan Kelly: NAMA is constantly challenging advice and external advice, which is not something I necessarily agree with. I am intrigued, however, that when Mr. McCarthy tendered for external advice, he got only one and there was a potential conflict, which is fair enough. It is quite incredible that there was only one. Was the tender too restrictive? Is there anything we can learn from that? Did Mr. McCarthy not think it was appropriate in those circumstances to re-tender?

Mr. Seamus McCarthy: The tender was in connection with the section 226 report which remains to be done. I do not think the tender was too restrictive. When we put out the tender, we emphasised that conflict of interest would be a qualifying condition because NAMA's operation is so extensive that it would be hard to find anybody in the market who was not either working for NAMA, for a purchaser of assets of NAMA or for a developer involved in NAMA. A lot of money has been spent on hiring professionals. If that was the whole playing field, that would be one thing, but there would be a strategic choice made by somebody who would agree to assist us to audit NAMA because it would close that company out of other business. There are many possible business reasons for people who might otherwise be interested in the work for us not to have tendered.

Deputy Alan Kelly: It is a very short list to choose from.

Mr. Seamus McCarthy: Yes, and it is a list that is self-selecting.

Deputy Mary Lou McDonald: Go raibh maith agat, to Mr. McCarthy and his team. NAMA, in addition to everything else, criticised Mr. McCarthy for what it claims was a refusal to meet with the board. Did Mr. McCarthy refuse to meet with the board?

Mr. Seamus McCarthy: There was a letter of request from NAMA in April for me to meet the board. I wrote back and said I did not think that was appropriate at that time. We were effectively disputing the meaning of words and what documents meant. My concern was that we needed to get something on record because I cannot rely on a conversation as any support for what is in my report.

I wanted a single view from the board members representing NAMA's position. All of the responses that came were endorsed by the board. I did not feel that was the way to go. If I was to engage with board members, I would have wanted to put a series of questions to them. We were into a whole other process then about structuring that and minuting and capturing the meaning. I really did not want to have another area where we were disputing what had been said.

Deputy Mary Lou McDonald: It also criticised Mr. McCarthy for not making comparisons with other bodies and it referred particularly to the IBRC loan portfolios. I think it said he was comparing NAMA with NAMA. I assume Mr. McCarthy's position is that the audit process is a case of comparing NAMA with NAMA. Can he comment briefly on that, particularly the IBRC comparison?

Mr. Seamus McCarthy: The chairman suggested that. I was aware that already there were inquiries into IBRC and that getting access to information would be a difficulty. I have no audit or access rights to information about IBRC. For simplicity, it seemed that if NAMA had set its own standard the simplest question for me to ask was if it did not observe its own standard why did it not, and what was the explanation?

Deputy Mary Lou McDonald: Returning to Lazard as the sale advisers, Mr. McCarthy sets out very clearly that in this instance, and it was not unique, NAMA departed from what would be considered standard practice. He cites, for instance, that as loan sale advisers it is not asked to carry out a valuation. It does not give the kind of comprehensive marketing strategy that might be expected in normal practice. It did not have control of the data room either, did it?

Mr. Seamus McCarthy: No, which would be a standard function.

Deputy Mary Lou McDonald: Who had control of that?

Mr. Seamus McCarthy: NAMA.

Deputy Mary Lou McDonald: Does Mr. McCarthy know who precisely in NAMA it was? Was it asset recovery?

Mr. Seamus McCarthy: Asset recovery and legal.

Deputy Mary Lou McDonald: So one presumes that Ronnie Hanna, as head of asset recovery, was in charge of that. One thing that intrigued me is that the Comptroller and Auditor General made reference to the letter of certification, or whatever the term is, at the end of the process from Lazard. In his report, he cites that once Lazard was engaged, it did not go through the standard procurement process. It was appointed. At that stage, it was asked to supply a draft letter of certification to NAMA. I wish to ask the Comptroller and Auditor General three things on that. Is it normal practice that when NAMA engages its loan sales adviser it seeks in advance a copy or a draft of such a letter?

Mr. Seamus McCarthy: That I cannot say. It would be clear, however, in the terms of

reference for the loan sale adviser that this is what it was expected to do. As to whether there would an exchange of letters, I cannot comment.

Deputy Mary Lou McDonald: It is noted in the report that not alone in its terms of engagement was it required to produce one, but that in fact NAMA required a draft of such a letter at the very outset of the process. The Comptroller and Auditor General quotes at the tail-end the letter that it submitted. The Comptroller and Auditor General notes, quite correctly in my view, that it was restrictive and limited in what it said. Did he also get sight of the draft that was supplied?

Mr. Seamus McCarthy: We did.

Deputy Mary Lou McDonald: Does one mirror the other?

Mr. Seamus McCarthy: There are some changes but I think the format was relatively settled early in the process.

Deputy Mary Lou McDonald: Okay. Tell me this. Lazard was not informed of the fixer's fees and the difficulties, let us say, with PIMCO.

Mr. Seamus McCarthy: It was not.

Deputy Mary Lou McDonald: Is the witness convinced of that?

Mr. Seamus McCarthy: I am reporting what I have been told and what has been confirmed in writing.

Deputy Mary Lou McDonald: This is what NAMA told the Comptroller and Auditor General. Okay. The Comptroller and Auditor General made extensive reference to the lack of property evaluations and he made a number of observations in terms of the minimum pricing for the portfolio. He notes that this minimum price of £1.3 billion was recommended to the board by the NAMA executive. What does he mean or to whom does he refer when he refers to the NAMA executive?

Mr. Seamus McCarthy: I am referring to the paper for the board for the meeting on 12 December 2013. At the beginning it states:

This item is for decision

RECOMMENDATION

... Should [the] Board authorise a closed market exclusive transaction with PIMCO or authorise the commencement of an open loan sale process NAMA [asset recovery] seeks approval to complete the sale of Project Eagle for consideration greater than STG£1.3 billion ... subject to final transaction terms and conditions being approved by the Board in due course.

Deputy Mary Lou McDonald: What I am trying to get at is, in the absence of valuations and expert market advice - because NAMA did not procure any in the course of valuing the portfolio - who, not how, brought forward this £1.3 billion? On my reading, it came from asset recovery.

Mr. Seamus McCarthy: It was asset recovery in my understanding of it too.

Deputy Mary Lou McDonald: I just wanted to make sure that I was correct. On the conflicts of interest, one thing the witness said this morning intrigued me. He said that over time, Mr. Cushnahan declared to NAMA his involvement as an adviser to NAMA debtors. Am I to take from this that in a succession of statements of interest, that was the picture built around Mr. Cushnahan? It was not just an open one-off.

Mr. Seamus McCarthy: No. If the Deputy brings up figure 5.2 on page 91, she can see the disclosures by external members of NIAC between 2010 and 2014. There are two processes of disclosure. One is the annual statements of interest, which are required under the Ethics in Public Office Act. There are then separate material instances disclosed at meetings. She can see that in relation to Mr. Cushnahan, there were five declarations of material interest at meetings in 2011 and three in 2012. We compared the disclosures at those meetings with the subsequent annual statements of interest and the same interests were declared in those annual statements.

Deputy Mary Lou McDonald: In the same sequence?

Mr. Seamus McCarthy: Yes.

Deputy Mary Lou McDonald: Okay. Was PIMCO pushed or did it jump?

Mr. Seamus McCarthy: My interpretation of the information available here is that PIMCO made a decision to withdraw from the process.

Deputy Mary Lou McDonald: What does the witness base that on?

Mr. Seamus McCarthy: I think it is appendix E. If the Deputy looks at page 158, on 12 March 2014, the following is reconstructed from other notes and interviews:

Around 5pm on 12 March 2014, PIMCO advised NAMA that it had no option but to withdraw from the process. The fee arrangement was a serious issue for it and NAMA. PIMCO was unwilling to proceed in the absence of disclosures of interest it expected would have been made to NAMA, particularly given the quantum of the fee.

Deputy Mary Lou McDonald: Who keeps the minutes of the board meetings? Who takes them?

Mr. Seamus McCarthy: The secretary of the board of NAMA.

Deputy Mary Lou McDonald: And then they are cleared by the board.

Mr. Seamus McCarthy: Yes. They have to be approved by the board.

Deputy Mary Lou McDonald: Would it be fair to say that with Brown Rudnick and Tu-ghans moving so speedily, so gracefully, from PIMCO to Cerberus, that Cerberus essentially inherited what Mr. McCarthy has referred to as the head start that PIMCO had enjoyed?

Mr. Seamus McCarthy: That is a possibility.

Deputy Mary Lou McDonald: The witness cannot comment on that. Did Mr. McCarthy find any evidence of meetings between NAMA board members or executives and Cerberus?

Mr. Seamus McCarthy: I do not think so.

Deputy Mary Lou McDonald: He found no evidence of that.

Mr. Seamus McCarthy: Of meetings, no. Not that I can recall.

Chairman: I call Deputy Aylward. Deputy McDonald will have another opportunity shortly.

Deputy Bobby Aylward: Unfortunately, the first question I was going to ask has just been asked by Deputy McDonald. I will ask it again anyway. PIMCO was probably the instigator of this bulk sale and it probably first approached solicitors in the UK that came here and changed the whole strategy for Northern Ireland and the sale book. Does the witness believe - again, Deputy McDonald has asked this - that the success fee was the only reason PIMCO withdrew, because of Mr. Cushnahan, Brown Rudnick and Tughans? Was that the only reason, in the witness's opinion, that PIMCO withdrew? Was there any other reason?

Mr. Seamus McCarthy: Going back to the Deputy's point that PIMCO started it, the initial approach was actually from Brown Rudnick through the Minister in the North.

Deputy Bobby Aylward: Was it acting for someone?

Mr. Seamus McCarthy: It said in its initial letter that it had investors who were interested. It referred to two investors who would be interested in having a look at the Northern Ireland debtor connection loans. I do not know who the second investor might be.

Deputy Bobby Aylward: We do not know who they are.

Mr. Seamus McCarthy: No. PIMCO emerged in September with its initial approach. The Deputy's specific question-----

Deputy Bobby Aylward: My specific question was whether the witness thinks there is any other reason, apart from the success fee, that PIMCO withdrew.

Mr. Seamus McCarthy: I am not aware of any other factor in its decision.

Deputy Bobby Aylward: Okay. Would the outside valuation and expertise have changed the overall valuation of the loan portfolio if it had been brought in in time to look at the system before the loan? Does Mr. McCarthy believe it would have increased the valuation if it had been done by outside expertise?

Mr. Seamus McCarthy: If I were to say they would have concluded that it should be higher or lower in value, I would be speculating. I cannot know.

Deputy Bobby Aylward: Would it be normal for it to go up if a valuation was taken out?

Mr. Seamus McCarthy: I do not know. It would have to reflect the valuer's consideration of the value of the property at the time. I was looking to see that the organisation had the information and advice that would allow me to be sure it understood the value of the property at the time it decided to sell it through a loan sale.

Deputy Bobby Aylward: What is the value for money return from selling individually rather than in bulk? Is there much difference? Mr. McCarthy said there were different timescales, from three or four years to 20 years.

Mr. Seamus McCarthy: It is accepted as standard that if an investment buys non-performing loans, they will buy them at a discount to the property value. When they get the valuation of a property a loan sale adviser tries to model how a purchaser might value the loans. They

create their own cashflow exercise which helps them advise the seller what the market may be willing to pay for the loans.

Deputy Bobby Aylward: Then we will never know.

Mr. Seamus McCarthy: It is impossible to know at this stage.

Deputy Bobby Aylward: On the strategy used by NAMA, the report mentions the political and cross-jurisdictional context and states that the relationship with Northern Ireland debtors was deteriorating. Do we know why the relationship with Northern Ireland debtors was deteriorating? I understand the political dimension as it pertains to the Republic and Northern Ireland.

Mr. Seamus McCarthy: We asked if they could provide us with some evidence of that. This was a representation that was made to us by NAMA but we did not get any evidence to indicate what the nature of those problems was.

Deputy Bobby Aylward: They gave no reason.

Mr. Seamus McCarthy: They just said they expected that relationships with the Northern debtors were likely to deteriorate.

Deputy Bobby Aylward: Does Mr. McCarthy believe there was something wrong in the sale and in the method used? Did we get value for money?

Mr. Seamus McCarthy: One can only sell something once. It is the nature of the process which provides us with the reasonable assurance that the best price was available. When restrictions start coming into the process, it creates a difficulty for me. I do not have a crystal ball which tells me what the best price in the market is. I rely on the process and if the process is not there, I do not have enough assurance that the best price was achieved.

Deputy Bobby Aylward: My next question is the most important. Does Mr. McCarthy believe there was personal gain or insider dealing in the whole process?

Mr. Seamus McCarthy: It is a question I cannot answer.

Deputy Bobby Aylward: Does Mr. McCarthy have any comment at all?

Mr. Seamus McCarthy: No.

Deputy Bobby Aylward: Is there any way we can get further information on it? Maybe I am asking the wrong man.

Mr. Seamus McCarthy: Sorry, but I cannot do that. The Deputy is asking me to speculate on what might be behind this.

Deputy Bobby Aylward: Mr. McCarthy has a better insight than I or anybody else here.

Mr. Seamus McCarthy: I have an insight into it and in the report I have tried to present as many facts as I could and as many documents as I felt were appropriate to allow the committee to consider the matter. I cannot go any further.

Deputy Bobby Aylward: There are already two investigations into the sale and we will probably have another one in the future. Has Mr. McCarthy any comment on that?

Mr. Seamus McCarthy: That is not a matter for me.

Deputy Bobby Aylward: I know. I just thought I would push it in there as a question. It is unbelievable that two institutions of the State, the Comptroller and Auditor General and NAMA, are here today and the second of these, NAMA, is saying the Comptroller and Auditor General is inexperienced and his report has a narrow interpretation of its situation. Does Mr. McCarthy feel that is unfair? Does he feel it is wrong for two institutions of the State to be at each other's throats with two different interpretations of the situation?

Mr. Seamus McCarthy: It is not a situation I would have wanted. If I could have done anything to avoid this, I would have done it. As auditor general, I have to report. Once I start examining something and feel there is a matter to report, I have to do so to the best of my ability.

Deputy Bobby Aylward: Will this have implications for the future? The Comptroller and Auditor General will continue to audit, so will it have personal implications for NAMA and his office?

Mr. Seamus McCarthy: The audit of NAMA for 2016 is ongoing and normal relations are in place. My staff are working in NAMA at the moment and I have asked them if everything is okay. They have told me that there is no difficulty and that everybody is behaving in a very professional way in respect of the audit.

Deputy Róisín Shortall: I thank Deputy MacSharry for allowing me to come in now on account of my Dáil engagements later. I thank the Comptroller and Auditor General and his office for his report and their presentation this morning. I have questions on three areas. There has been a lot of media and public focus on the scale of the probable, or possible, loss but for our purposes, the main concern should be the handling of the transaction by NAMA and the role of the board in that regard. Can Mr. McCarthy comment on the oversight role of the board? The board was of the view that a 5.5% discount rate was appropriate and that it had considered a lower discount rate. I am curious to know about the level of scrutiny and discussion that took place at board level, given its decision on the appropriate discount rate. When details of Project Eagle were provided to the board, to what extent did it scrutinise the terms of the sale? One would expect that a very significant discrepancy between the cashflow figure and the price achieved, based on a much more significant discount, would have been a matter of concern to the board. To what extent were concerns raised about the sale?

Mr. Seamus McCarthy: I am mainly relying on the board papers and its minutes for an indication of the matters discussed and the decisions that were taken. We redid many of the calculations contained in the paper for the board meeting of 12 December. At first sight, it seems to have covered most of the issues that needed to be considered. When a board is presented with a paper, its function is to analyse it, to challenge it and question it and the minutes should record the flavour of the discussion as well as the decisions and the basis for those decisions. We found that there were differences in the way the paper was presented to the board, including in the way the 5.5% discount rate was applied, which had an effect on the values that came out of the analysis. That is not flagged to the board, about which there is concern.

Deputies have mentioned the qualifications and experience of board members. They are very well qualified to deal with an issue such as this when presented to them. The main meeting at which the matter was discussed was held on 12 December. That was a normal meeting of the board. There was then a special meeting on 8 January to consider the process for how the sale should proceed.

Deputy Róisín Shortall: I am interested in knowing what evidence there is in the minutes that there was adequate or appropriate scrutiny of the fact that there was a very significant discrepancy between the cashflow figure and the actual price achieved, of the discount applied and the price achieved.

Mr. Seamus McCarthy: There were various scenarios presented in the paper for the board, as recorded in the board minutes. I will get a copy for members.

Mr. John Riordan: It is mentioned on page 108 for the December meeting and page 110 for the January meeting.

Mr. Seamus McCarthy: On the sales price, the board noted that PIMCO had made an indicative bid of £1.1 billion to £1.3 billion, subject to due diligence. It further noted that NAMA's own discounted cashflow valuation of the portfolio was in the range of £1.2 billion to £1.3 billion, depending on the assumptions used. In response, the board noted that the original value of the portfolio was approximately £2 billion, with the current valuation reflecting significant impairments to date, which is correct, with further impairments expected. As agreed at its meeting on 12 December, the board noted that it would not consider the sale of the Project Eagle portfolio for a consideration of less than £1.3 billion. That is the record of the board's discussion on it and it specifically refers to the cashflow analysis presented to the board.

Deputy Róisín Shortall: Did anybody on the board at any point refer to the fact that there were no property valuations available in the context of the sale?

Mr. Seamus McCarthy: I do not believe that is recorded in the minutes.

Deputy Róisín Shortall: On the Comptroller and Auditor General's exchanges with NAMA on the various drafts of the report, Mr. McCarthy made a very interesting point in his presentation that while he had had engagement from January this year, it was not until June, some five or six months later, that there was a query about the valuation. Will he indicate to us the nature of the issues in dispute between January and June?

Mr. Seamus McCarthy: On the specific point about the valuation, based on the paper, in January we asked what the basis was for using the figure of 5.5% in the calculation. The board gave us the June 2013 paper, which basically had been presented to it to endorse the use of that value in evaluating transactions, for example, whether to hold on or to sell an asset. There were very extensive comments on all of the report. There were contentions and board members were challenging us to produce additional evidence. For instance, in relation to the sale process, we could see and conclude that a number of aspects of the board's standard procedure had not been operated and its members were challenging us, if one likes, to back up the conclusions we were drawing in the report. I added in additional material effectively to demonstrate why I had come to my conclusions.

Deputy Róisín Shortall: Mr. McCarthy responded to Deputy Catherine Connolly's questions on the matter earlier in the meeting, but to clarify, is it correct to say his figure of £190 million, as being the possible loss, was included in the draft in January and that the figure was not queried until June? That is my understanding of what he indicated earlier, but I might be incorrect.

Mr. Seamus McCarthy: No, it was always contended that the conclusion that the choice to sell in a portfolio, as opposed to working out the loans, was problematic. We were using the figure of 5.5%, effectively reperforming the analysis, and coming up with a figure of £190

million. At one point the board provided us with evidence as to why it might be necessary to recognise further impairments which would have brought down the figure of £190 million. At that point we were debating what the precise figure was. The question of whether the discount rate should be 5.5% or 10% for the purposes of evaluating the work-out only emerged in the board's response in June.

Deputy Róisín Shortall: I thank Mr. McCarthy for the clarification. The third issue about which I wish to ask him is the management of conflicts of interest. On page 90 of the report-----

Chairman: Is this the Deputy's last question?

Deputy Róisín Shortall: Yes, it is. On page 90 of the report Mr. McCarthy states the NAMA board and subcommittee members are legally obliged to make annual statutory declarations of relevant interests and that this entails the disclosure of interests. They should not seek to influence a decision on a matter and should absent themselves from a meeting or that part of it during which the matter is being discussed. Was this third requirement adhered to? Were members of a subcommittee who had a conflict of interest required to absent themselves from meetings at which the issue was being dealt with?

Mr. Seamus McCarthy: That is a requirement where a matter is to be discussed. It is standard procedure. The first point is that one should disclose a conflict of interest and a decision can then be made by the committee or perhaps by the chairperson of the meeting that it has no bearing on the matter to be discussed and that an individual may sit in at the meeting. A distinction is drawn between the declarations made by Mr. Cushnahan and Mr. Rowntree. There were agenda items which were to be discussed in respect of which Mr. Rowntree had made a disclosure. I do not remember the specific disclosures, but they did not relate to debtor connections but to other matters. A decision could then be taken by the board on whether he needed to leave.

On Mr. Cushnahan's disclosures, they were statements of fact. There was no discussion coming up of the individual debtors, but he was putting it on the record that he had an engagement or a relationship with certain debtors.

Deputy Róisín Shortall: Yet Project Eagle entailed a significant number of properties owned by those debtors.

Mr. Seamus McCarthy: Yes.

Chairman: Deputy Róisín Shortall is going over her time.

Deputy Róisín Shortall: I am sorry. That to me is a very significant issue and a serious failing of corporate governance. Mr. McCarthy has said there is a legal requirement. In his view, was it met by the members of the NIAC?

Mr. Seamus McCarthy: I cannot comment on the actions of an individual.

Deputy Róisín Shortall: From the Comptroller and Auditor General's experience, was this issue raised at any point on the board of NAMA?

Mr. Seamus McCarthy: The issue of whether Mr. Cushnahan should be engaged.

Deputy Róisín Shortall: The issue that a member of the sub-committee had a significant conflict of interest and that this had been disclosed.

Mr. Seamus McCarthy: A review is undertaken each year by the chairman of NAMA with the head of National Treasury Management Agency, NTMA, compliance, which provides support to NAMA where the annual statements of interests are reviewed. Those reviews of the statements of interest took place.

Chairman: We can put that further to NAMA. I call Deputy MacSharry.

Deputy Marc MacSharry: It will not be possible to do so now but could the Comptroller and Auditor General provide a list of the parties he spoke to by phone or in interview in the preparation of the report? If there are any memorandums or contemporaneous notes on the preparation, in terms of the management papers, could they be made available to us?

Mr. Seamus McCarthy: Is it the working papers of the examination?

Deputy Marc MacSharry: It is a list of everybody he consulted either by phone or in interview, plus any papers that back up the work on the preparation of the report. Can they be made available to us, not now, but as part of our deliberations?

Mr. Seamus McCarthy: Our engagement would have been with NAMA officials.

Deputy Marc MacSharry: I appreciate that. I am interested to know if the Comptroller and Auditor General can give us a list of the people.

Mr. Seamus McCarthy: I am sure we can work it up. It might take some time to compile it.

Deputy Marc MacSharry: I appreciate it cannot be done today but it might be helpful to our work if that could be made available. Any notes of the Comptroller and Auditor General's own management papers in putting it together may be useful to us also. If the Chairman believes it is appropriate to ask for that and if the Comptroller and Auditor General believes it can be done, albeit in time, it could be useful. Also, in terms of the responses from NAMA to the Comptroller and Auditor General, could any management papers be made available to us?

Mr. Seamus McCarthy: In regard to working papers of the examination and the exchanges around drafts, I have a concern because the commentary was on the analysis we did and the drafts we presented. There is possibly enough confusion around one report without adding four further drafts and why every change that was made was made. The process we went through was a process of refinement. Certainly, we got some things wrong. Where NAMA was able to show us that we were wrong, we were happy to change and we made the changes. There is redrafting, reshaping and so on-----

Deputy Marc MacSharry: I appreciate that.

Mr. Seamus McCarthy: -----so I think I would have a difficulty providing the drafts because the letters from NAMA do not really make that much sense unless the Deputy can see what they were commenting on.

Deputy Marc MacSharry: I will back our own ability on that. While I appreciate that the Comptroller and Auditor General's opinion is not to do so, I am asking, as a member of the committee, through the Chair, that we would get those.

Mr. Seamus McCarthy: I think I will have to-----

Chairman: We will come back to that.

Deputy Marc MacSharry: Obviously, if it is within the bounds of the Comptroller and Auditor General's capabilities to refuse that, he can refuse it. I am asking for it because I believe it would be useful to us and I believe the abilities of those on the Committee of Public Accounts will stand up to scrutiny after the fact in terms of their interpretation of language and the complexities of that when that happens.

Did the Comptroller and Auditor General write to Ronnie Hanna?

Mr. Seamus McCarthy: No.

Deputy Marc MacSharry: Did he write to Frank Cushnahan?

Mr. Seamus McCarthy: No.

Deputy Marc MacSharry: Why not?

Mr. Seamus McCarthy: Our line of accountability is from NAMA to us.

Deputy Marc MacSharry: Does the Comptroller and Auditor General believe contact with those persons may have informed the process he was undertaking?

Mr. Seamus McCarthy: I think it would be bringing the examination process into a completely different space. It would be moving it into an inquiry mode. Our expectation, and it is a standard expectation in regard to public audit, is that the entity continues. The entity should always be able to explain its decisions, produce records and so on, irrespective of people moving away from the organisation. The information I needed, therefore, should always be or have been in NAMA.

Deputy Marc MacSharry: As a result of his findings in the report, does the Comptroller and Auditor General have concerns about the governance structures in NAMA?

Chairman: Somebody's mobile phone is ticking away, and it will cause a problem. Some of this discussion will not be able to be picked up on the House recording systems. It is no good having the phone on silent mode; it must be on airplane mode.

Mr. Seamus McCarthy: The concerns I have are around Project Eagle and not generally around NAMA. NAMA is a good organisation. Our work with it shows that it has good systems. We have looked at two other loan portfolio sales in the course of this examination in some detail. I do not have similar concerns about other deals, or other sales.

Deputy Marc MacSharry: Are there any other deals that the Comptroller and Auditor General is aware of from his section 226 reports of the past or any other examinations he has done where NAMA did not follow the procedures or there was the same level of ambivalence to a structure that seemed to be followed in most cases?

Mr. Seamus McCarthy: Obviously, Project Eagle was the first big multi-debtor, multi-property portfolio it sold. When we looked at its operations in the section 226 report, and at that stage it was selling assets rather than loans, in the main, we found that it always used a competitive process or if it did not, it at least had a valuation. If, say, it was selling to another State entity, it got a market valuation of the property. It was either the sales process or the valuation that underpinned the value achieved in regard to those.

Deputy Marc MacSharry: Did the content of the data room change from when PIMCO

had exclusive access to it, and then when it was opened to others?

Mr. Seamus McCarthy: It did.

Deputy Marc MacSharry: Was there less information in the latter version or more?

Mr. Seamus McCarthy: More. The first data room that was set up for PIMCO related to the 55 top assets.

Deputy Marc MacSharry: Is it fair to say, therefore, that everything that was available in the earlier part was available to everybody, albeit for a shorter period of time at a later stage?

Mr. Seamus McCarthy: Yes. There was an increase in the amount of information in the data room between the first part of access to the data room and the finish of it.

Deputy Marc MacSharry: And nothing was removed.

Mr. Seamus McCarthy: No. Nothing was removed, that I am aware of.

Deputy Marc MacSharry: When other bidders cried foul of a process that was prohibitively narrow for them to do due diligence, why was no action taken? Was that a major surprise to the Comptroller and Auditor General at that point?

Mr. Seamus McCarthy: From the outset, the loan sale advisers were told to tell the bidders, and they did, that what was in the data room was what would be available.

Deputy Marc MacSharry: It is clear they complained about the timeframe being prohibitively short. It seems from the report that nothing was done about that. Was that a surprise to the Comptroller and Auditor General?

Mr. Seamus McCarthy: It goes to the narrowness of the amount of information that was provided to the bidders. Effectively, people were being notified of a very large sale. They had to mobilise a team in very short order to examine the information that was available and submit a bid. To me, the process was off-putting to potential purchasers.

Deputy Marc MacSharry: Did the Comptroller and Auditor General seek any external legal advice in preparing this report?

Mr. Seamus McCarthy: We did take legal advice.

Deputy Marc MacSharry: On what issues?

Mr. Seamus McCarthy: Obviously, there was the issue of being careful about not making findings in regard to individuals. That was one aspect. That was the main focus of their reading of it.

Deputy Marc MacSharry: Given the narrowness that was highlighted by certain bidders, and the fact that is admitted in the Comptroller and Auditor General's report, does he believe NAMA is exposed under the 2010 EU remedies regulations or the Irish guidelines on public procurement?

Mr. Seamus McCarthy: I am not forming an opinion on whether it has an exposure or not.

Deputy Marc MacSharry: In any year-----

Mr. Seamus McCarthy: My focus was in terms of the assurance that could come from the sale process as to the price achieved in the market.

Deputy Marc MacSharry: With regard to any of his dealings with the Department of Finance, in a response to a parliamentary question today on this issue from the Minister, Deputy Noonan, he states that the Comptroller and Auditor General's office engaged with him in the review as early as November 2015. Is that the case?

Mr. Seamus McCarthy: We sought the files of the Department of Finance in November when we were doing the field work to see what sort of documentation it had and what light it could throw on the matter. We did not give the Department a copy of the statement of facts and evidence in January, and we gave two drafts of the report. If there were things that could be ironed out, we wanted to iron them out. The first draft went to the Department in April.

Deputy Marc MacSharry: Was there any suggestion in deliberations between the Comptroller and Auditor General and the Department of Finance that it wished Mr. McCarthy to be cognisant in his language of what I just mentioned, the potential for challenge under the 2010 EU remedies regulations or the Irish guidelines on public procurement?

Mr. Seamus McCarthy: No.

Deputy Marc MacSharry: My last point was touched on by Deputy McDonald when she referred to the graceful change in a couple of weeks of the legal advisers of PIMCO over to Cerberus. Has Mr. McCarthy seen any evidence to suggest that a payment took place between Cerberus and PIMCO in light of that?

Mr. Seamus McCarthy: We have seen nothing.

Deputy Marc MacSharry: Did Mr. McCarthy ask NAMA if it had sought sight of letters of release which would be common between solicitors acting in such a manner?

Mr. Seamus McCarthy: No.

Deputy Marc MacSharry: Was it wise not to do that? The witness said he had assurances that everything was above board, but he felt NAMA could go further. In saying that it could go further, does the witness think it should have sought those letters of release?

Mr. Seamus McCarthy: NAMA got the assurance. I was commenting on the fact that it had not made any further inquiries as to the circumstances of the transfer, what the role was for Cerberus at the end of the process and when it had commenced its engagement with Brown Rudnick. That was the focus.

Chairman: The Deputy will have another opportunity to ask questions. I am keeping to ten-minute slots to give all members an opportunity. Deputies Connolly, McDonald and Cullinane have indicated that they wish to ask further questions.

Deputy Catherine Connolly: I have a number of questions and I realise we are all getting tired. Táimid tuirseach traochta. To put this in context, for what amount was the Northern portfolio acquired?

Mr. Seamus McCarthy: It was 2.5 billion.

Chairman: Was that euro or sterling?

Deputy Catherine Connolly: Sterling.

Mr. Seamus McCarthy: Yes, sterling. That specific piece of information is not in the report. We will clarify that.

Deputy Catherine Connolly: Is it called the par value at the time? What were we losing at that point?

Mr. Seamus McCarthy: The par value of the loans that were in focus on 31 December 2013 was £4.6 billion. Obviously things happened after the loans were acquired.

Deputy Catherine Connolly: What was the value at the time they were acquired? What was the loss to the taxpayer at the acquisition of it?

Mr. Seamus McCarthy: That is the figure that we think is £2.5 billion.

Deputy Catherine Connolly: Is that what was paid for them?

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: However what was the value of them? What was written off?

Mr. Seamus McCarthy: Does the Deputy mean when it acquired them?

Deputy Catherine Connolly: Yes. I understand it was billions.

Chairman: The loans that NAMA took over from the respective banks had a figure or value in the banks of £4.6 billion. When NAMA took them over that was severely discounted to approximately £2.5 billion. There was a massive discount.

Mr. Seamus McCarthy: We have reported on that previously, obviously not specifically identifying the Northern portfolio.

Deputy Catherine Connolly: Okay. I just want a context for what we are discussing-----

Mr. Seamus McCarthy: Certainly, the write-down was 57% on average.

Deputy Catherine Connolly: Then it comes to the point of sale.

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: There are impairment figures on top of that. The witness said they were approximately £480 million or the like, where it comes down further.

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: Then, without any valuation, a price of £1.3 billion is put on it. Then the Comptroller and Auditor General says that we have now lost, in addition, probably £190 million.

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: That is the context.

Mr. Seamus McCarthy: At 31 December, the forecast carrying value was just under £2

billion, with impairment already taken out.

Deputy Catherine Connolly: The poor quality of the loans has been mentioned by NAMA. We have all received the briefing papers to the Minister for various meetings in Northern Ireland. The briefing papers refer to 70% of the Northern portfolio being complete property and income producing.

Mr. Seamus McCarthy: Yes, it was income producing. Not every asset was, but there was a rent roll in 2013 of £100 million and for 2014 the cashflows were showing rent and other non-disposal receipts of approximately £88 million.

Deputy Catherine Connolly: The breakdown of the portfolio has been provided. It had everything from offices to shopping centres. I believe there were 24 shopping centres. It was income producing.

Mr. Seamus McCarthy: Yes, many of the assets were income producing.

Deputy Catherine Connolly: With regard to Lazard, I asked what fee was paid. The fee was repeated by Deputy Alan Kelly. It was approximately £4 million.

Mr. Seamus McCarthy: It was £4.3 million.

Deputy Catherine Connolly: Lazard was brought in for a limited period of time.

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: Does Mr. McCarthy have a view about the amount of money that was paid to Lazard? Does he have a role in assessing that?

Mr. Seamus McCarthy: I will make two comments. In Project Tower, which was sold at the same time and in a structured way following the guidelines, the fee basis was similar. The fee depends on the value - it is a proportion - but the rates were similar. When one compares it with Project Arrow, which was the following year, the fee rates were significantly less.

Deputy Catherine Connolly: Presumably Lazard had less work to do than in the case of the two projects to which the witness is comparing it.

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: It did not carry out a valuation.

Mr. Seamus McCarthy: Absolutely.

Deputy Catherine Connolly: It had a limited role compared with the others.

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: Does Mr. McCarthy have a view or role in assessing the value for money of the money given to Lazard?

Mr. Seamus McCarthy: I pointed out in the report that this was the basis of the payment. They were the terms agreed. It got what it was contracted to be paid and I have drawn attention to the fact that, comparing the volume of work, the fee was significantly higher for Lazard.

Deputy Catherine Connolly: The witness said that NAMA could have done more with

regard to the conflict of interest and following it up when it was highlighted. Would it be wrong to say “should”? Should it have reported it to the Garda, even retrospectively?

Mr. Seamus McCarthy: It is difficult to answer that. It would depend on whether it had made inquiries and found further information. Then it might have led NAMA to evaluating whether it should or should not report the matter. The places where it might have got more information were, perhaps, from Mr. Cushnahan and also, perhaps, from PIMCO. There were those two sources.

Deputy Catherine Connolly: It was acknowledged earlier that PIMCO was in the race early. In fact, it was in the race from very early in 2013, meeting Northern politicians. Was Mr. McCarthy aware of that going back to March or April, well before the unsolicited connection was made with NAMA?

Mr. Seamus McCarthy: The notes we have put together here indicate that when it was disclosing to NAMA that there had been a success fee arrangement, it talked about negotiations having commenced in April 2013. At least at that point NAMA knows that there was some negotiation around that period, which would have predated the initial letter from Brown Rudnick.

Deputy Catherine Connolly: With regard to the experts that came forward, is it correct that there were four of them?

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: One of them was Lazard, the advisers to PIMCO.

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: Was Cushman & Wakefield advisers to PIMCO when it came forward and gave an expert opinion?

Mr. Seamus McCarthy: Cushman & Wakefield was advisers to Cerberus or Fortress-----

Deputy Catherine Connolly: It was adviser to one of the bigger-----

Mr. John Riordan: It was adviser to PIMCO and then it moved to Fortress.

Deputy Catherine Connolly: That is two of the expert advisers brought forward by NAMA, but they were already conflicted.

Mr. Seamus McCarthy: In terms of the comments that they were providing for the purposes of this report, it was a general inquiry that they were asked to comment on. It is general advice. It is not specific and I do not believe that they would have either the evidence that we sent or a draft of the report. They could not have had a draft of the report in January 2016 so they were making general comments.

Deputy Catherine Connolly: The Comptroller and Auditor General has already said he did not have a difficulty.

Mr. Seamus McCarthy: I do not have a difficulty with what is said in it anyway.

Deputy Catherine Connolly: Finally, the Comptroller and Auditor General noted in his report that this was a strategy change. Is it correct that it was a fundamental change in policy, that they decided to-----

Mr. Seamus McCarthy: In relation to Northern Ireland, yes.

Deputy Catherine Connolly: In the context of the briefing notes, the minutes and what was on the website for the Northern Ireland advisory committee, it was repeatedly pointed out that Northern politicians did not want fire sales. Is it correct that NAMA reassured them continually that it was operating on a careful basis?

Mr. Seamus McCarthy: That is my understanding of it.

Deputy Catherine Connolly: Then, suddenly, there was a change of policy. Would the Comptroller and Auditor General concur with my use of the word “suddenly”?

Mr. Seamus McCarthy: It was within a short period. There was a change when they saw the opportunity that presented.

Deputy Catherine Connolly: A fundamental change in policy?

Mr. Seamus McCarthy: A significant change of policy, yes.

Deputy Catherine Connolly: Okay. There is evidence that they were selling off. By 2012, they had sold €100 million worth of property. So there was movement in the market.

Mr. Seamus McCarthy: Yes, and other sales were ongoing. They were projecting significant sales in 2014.

Deputy Catherine Connolly: On page 70 of the Comptroller and Auditor General’s report, there is an extract from European Real Estate Loan Sales Market, February 2014. It speaks of the market going up. Is it correct that it speaks of there being more interest at the time from investors in smaller packages?

Mr. Seamus McCarthy: Yes. The reason I included that was to give a flavour of what neutral observers felt was the situation at the time when the Project Eagle sale was proceeding.

Deputy Catherine Connolly: So that is a positive report with regard to the market changing.

Mr. Seamus McCarthy: It is basically saying that there are more investors coming into the market and they are looking for different kinds of offers and significant growth - that it was a market that was heating up, effectively.

Deputy Catherine Connolly: On that point, on page 133 of the report of the Comptroller and Auditor General - this is a reproduction of page 3 of the proceedings of the NAMA board meeting held on 10 October - there is an acknowledgement from PIMCO to the effect that “the NI economy has “bottomed out””.

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: They go on to say that they “wanted exposure to capitalise on future growth/recovery”. Therefore, they were anticipating future growth and recovery. Is it correct that they were anticipating selling off what they bought?

Mr. Seamus McCarthy: That is correct.

Deputy Catherine Connolly: Is it correct that they were anticipating selling off that rela-

tively quickly?

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: To make a profit?

Mr. Seamus McCarthy: Inevitably. They were in it to make a profit.

Deputy Catherine Connolly: That goes totally against all I read here in the briefing documents that there would be no fire sale and they would look in terms of suiting the Northern economy.

They also acknowledge that two thirds of the debtors were working with them. There was a comment here, referring to NAMA, that the debtors were not working with them but in the briefing documents, they acknowledge that the property is completed, it is income producing and two thirds of the debtors are working actively with NAMA.

Mr. Seamus McCarthy: Yes.

Deputy Catherine Connolly: We have that and then we have this extraordinary decision to change policy and sell-off assets in a portfolio and at a probable loss to the taxpayer of €190 million. The latter was in addition to all the other losses that the taxpayer incurred.

Chairman: I will move on to Deputy Cullinane.

Deputy David Cullinane: The Comptroller and Auditor General stated earlier that he had some interesting discussions on semantics with the members of NAMA on the meaning of certain words in the context of the sales process, the sales strategy and the work-out value, the sales value, etc. As part of the preparation for this report, the Comptroller and Auditor General would have had a lot of communication with NAMA on the various drafts and NAMA had the opportunity to respond. In terms of the timeframe that would have been given and the type of issues that took up most of the time in those exchanges where NAMA had an opportunity to clarify positions or challenge the Comptroller and Auditor General's findings, would it be fair to say that most of that was concentrated on the sales process and on the differences in terms of the work-out value, etc.?

Mr. Seamus McCarthy: That would be fair to say. If they were simple straightforward issues that needed to be corrected, we accepted those. We made the corrections and those kind of points of contention would have gone away.

Deputy David Cullinane: In the Comptroller and Auditor General's report, paragraphs 52 to 58, inclusive, deal with conflicts of interest, both in respect of Mr. Cushnahan and the presence of success fees with regard to both Cerberus and PIMCO. Were those findings or the Comptroller and Auditor General's conclusions challenged by NAMA in any of the discussions that took place?

Mr. Seamus McCarthy: Not significantly, I think. There is a section, on page 94, where we set out what NAMA's view was, or its final view.

Deputy David Cullinane: But the agency had a response. It would have received a draft of this report, which makes a number of very serious findings, in my view, or draws a number of conclusions.

Mr. Seamus McCarthy: Yes.

Deputy David Cullinane: What the Comptroller and Auditor General is saying is that they were not robustly challenged.

Mr. Seamus McCarthy: They had given a view and I have represented it in the report, at page 94. It is a section which has three paragraphs - a statement of NAMA's views in relation to the matter.

Deputy David Cullinane: So there were three paragraphs in a statement on all of those findings regarding the conflicts of interest.

Mr. Seamus McCarthy: There would have been other comments as we were going along. Perhaps that-----

Deputy David Cullinane: Let us take the findings individually then. One of them is that "The NAMA Board should have formally considered whether Mr Cushnahan's engagement in discussion of the strategy - including the PIMCO/Brown Rudnick approach - was consistent with his ongoing involvement as financial advisor to a significant proportion of NAMA's Northern Ireland debtor connections." Did NAMA question or query that finding?

Mr. Seamus McCarthy: Their main comment was that there was no debtor information made available to Mr. Cushnahan or to the external board members at NIAC meetings.

Deputy David Cullinane: Okay. The next one is paragraph 55, which states:

Mr Cushnahan had an office in Tughans' premises in Belfast, and two NIAC meetings had been held there. Given the joint agreement between the parties to the success fee arrangement with PIMCO, all of the payment - not just the payment to Mr Cushnahan - should have raised concerns for NAMA.

Did they offer up any defence as to why it did not raise concerns?

Mr. Seamus McCarthy: I do not believe so. That is my opinion, essentially, that-----

Deputy David Cullinane: I know it is the Comptroller and Auditor General's opinion but they had a chance to respond to his opinion. They were quick to respond to his opinion on the sales strategy, the work-out value and the credibility of the Comptroller and Auditor General's staff, but on these issues I am asking were they as robust in their defence.

Mr. Seamus McCarthy: They clearly stated that they had taken appropriate and meaningful action by ensuring that he was not a beneficiary of any fee arrangement agreed by the successful bidder. That was their comment, and it is reproduced in paragraph 5.25.

Deputy David Cullinane: In his report, the Comptroller and Auditor General goes on to state, "The allegations of Mr Cushnahan's involvement in an arrangement to share fees with Brown Rudnick and Tughans (or the managing partner of Tughans) warranted more action by NAMA ...". Did NAMA ask at any point what further action that would have involved?

Mr. Seamus McCarthy: I had set out in the body of the report the types of additional actions.

Deputy David Cullinane: Did NAMA challenge that? Did it offer any reasons why those courses of action were not taken?

Mr. Seamus McCarthy: Their point of view was that they had done sufficient at the time.

Deputy David Cullinane: In a couple of paragraphs, but I am talking about the actual detail. The Comptroller and Auditor General goes into detail around what NAMA could have done and where there was a lack of action in respect of the conflicts of interest. Would it be fair to say the Comptroller and Auditor General is saying that NAMA just gave a very general response as to why it did not do it?

Mr. Seamus McCarthy: And that they did consider that the kinds of actions that I was suggesting they might have taken would not have been effective or made any difference.

Deputy David Cullinane: When NAMA was before the Committee of Public Accounts in July of last year dealing with these issues, Mr. Daly stated, “The board decided that if PIMCO did not withdraw, NAMA could not permit it to remain in the sales process.” He went on to state, “Suffice it to say that it was left in no doubt that if the withdrawal was not voluntary, it would have to be involuntary.” How does that tally with Appendix E and the discussions in terms of the conference calls, etc., that took place between NAMA’s and PIMCO’s legal representatives, particularly as this assertion is being made again to the effect that NAMA was pushing PIMCO out? However, when we analyse matters - this was the Comptroller and Auditor General’s analysis of those conference calls, etc. - something else seems to be suggested. When he was last before this committee, Mr. Daly stated: “Suffice it to say that it was left in no doubt that if the withdrawal was not voluntary, it would have to be involuntary.” He said they did not believe it was tenable for PIMCO to remain in the process. Does that chime with what is in Appendix E?

Mr. Seamus McCarthy: That is probably a matter that the Deputy would be best taking up with Mr. Daly. I have reported, based on the records that are available, what I think happened. My clear interpretation of that is that PIMCO withdrew for PIMCO’s reasons.

Deputy David Cullinane: At the July committee meeting, Mr. Daly stated:

I do not think there is any indication that the involvement of those in PIMCO indicated that they were trying to pull themselves out of the sale. In fact, the whole tenor of their approach on this issue around Frank Cushnahan was to stay involved.

What I am reading from Appendix E is that it was actually NAMA that was looking at alternatives and ways in which it could keep PIMCO in the game. That is my reading of it. What I am trying to get from Mr. McCarthy is an opinion on whether those two narratives chime.

Mr. Seamus McCarthy: I do not want to comment on evidence given by other witnesses. I can tell the Deputy that this is what we understand NAMA’s engagement with PIMCO to have been. I certainly expect that PIMCO would have wanted to stay in the process but, again, I am speculating. It does not come across as PIMCO approaching NAMA with an excuse to pull out of the exercise. We could take it from a business perspective that it would have liked to have stayed in but its legal advice, when its compliance people looked at the matter, was that it had to pull out.

Deputy David Cullinane: Reading into Mr. McCarthy’s opening statement and a report on what he said, I believe his main assertion is that NAMA failed because it simply did not inquire enough about the conflicts of interest, and that it fell short on the inquiry side of it.

Mr. Seamus McCarthy: I think it could have inquired more about the circumstances of the

success fee arrangement, particularly when it commenced.

Deputy David Cullinane: I assume this is Mr. McCarthy's judgment. I would measure all his findings or conclusions against whether there is supporting documentation, supporting evidence and so on. However, when he says NAMA appears to have taken a narrow approach, focusing on what were its legal obligations rather than the options for action to be considered, he is giving his opinion. However, given what he said previously in the report in terms of the other findings, whereby NAMA might not have taken enough action, fell short or did not inquire enough, Appendix E makes it very clear that PIMCO said at some point, "We are out of here. We are gone. We cannot stay in a process that potentially could be corrupted." It did not say that but that was the subtext. It was gone and yet NAMA did not take that decision. Mr. McCarthy seems to have fallen short of saying in his report, as a conclusion, that NAMA should have stopped the sales process. Could he give us an explanation as to why that is the case?

Mr. Seamus McCarthy: The point that was made earlier, on the view that if it had made inquiries and found something further, was that it might have had to consider those sorts of actions-----

Deputy David Cullinane: So Mr. McCarthy is saying-----

Mr. Seamus McCarthy: I cannot say because I do not have enough information. I do not know when-----

Deputy David Cullinane: Mr. McCarthy was able to find out in his investigation that there were potential conflicts of interest that were more serious. Perhaps his team did more due diligence work on it.

Mr. Seamus McCarthy: Yes.

Deputy David Cullinane: That is a fair point. If NAMA and its board had done the same sort of due diligence work, given that PIMCO had withdrawn from the process and what Mr. McCarthy's investigation team uncovered, should NAMA have halted the sales process?

Mr. Seamus McCarthy: My point is that, in my view, NAMA should have made further inquiries in the circumstances. Taking account of the information it got, or even if it did not get an explanation that was satisfactory, other consequences might have flowed from that. I was not in the situation; I cannot say what it should have done. I am not taking a view as to whether it should have halted the process.

Deputy David Cullinane: Let me make a final point. NAMA, in its defence of its reason for not taking further action when the first conflicts of interest were brought to its attention in relation to the association with Mr. Cushnahan and debtors, the PIMCO success fees and, as articulated earlier, the graceful transfer to Cerberus and the same players and so on, says it had to consider all this but that, on the other hand, in the words of Mr. Daly, it had to weigh up the potentially serious costs and consequences for NAMA, for the State-owned banks and for the sovereign halting of a major loan sale. It seemed to be placing more weight on the bigger picture, which was to achieve its sales price of €1.3 billion. One could argue it is saying the end justifies the means. Does Mr. McCarthy see a problem with that?

Mr. Seamus McCarthy: Bearing in mind the processes, one has to do what is right in a situation. It is a very experienced board. If it has the information available to it to make a decision, it is its prerogative to make that decision. I cannot say what decision it should have taken.

Obviously, those considerations that Mr. Daly has outlined would have been in play. Then we could be talking about that but this is how NAMA handled the information it had at the time.

Deputy Mary Lou McDonald: At what stage were the PIMCO success fees agreed, in Mr. McCarthy's understanding?

Mr. Seamus McCarthy: I do not have evidence of when the PIMCO success fee was arranged. It is not information that I understand is in NAMA. The point is that it did not seek an explanation or a copy of the success fee arrangement or, apparently, clarification as to when the success fee arrangement was put in place. The minutes record that the negotiations had commenced in April 2013. Considering how the minutes are set out, it is possibly indicating that it was the negotiations around the success fee but it could have been another factor. The board says that, in its view, this disclosure that negotiations had commenced in April 2013 was taken by it to mean negotiations between PIMCO and Brown Rudnick had commenced in April 2013 and not that negotiations over success fee payments had commenced at that stage.

Deputy Mary Lou McDonald: I asked that question for that reason. Mr. McCarthy probably cannot comment but I am now going to assume that, at that stage, the success fees were agreed. We will test that later. At no point is there a discussion or the record of a discussion around halting the sales process when all of this comes to light. Could Mr. McCarthy clarify that?

Mr. Seamus McCarthy: I do not think so.

Deputy Mary Lou McDonald: I am just checking. I thank Mr. McCarthy for that.

On the valuation of the assets, which did not happen prior to the disposal of the portfolio, who in NAMA would have had the responsibility to carry out or oversee the valuation of those assets? Which division?

Mr. Seamus McCarthy: In the normal way, that valuation of assets for a portfolio loan sale would actually have been carried out by the loan sale adviser.

Deputy Mary Lou McDonald: In the absence of that, who watches that piece of the puzzle internally?

Mr. Seamus McCarthy: Essentially, what was relied on, or fallen back on, instead of those valuations and a modelling exercise done by the loan sale adviser, was the cashflows.

Deputy Mary Lou McDonald: Yes. Here is what I am getting at because time is limited. For Mr. McCarthy, a glaring omission is the lack of property valuations. Clearly, one cannot audit something that does not exist, so it is a nonsense to try to advance that argument. What I am trying to get at is who within NAMA, on the board or within the executive, should have spotted that glaring omission. I want to know whether it was asset management. Which division? Who?

Mr. Seamus McCarthy: The relationship with the loan sale adviser would be asset management. That would be my understanding.

Deputy Mary Lou McDonald: If Mr. McCarthy or I were in charge of asset management, we would anticipate seeing it in some of the records at some stage and would say: "Hang on a second. Perhaps we need to do that", even if it was then decided that it was not a necessary exercise. I just wanted to clarify that.

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Did the Comptroller and Auditor General find any evidence that NAMA had foreclosed on any of the debtors with whom Mr. Cushnahan had an advisory relationship?

Mr. Seamus McCarthy: I would be reluctant to comment on any debtor or any small group of debtors, but it is not a question that I can answer. We did not look at enforcement activity concerning individual debtors.

Deputy Mary Lou McDonald: Mr. McCarthy did not examine any paperwork-----

Mr. Seamus McCarthy: No, I did not.

Deputy Mary Lou McDonald: -----and he has no information in that regard.

Mr. Seamus McCarthy: No.

Deputy Mary Lou McDonald: One of the shortfalls that Mr. McCarthy identifies in terms of good practice, when all of this comes to light around fixer's fees and Mr. Cushnahan, was a failure to revert to the National Treasury Management Agency, NTMA, compliance division or service. It seems to me to be a fundamental omission. Who from the NTMA was on the board of NAMA at the time when all of this came to light? I am right in saying that the NTMA-----

Mr. Seamus McCarthy: The chief executive of the NTMA is an *ex officio* member of the board of NAMA.

Deputy Mary Lou McDonald: Was that-----

Chairman: In using that term *ex officio*, is that a full board member? Some people think it is half a member. Is it?

Mr. Seamus McCarthy: No, it is a full board member.

Deputy Mary Lou McDonald: So the NTMA has full board membership. Can Mr. McCarthy say if the NTMA person was in attendance when these matters were discussed by the board?

Mr. Seamus McCarthy: I ask the Deputy to bear with me for a moment. On page 103, in figure B1, there is a schedule listing the attendance or participation in all of the meetings. In talking about this issue, we are talking about 11 and 13 March.

Deputy Mary Lou McDonald: That is right, yes.

Mr. Seamus McCarthy: The date 13 March would have been a scheduled meeting.

Deputy Mary Lou McDonald: Yes.

Mr. Seamus McCarthy: The chief executive of the NTMA would have been at the meeting on 13 March and would have participated via phone link on the meeting of 11 March.

Deputy Mary Lou McDonald: For the purposes of the committee, which names should members be looking at?

Mr. Seamus McCarthy: Mr. Corrigan.

Deputy Mary Lou McDonald: Is that not an extraordinary thing then, when it occurs to Mr. McCarthy in his exercise that an obvious thing to do was to go back to that service and

guidance that one relies on in terms of compliance for some form of advice or steer? They failed to do that. Not alone that, but one of the people involved in the conversation is actually the most senior person in the NTMA. Mr. McCarthy cannot comment but I can. I find that an extraordinary thing. Finally-----

Mr. Seamus McCarthy: I might just point out that in NAMA's view, part of that is a comment that NTMA compliance has indicated that, given the information available at the time, there was no additional action that it could have advised to be taken that had not already been taken by NAMA.

Deputy Mary Lou McDonald: When did they furnish them with this gem of information?

Mr. Seamus McCarthy: That is a comment that was given to us in the course of their responses.

Deputy Mary Lou McDonald: Did Mr. McCarthy see a piece of paper with that written down?

Mr. Seamus McCarthy: It is written down in NAMA's response to us.

Deputy Mary Lou McDonald: Yes, but is it written down on headed notepaper that says NTMA compliance, or did Mr. McCarthy not see that?

Mr. Seamus McCarthy: We did not seek a copy of that.

Deputy Mary Lou McDonald: Right. We will see whether that is there. We know that Mr. Daly has sought to discount, and in his view it is the correct thing to say, that the Northern committee had no real clout, no decision-making powers and so on. However, he went further in his eagerness to confront Mr. McCarthy's report. He is on the public record as describing this committee as a talking shop. I understand that Mr. McCarthy is limited in how he can respond to that, but I would like a response from him on that. Would Mr. McCarthy describe that Northern advisory committee as a talking shop?

Mr. Seamus McCarthy: It is not the kind of term I would use about a committee of a significant body. It was set up for particular purposes, obviously, with a particular background. It was set up under an article in the NAMA Act. It did its business or it did business; it is recorded. I would be very reluctant to form a view that it served no function.

Deputy Mary Lou McDonald: Could I invite Mr. McCarthy's comment on the composition of the committee? Obviously it was not the board, but it did have full board members on it. It also had very senior persons, for instance, the head of asset recovery.

Mr. Seamus McCarthy: Yes.

Deputy Mary Lou McDonald: Very key people with access to all information - correctly, not inappropriately. I would have thought, looking at that line-up, that far from being a marginal, peripheral or inconsequential kind of gathering, fairly influential figures were around that table - knowledgeable people as well.

Mr. Seamus McCarthy: Four NAMA board members. As the Deputy said, the head of asset recovery was a member, and then two external members who were nominated and agreed by the Finance Ministers.

Deputy Mary Lou McDonald: They were appointed initially by the former Minister, Mr. Lenihan, back in the day, and then reappointed by the Minister, Deputy Noonan, in 2012. Is that not correct?

Mr. Seamus McCarthy: I think, strictly, the appointment is by the board of NAMA. The actual instrument appointing them is by the board of NAMA, but it was agreed by the Ministers for Finance.

Deputy Mary Lou McDonald: Okay. I thank Mr. McCarthy.

Chairman: I have a few quick questions. Will Mr. McCarthy confirm that he has carried out three special reports into NAMA and six annual audits?

Mr. Seamus McCarthy: Yes.

Chairman: Was there any public criticism of any of those reports by NAMA? Has it criticised Mr. McCarthy about any of his previous work?

Mr. Seamus McCarthy: There was a disagreement on the section 226 report. That is the only criticism. I do not know if the Chairman wants me to outline that briefly.

Chairman: Was it major or minor?

Mr. Seamus McCarthy: It was a recommendation I made that it set target rates of return for disposals and for investments. NAMA disagreed with that on the basis that it did not want to set those kind of targets because it wanted to be able to avail of commercial opportunities when they arose. I should say that my recommendation was a process recommendation, not a recommendation as to what those rates should have been, just that they would be a useful guide to NAMA in its business.

Chairman: Mr. McCarthy mentioned the sales process earlier. He said that some of the process was off-putting. Is that correct?

Mr. Seamus McCarthy: Yes. I think that when some of the potential bidders were approached and they looked at the process, their response to what they were being asked to do was that they did not want to get involved with it. In what we have seen, there was no specific reference to the quality or nature of these assets. It is not something we want to get involved in. There was a comment about Northern Ireland, that if they were not able to access valuers in Northern Ireland then they would have a difficulty in pricing a bid. That was one of the conditions.

Chairman: Overall, would Mr. McCarthy consider the sales process a well-designed one?

Mr. Seamus McCarthy: No. I do not think I can say that.

Chairman: Would Mr. McCarthy say it was not a well-designed sales process?

Mr. Seamus McCarthy: My assessment of it is in terms of the assurance it gives me about the sale price. I find that this process does not give me adequate assurance that another way of disposing of these loans in a different composition, or approaching the market in a different way, would not have given them a better price.

Chairman: In other words, Mr. McCarthy would not describe this as a well designed sales process.

Mr. Seamus McCarthy: No.

Chairman: The reason I say that is as follows. The letter KPMG supplied to NAMA on 11 May 2016 is referred to on page 16 of the report. KPMG was asked to comment on market value - item No. 2 in the letter. I will not read it all, but KPMG refers to the Royal Institute of Chartered Surveyors, the International Valuation Standards Council and the International Accounting Standards Board in considering how to define market value. It states they all share a common theme on market value, that, ultimately, it requires willing participants and a well designed sales process. Mr. McCarthy has stated his opinion that we did not have a well designed sales process. As such, the reference on which NAMA is relying in the letter from KPMG does not apply if we accept that there was no well designed sales process. Does Mr. McCarthy follow my logic?

Mr. Seamus McCarthy: Yes.

Chairman: The Royal Institute of Chartered Surveyors, mentioned in the next paragraph, refers to willing buyers and sellers after proper marketing. There is an issue in that regard. The question is whether the definition applies. These are documents produced by NAMA.

Mr. Seamus McCarthy: Yes.

Chairman: They were produced quite recently to justify its use of market value.

The next organisation, the International Valuation Standards Council, talks about the position after proper marketing, while the International Accounting Standards Board refers to the price that would be received to sell an asset or would be paid to transfer a liability in an orderly transaction between market participants on the measurement date. The argument KPMG has made might have been relevant from NAMA's perspective in justifying its use of market value had the conditions and the definition of market value applied to the process. However, the Comptroller and Auditor General has said he cannot accept that it was a well designed sales process. We will ask NAMA to comment on this later.

People become a little confused and somewhere along the line we will have to get a note, in the first instance, from NAMA on, as Deputy Catherine Connolly said, the par value and the discount rate when it took over the loan. We need a report on the level of impairment in each of the years before 2013. The Comptroller and Auditor General could probably do it, but NAMA is his client and it is up to that body to produce the information. It reassessed its loan book on an ongoing basis and there were significant impairments. That leads me to the impairment figure in its 2013 accounts on which it signed off on 9 May 2014 after the sale had been agreed but before it was finalised absolutely. The Comptroller and Auditor General signed off on the accounts on the same day and the report was presented to the Minister. The proceeds of the sale were £1.241 billion. What was the figure in NAMA's financial statements the day before the sale took place? Does the Comptroller and Auditor General have a figure?

Mr. Seamus McCarthy: There was no-----

Chairman: I am not talking about market value but the figure in the financial statements of NAMA. What was the figure if that was its publicly stated view on 9 May when it signed off on the accounts? The sale was completed a couple of weeks later.

Mr. Seamus McCarthy: When they were evaluating it, they projected that the impairment figure would be in the order of €500 million.

Chairman: When was this?

Mr. Seamus McCarthy: December 2013. On the figure, we would have to conduct a process of extraction to find what the actual impairment figure was. What I will say is that at the time the audit was being finalised, there was no adjustment of the impairment figure.

Chairman: Was it an impairment figure in the 2013 accounts?

Mr. Seamus McCarthy: There was an impairment figure in the accounts.

Chairman: How was that figure arrived at?

Mr. Seamus McCarthy: An impairment figure was proposed for the overall loan book by NAMA when it presented-----

Chairman: I am talking about the Northern Ireland loans.

Mr. Seamus McCarthy: It was not itemised in that way.

Chairman: Can the figure for the Northern Ireland element be calculated at this stage?

Mr. Seamus McCarthy: I am sure it could be calculated, but it is probably NAMA that could provide it most easily.

Chairman: We will ask NAMA because of the reference on page 136 which sets out the board notes for the meeting on 12 December. In the second last paragraph there is a reference in respect of the Project Eagle portfolio, the details of which are set out, to the post-financial year end 2013 impairment exercise. The adjustment figure for assets forecast to be held during the period 2017 to 2020 is estimated at £1.39 billion. Is that the figure we can say was included in the financial statements?

Mr. Seamus McCarthy: No. There was an adjustment of the projected impairment figure of £85 million which they argued in the paper to the board had to be made because the value of the 2017 to 2020 assets had not been impaired.

Chairman: Starting with the figure of £1.39 billion, minus the £85 million, we are in the region of-----

Mr. Seamus McCarthy: If one looks at page 143, there is a table which sets out the figures.

Chairman: I have seen it.

Mr. Seamus McCarthy: The bottom figure - NAMA debt for Project Eagle comparison - is £1.390 billion.

Chairman: That is after the addition of £85 million.

Mr. Seamus McCarthy: That is after the adjustment of £85 million. The figure they were projecting for the end of the year - the projected NAMA debt - was £1.474 billion against a par debt of £1.980 billion.

Chairman: In its financial statements NAMA took some impairment into account in its Northern Ireland loan book.

Mr. Seamus McCarthy: Yes. It had always been taken into account.

Chairman: It was always done and we will receive a schedule from NAMA showing how much it wrote down each year. People here will not have it, but note 41(c) on page 174 of NAMA's 2013 accounts refers to events after the end of the financial year. There is a specific note on the Northern Ireland portfolio sale which happened after year end. However, there was an offer on the table which was known to be the best offer and which had already been accepted by the board, albeit it had not actually yet been paid. Given that it was the best possible valuation at that point for the Northern Ireland loan book, why was the impairment figure it had implied not been included in the accounts for 2013? Would it not have been prudent to have included it?

Mr. Seamus McCarthy: We discussed with NAMA whether there was a need to increase the impairment figure.

Chairman: Was that in the light of this knowledge?

Mr. Seamus McCarthy: It was in the light of a bid having been accepted, in effect, and the fact that they were working on the disposal. NAMA's principal argument was that additional impairment should not have been recognised as it was a sale that might not proceed. I think it took accounting advice from accountancy advisers and presented a paper to us justifying it. We accepted this.

Chairman: Does Mr. McCarthy have that paper?

Mr. Seamus McCarthy: Yes.

Chairman: We will want that paper also.

Mr. Seamus McCarthy: Yes.

Chairman: I want to read to Mr. McCarthy the note with which he has obviously concurred in NAMA's 2013 accounts. It states the portfolio had a par value of £4.6 billion and that, as the transaction had not yet been completed at the date of authorisation of the financial statements - 9 May 2014 - and was commercially sensitive, the financial effect of the transaction was not being disclosed and not recognised in the financial statements. Is it normal practice to use commercial sensitivity as a reason not to include something in a body's audited accounts? Is it normal to exclude items from audited accounts just because they are commercially sensitive?

Mr. Seamus McCarthy: No. Obviously, the financial statements are NAMA's and we audit them. NAMA makes decisions on what is appropriate and we challenge it if we disagree. If an amount should have been recognised in the financial statements, we would always want it to be recognised and that it hit the accounts when it was due to hit them.

Chairman: This refers to commercial sensitivity as a reason not to include a financial audit or statement. We cannot have organisations excluding items from their audited accounts because of commercial sensitivity. Does the Comptroller and Auditor General not have a problem with that phrase in the notes and he accepted that?

Mr. Seamus McCarthy: Yes, we were aware of the note. We also were aware that in the note, as originally proposed, it had been completed as an open process but we felt it was important to say that it was a restricted process.

We did examine whether additional impairment should be recognised at that point. We were satisfied that it did not need to be and that the loss would be incurred in the 2014 financial statements.

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Chairman: Mr. McCarthy completed the note by saying that the transaction represented the largest single transaction by NAMA to date and that it followed a focused sales process involving bidders from Europe and the United States.

Mr. Seamus McCarthy: Again, it is NAMA that is making those statements. We are the auditor. We accepted that.

Chairman: The chairman and the director signed that. It is their report and we will put that to them but the Comptroller and Auditor General also signed his audit report accepting that.

Mr. Seamus McCarthy: We accepted that it was important that it be disclosed as an issue.

Chairman: Okay, I want to-----

Mr. Seamus McCarthy: The disclosure was important.

Chairman: Where best can we get an exact figure regarding the valuation included in the financial statements of NAMA relating to Project Eagle before the sale was completed? The Comptroller and Auditor General will appreciate that I have heard about ten different potential valuations depending on assets in, assets out, transactions during the period, further impairment, discounted cash flow and carrying value and so on. We must start with the audited accounts as a basis.

Mr. Seamus McCarthy: It is a note that NAMA can give the Chairman most easily.

Chairman: Are there any other questions?

Deputy Bobby Aylward: To clarify, did the Comptroller and Auditor General have any correspondence with the NIAB or Lazard during this investigation?

Mr. Seamus McCarthy: We did not have correspondence with Lazard.

Deputy Bobby Aylward: And with the NIAB?

Mr. Seamus McCarthy: The NIAB?

Deputy Bobby Aylward: The Northern Ireland advisory board.

Mr. Seamus McCarthy: No, the Northern Ireland advisory committee had ceased to exist at that stage. Lazard was in a contractual relationship with NAMA. We made it clear to NAMA that if it wanted to share parts of the draft report and get comments from Lazard, we would be happy to consider any of those comments. Lazard did provide a number of comments to NAMA, which passed them on to us. We considered them and represented some of their views in the report.

Chairman: We will suspend our meeting at this stage. We are concluding this section of our examination of the report. I think voting starts at 12.45 p.m. and could run for at least 30 minutes. I think 2 p.m. would be a good time to resume when we will start with NAMA.

Sitting suspended at 12.34 p.m. and resumed at 2.07 p.m.

Mr. Brendan McDonagh (*Chief Executive, NAMA*) called and examined.

Mr. Frank Daly (*Chairman, NAMA*) called and examined.

Chairman: The committee is now back in public session. We spoke with the Comptroller and Auditor General in the first part of the meeting about special report No. 94 on the National Asset Management Agency sale of Project Eagle. We have invited representatives of NAMA to discuss the report with the committee. We are joined by Mr. Frank Daly, chairman, Mr. Brendan McDonagh, chief executive officer, Mr. Brian McEnery, board member and chairman of the audit committee, Mr. John Coleman, chief financial officer, Ms Aideen O'Reilly, head of legal affairs and Mr. John Collison, head of residential delivery and formerly deputy head of asset recovery. We are also joined by a representative from the Department of Finance, Mr. Declan Reid, who is a specialist in the shareholding management unit.

I advise witnesses that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to 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 qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him or her identifiable.

Mr. McDonagh will make the first statement. The meeting this morning went on a little longer than planned. That is why we are only starting now at 2 p.m. There will be a number of hours in the meeting so I propose to take a break after a couple of hours so everybody can have a cup of coffee. It can be a long session so if somebody needs a break for personal reasons, we will have no trouble adjourning at any stage. They should just let us know.

Mr. Brendan McDonagh: We welcome this opportunity to set out NAMA's response to the Comptroller and Auditor General's section 9 special report on the sale of the Project Eagle loan portfolio. It is remarkable that the Comptroller and Auditor General does not form any view on the value for money but comments that the decision to sell the loans at a minimum of £1.3 billion involved "a significant probable loss of value" to the State. In the time available to me, I will focus my remarks on this comment which NAMA very emphatically rejects. The Comptroller and Auditor General's view is that a discount rate of 5.5% would have been appropriate to derive the market value of this portfolio. Not only does the report fail to provide any market or expert support for this view, but it inexplicably ignores strong market evidence from international loan sales experts which would have supported the use of a discount in the 10% to 15% range. This report has adopted a position which would not be accepted by anyone engaged in actual loan sales in Ireland or anywhere else. The Comptroller and Auditor General position holds that there should have been no divergence between the end-2013 proxy accounting value of the portfolio of £1.465 billion, based on a 5.5% discount rate, and a market value of approximately £1.3 billion, based on a 10% discount rate, and that, therefore, NAMA should not have accepted anything less than its accounting value.

The accounting value of the portfolio was derived using effective interest rate, EIR, discount rates, which are based on the IFRS accounting rules that NAMA has been required to follow since inception. They were not market rates and no potential purchaser would have applied them to value the portfolio. Valuation of the portfolio at EIR rates may be appropriate for ongoing NAMA accounting purposes but clearly not appropriate when determining a market sales value. NAMA's view, which is supported by expert market evidence from four internationally recognised loan sales experts and which we provided to the committee last week, is that a discount rate in the 10% to 15% range was appropriate to apply to the cash flows associ-

ated with the Project Eagle portfolio. This reflects the cost of capital that bidders would have incurred in early 2014. It is also very much in line with the range of discount rates - 10% to 15% - which were applied in a number of our other loan sales that NAMA conducted. It also reflects the inherent risk associated with a loan portfolio which was secured, for the most part, by a granular portfolio of non-prime assets, located mainly in Northern Ireland and in northern parts of Britain. The positions on this issue are very stark: NAMA and the loan sales market have one view on the appropriate discount rate; the Comptroller and Auditor General report appears to be alone in its view. It would not have been difficult for the report's authors to have consulted market experts on this crucial point, something the NAMA board requested them to do. For some reason, however, this was not done.

A second major difficulty with the report's understanding of the valuation issue is that it assumes that cash flow projections are fixed and certain. In reality, cash flow projections are no more than estimates of the income and disposal proceeds that assets may generate in the future. They are a point-in-time exercise. NAMA carries out a formal impairment review each 30 June and 31 December. There can be no certainty attached to the timing of cash flows or that they will remain constant. This uncertainty is compounded in the case of granular, secondary portfolio assets. For instance, cash flow projections associated with Dundrum Town Centre have a reasonable level of certainty attached to them because of the attractiveness of the asset to shoppers, to tenants and to potential purchasers. This is a strong income-producing asset with strong tenants. On the other hand, the cash flows attaching to small assets in Northern Ireland and certain parts of northern England and Scotland are much less certain both in terms of projected disposal proceeds and projected income. Some assets had no income stream. A total of 31% of the Northern Ireland portfolio comprised land and development assets. The top 55 assets in Project Eagle accounted for almost two thirds of the portfolio's value. That left the rest of the portfolio with about 870 assets which had an average value of £600,000 each. It made sense, through a loan sale, to bundle poorer quality assets with the better quality and higher value assets. In general, the less attractive the assets and the income stream securing a loan portfolio and the less certain that the associated cash flows will actually be received, the higher the risk premium and, therefore, the discount rate that will be applied by buyers.

The report's valuation approach involved in our view a mechanistic and rigid application of a spuriously precise and abnormally low discount rate to cash flows which are assumed, unrealistically, to be fixed and certain. In both respects, the level of certainty attached to cash flows and the discount rate, are seriously at odds with how distressed debt portfolios such as Project Eagle are actually valued by investors and purchasers in reality. The minimum sales price set by the NAMA board was £1.3 billion. That falls within the mid-point range of sale values generated by the 10% to 15% range of market discount rates that would have applied to a portfolio such as Project Eagle during the first half of 2014. A 10% buyer discount rate produces a value of £1.35 billion; a 15% discount rate produces a value of £1.25 billion. The £1.322 billion achieved on the sale, which was above the minimum price of £1.3 billion, was, therefore, well within the expected range of expected market values.

The only evidence offered in the report to support the use of a 5.5% discount rate is a NAMA board decision of June 2013. However, for some reason, the report ignores important caveats which were applied by the board in the case of its approved discount rate methodology and which were clearly set out in the paper on which that decision was based. The board decision of June 2013 noted that a 5.5% rate should not be used as an overarching discount rate to evaluate all potential transactions and that flexibility should be maintained. In particular, the board approved the position that "care should be taken to ensure that both (a) alternative NPV

scenarios are generated using alternative discount rates and (b) that qualitative information would be considered as part of the decision-making process”.

A discount rate of 5.5% may have been appropriate for overall portfolio accounting purposes and, indeed, for some individual transaction evaluations but would not have been appropriate for all segments or assets within the portfolio. The flexible approach approved by the board in June 2013 was clearly designed to deal with the evaluation of transactions and lower quality assets such as Project Eagle which was not typical of the NAMA portfolio as a whole. As I indicated, discount rates in the 10% to 15% range were applied to cash flows in later loan portfolio sales. There was very good reason the Project Eagle portfolio would have been subject to a higher discount rate, including the relatively poor quality of the underlying assets and the underlying weak economic conditions in Northern Ireland and in parts of northern England and Scotland. The discount rate would also have reflected the inherent macro risk associated with a high concentration of assets located in the small Northern Ireland economy. The Northern Ireland property market did not have the capacity to absorb a large volume of asset sales over a short time; this lack of market liquidity was evidenced by the fact that in the four years from 2010 to the end of 2013, sales of NAMA-secured assets in Northern Ireland realised a total of only £100 million. This consideration would not have applied to the Dublin or London markets.

Project Tower, a better quality portfolio than Project Eagle and to which it has been compared in the report, was launched to market at the same time in quarter 1 of 2014. UBS, our loan sale adviser for Project Tower, advised that a 10% discount rate was appropriate. In Project Arrow, a portfolio with similar characteristics to Eagle, Cushman and Wakefield, our adviser, advised us in mid-2015 that a 15% discount rate was appropriate. This demonstrates that NAMA’s position on discount rates reflects the market reality of loan sale pricing. The Comptroller and Auditor General’s claim that Project Eagle involved a significant “probable loss” of value to the State rests on its mistaken view that the board adopted a “standard” discount rate of 5.5% in June 2013 to be used subsequently for all future evaluations. The board firmly rejects this Comptroller and Auditor General interpretation of its own decision. It is clear from the June 2013 decision itself, as quoted earlier, that the board did not intend that 5.5% should be a one-size-fits-all discount rate. When it became clear to the board that the Comptroller and Auditor General’s examination team was unwilling to accept the board’s understanding of its own decision on the £1.3 billion minimum price, it offered to meet the Comptroller and Auditor General directly to discuss this issue and to discuss the key points. The board’s offer, however, was refused by the Comptroller and Auditor General.

The Comptroller and Auditor General’s office has not been consistent in the application and guidance it has provided in writing to the NAMA audit committee and board. In his end-2013 management letter issued after an unqualified sign-off of the 2013 financial statements, the Comptroller and Auditor General acknowledged that NAMA’s strategy was evolving from individual asset-by-asset sales to a greater focus on bulk loan portfolio sales. In that context, both NAMA and Comptroller and Auditor General staff agreed in 2013 and 2014 that we could not have maintained the previous carrying value of the portfolio once the strategy changed from individual asset sales to a loan sale of full debtor connections. This is evident from the end-2013 management letter, which was issued in mid-2014, in which the following is stated: “Where a change in strategy is effected which results in either (i) a change in the sale of underlying collateral to a loan sale/portfolio sale or (ii) a change in the sale of a loan/loan portfolio to the sale of the underlying collateral, cash flows should be updated to reflect the most up to date position to mitigate the risk of an incorrect impairment provision being recognised.” Two things are clear from this. One is that senior Comptroller and Auditor General staff in 2013 took the view

that the carrying value of assets included in a loan sale could differ from their carrying value as individual items of collateral. Second, it shows that senior Comptroller and Auditor General staff in 2013 would have expected NAMA to update the portfolio's carrying value in response to a change in strategy and to the emergence of up-to-date information relevant to judgments on impairment.

Ultimately, the value of any loan portfolio, including the Project Eagle portfolio, is what credible bidders are willing to pay for it at a point in time taking account of demand-supply and economic conditions. If we had halted the Eagle loan sale, we would have had to adjust our carrying value to bring it into line with the market price indications we had received from potential bidders. This is absolutely consistent with the IAS 39 IFRS accounting guidance and in line with NAMA's own understanding. Indeed, it is very much in line with the Comptroller and Auditor General's 2013 management letter recommendation, although not apparently in line with the view adopted in this report. What this means in layman's terms is that if the best bid for Eagle had been £1.1 billion and NAMA had therefore decided not to sell, the Comptroller and Auditor General's office would have insisted - rightly, in my view - based on the end-2013 management letter that NAMA write down the portfolio to £1.1 billion. NAMA could then have sold the portfolio later in 2014, perhaps for £1.1 billion, and there would have been no talk of a probable loss to the taxpayer, merely because the accounting adjustment with a higher impairment would already have been made at that stage. Ironically, because NAMA was guided by its section 10 of the NAMA Act objective of getting the best price achievable, it set the minimum price at a more aggressive £1.3 billion. It achieved in excess of that price target. As a result, we are now being accused of losing £190 million because of the Comptroller and Auditor General report's misplaced attachment to an accounting value rather than the real world market value, which is ultimately what matters. It would be absurd if NAMA's commercial activity was driven by accounting valuations rather than by real world values. In effect, the practical consequence of the position now adopted by this report is that NAMA would never have sold the Eagle portfolio or any other similar loan portfolio if the market value failed to match NAMA's accounting value. It is worth bearing in mind that an accounting value is no more than a provisional estimate of value until confirmed or otherwise amended by evidence of market value, that is when it is sold.

NAMA, under legislation enacted by the Oireachtas, has to operate by reference to commercial principles. Acceptance of the Comptroller and Auditor General's unrealistic and uncommercial position would make commercial decision-making impossible. That is why this issue goes to the heart of NAMA's commercial mandate and why we have no alternative but to contest the stance as evident in this report.

The issue of valuation and the appropriate discount rate is closely bound up with the procedure adopted by the Comptroller and Auditor General in preparing this report. Prior to commencing his examination of Project Eagle, the Comptroller and Auditor General sought external specialist expert advice to assist him in his examination. This was, in effect, an acknowledgement of the reality that he needed expert advice if he was to conduct the examination in a properly informed manner. Ultimately, the fact that no external advisers were commissioned to advise the examination means that the report's conclusions are based entirely on opinions formed by staff who, to our knowledge, have no market experience and no expertise in loan sales. By contrast, when the Comptroller and Auditor General's office was preparing an earlier report on NAMA's management of loans in 2012, the then Comptroller and Auditor General, Mr. John Buckley, commissioned external advice on the property valuation process and on legal issues. Mr. Buckley stated that he did so "in order to gain assurance" about two elements of the

process on which his office had no expertise, namely the valuation of properties and legal due diligence. Mr. Buckley relied heavily on expert evidence in arriving at his conclusions. We are aware of at least one other instance in which Mr. Buckley sought external expert advice from property consultants. Contrary to recent press reports, NAMA is not the first State body to contest the Comptroller and Auditor General's findings on matters which are outside its expertise. In December 2010, during a discussion at the Committee of Public Accounts on the OPW Vote, where the OPW disagreed with the Comptroller and Auditor General's position, Mr. Buckley stated the following:

Normally when we carry out assessments, we operate on the basis of our own work. Here, however, we are dealing with an area of expertise that is outside of our comfort zone. As a result, we employed consultants.

In his evidence to the banking inquiry, the current Comptroller and Auditor General stated that external experts were engaged on four occasions between 2010 and 2014 to provide specialist assistance on issues relating to NAMA. He stated:

Matters which are taken into account in the decision to engage an expert include the competence, capability and objectivity of the expert; the significance of the accounting area or nature of the matter to which the expert's work relates; and the significance of that expert's work in the context of the audit or reporting work.

Therefore, it is all the more extraordinary that the external expert advice was not utilised on this review given that loan sales are new to the Irish market and are certainly more esoteric than property or other matters on which external expert advice has been utilised in the past.

During the same discussion in December 2010, Mr. Buckley went on to point out that "when one is examining the performance of the OPW, there is no point in using the way it operates as a yardstick to judge that performance". In other words, good practice requires that you judge performance by reference to some objective external benchmark. In that context, we note that the current Comptroller and Auditor General report on Project Eagle reviews the Eagle sales process by reference to later NAMA loan sales processes, not by reference to the numerous non-NAMA sales processes which took place in Ireland and elsewhere in 2014. In effect, the Comptroller and Auditor General benchmarks NAMA against itself, not against the wider market. It would have been instructive to have compared the due diligence information in the Eagle data room with the quality of information available to bidders for the IBRC loan portfolios which were sold by the liquidator at the same time in 2014. That would have been a very relevant and useful comparison. It would also have been instructive to compare the targeted loan sales process applied in Eagle with the more targeted sales processes adopted by RBS and Lloyds loan sales in the UK. It could have shown that the targeting of major investors is a regular feature of the loan sales market. Unfortunately the relevant comparisons, which would have placed the Eagle sales process in a proper market perspective, were not carried out. Why not? It would not have required a huge amount of effort. Are these not obvious comparators which one would expect to find in any major review, like that of Project Eagle, which purports to be authoritative?

It is difficult to understand why the well-established Comptroller and Auditor General precedent of using external expertise was not utilised in the review of Project Eagle. The area of loan sales is very much a specialist area and is not one on which the Comptroller and Auditor General's staff could reasonably be expected to have detailed expertise. There would have been nothing wrong in acknowledging this. The view of the NAMA board is that if the Comptroller and Auditor General's examination had been informed by external market expertise and exper-

tise in loan sale valuation and sales processes, its comment on this key valuation issue would have been very different. Given that this very unsound comment stems directly from what we regard as the inadequate examination process that was adopted, it would be entirely unsatisfactory if it was the last word on the matter. A report which is prepared to make such a resounding and serious comment must be properly supported by convincing, formidable and sufficient evidence - evidence that is based on accepted market valuation methodology, evidence that would be accepted by market experts and evidence based on market comparators. Unfortunately, the evidence produced in this report falls well short on all of these counts.

I will add one more point which is not in my speech but which arose this morning from the Comptroller and Auditor General's opening statement. As an additional point, the Comptroller and Auditor General advised in his opening statement that his office consulted two officials in the UK National Audit Office who reviewed the Northern Rock loan sale in the UK. I have looked at the National Audit Office report and it should be noted that in its description of the audit it undertook, it said it used semi-structured interviews with the following: Credit Suisse and Moelis, which advised both UK asset recovery and UK financial investments; the bidders in the process including Cerberus, which won that loan sale portfolio; KPMG, which helped out with the due diligence involved in putting that portfolio on the market; the financial conduct authority in the UK; UK treasury; UKFI; and UKAR. The Comptroller and Auditor General did not do this with any of the equivalent bodies in respect of Project Eagle. Why not, if it had consulted the National Audit Office?

Deputy Catherine Connolly: Can we have a copy of Mr. McDonagh's additional comments?

Chairman: Are Mr. McDonagh's additional comments typed?

Mr. Brendan McDonagh: It is handwritten but I can make a copy of it.

Chairman: Will Mr. McDonagh pass his note to the committee secretariat who will arrange to make a copy for distribution? It will be on the record later but we had not seen that bit before.

Mr. Frank Daly: I welcome the opportunity to respond to the Comptroller and Auditor General special report into the sale of Project Eagle. I welcome it in particular because of the hugely damaging leaking of the Comptroller and Auditor General report, which I stress was not by the Comptroller and Auditor General, in the weekend before publication which was accompanied by briefings suggesting there were irregularities mentioned in the report. Over the weekend those irregularities became inflated to major irregularities. This was highly damaging to NAMA and I can only presume it was intended to be. There are no irregularities suggested in this report. I want to put that on record. I thank the Chairman for facilitating us this morning so we could watch the proceedings during the morning. By and large, perhaps with some exceptions, it was a very open, constructive and fair process and I trust we can look forward to the same.

I make two general observations from this morning because it seems to me that when one looks and listens through the whole thing there are lots of figures bandied about. There are an awful lot of figures in the report. It really boils down to three. The first is the £1.674 billion, which was the adjusted carrying value at the end of 2013. There is no disagreement between us and the Comptroller and Auditor General on that figure. Then there is the discount rate and the consequence of applying two different discount rates. The Comptroller and Auditor General applies 5.5% and comes to €1.49 billion as a net present value. We apply 10% and we come to

€1.3 billion.

(Interruptions).

Mr. Frank Daly: No, sorry, I am just giving-----

Chairman: Mr. Daly is ad-libbing for a moment.

Mr. Frank Daly: I am. If the Chairman will indulge me, it is very brief.

Chairman: We do not have it in front of us, so just-----

Deputy Catherine Connolly: We have an opening statement.

Chairman: Mr. Daly is after throwing figures at us. We are not disagreeing. We will give him everything.

Deputy Catherine Connolly: We have an opening statement and we stuck to a format. Now we are going off that.

Chairman: I can understand you want to comment. Are they handwritten notes or are you just ad-libbing?

Mr. Frank Daly: They are, but my writing is not great. I can hardly write and read it myself.

Chairman: Then Mr. Daly will have to go slowly to allow people time to jot down what he is saying.

Mr. Frank Daly: Just three figures: 1.6-----

Deputy Catherine Connolly: On a point of order. I ask Mr. Daly to stick to what he has given us for the moment because all of these speakers will speak and we have a limited time to come back. We also have to address what he said in his opening statement. If he has withdrawn it, that is fine. We should have the opening statement; that was the procedure to be-----

Chairman: I am going to be very fair to the witnesses and the members. I will allow the chairman to read his opening statement as presented, but I will also allow him the opportunity, as a result of this morning's meeting, if there is something he also wants to include in his opening statement, to give it verbally. It would have been better if we had had a copy of it so that we could read it. In fairness to the witness, I have to give him every opportunity to say what he has to say, but he needs to give us time to digest it.

Mr. Frank Daly: I thank the Chairman. That is very fair. I am not trying to be contentious. I am just saying what came across to me, namely, a lot of figures, but three matter.

Chairman: I ask Mr. Daly to give me a moment while I clear it with the committee members.

Deputy Josepha Madigan: In those circumstances, Mr. McCarthy should be afforded the opportunity to respond to NAMA's-----

Chairman: He will later, certainly. I ask Mr. Daly to go slowly in order that we have time

to jot down what he says.

Mr. Frank Daly: I am nearly finished on that.

Chairman: I ask him to go through those figures again. I am sorry about that.

Mr. Frank Daly: It is £1.674 billion, which is the adjusted carrying value at the end of 2013. That is where we are agreed. We and the Comptroller and Auditor General are more or less *ad idem* on that before discount. Then we get to this discount figure. Is it 5.5% or 10%? The Comptroller and Auditor General applied 5.5% and he comes to a value of £1.49 billion. We apply 10% and we come to a value of £1.3 billion. Take one from the other and one gets the £190 million that is the very contentious figure running right through that. That is all I wanted to say. Obviously, there are other issues around the sales process. A core issue seems to come through the Comptroller and Auditor General's report. Should we have held on to these assets or should we have sold them? That is an interesting debate we can have later on.

Chairman: We are back to the opening statement.

Mr. Frank Daly: I am back to the start. Ultimately, the Oireachtas established NAMA as a commercial entity and running a commercial entity is ultimately about making commercial decisions. All of them are necessary, many of them are complex and difficult, some of them are palatable and some are not. Project Eagle required us to make a number of decisions, some of which, as I will outline later, were difficult indeed.

Our key decision was to set a minimum price of £1.3 billion for the portfolio. We are satisfied, as much now as we were in April 2014, that the £1.322 billion that we got was the best price achievable. If we were selling Project Eagle today, we would be very unlikely to match that price. It is by no means certain indeed that there would be any bidders.

Mr. McDonagh has already explained NAMA's position on the key issue of price and valuation. I would like, therefore, to focus in my statement on two other issues raised by the report. The first relates to the sales process. The second concerns the role of Frank Cushnahan. The sales process adopted in the case of Project Eagle was initially influenced by the stated preference of both governments, which is on the public record, that the sale be conducted in a discreet and confidential manner. This was done to minimise the risks to the wider Northern Ireland economy and to avoid perceptions that an Irish State agency was, as it were, auctioning or selling off Northern Ireland. Northern Ireland could not have been, and was not, just another jurisdiction from our perspective. The heightened political sensitivity associated with it is evidenced by the fact that NAMA was a regular agenda item for North-South intergovernmental meetings.

There was a concern that a fully open sales process, which would by its nature take longer to conduct and would freeze activity in the Northern Ireland market for a period of nine to 12 months. As is clear from the Department of Finance minutes of a conference call between the Minister for Finance, Deputy Noonan, and the Northern Ireland First Minister, Mr. Robinson, and deputy First Minister, Mr. McGuinness, on 14 January 2014, there was very broad political consensus on the need for sensitive management of this sale. The minutes record that, during that call, the Minister, Deputy Noonan, "agreed that confidentiality was important and that both his department and NAMA would take appropriate steps". It is understandable that senior Northern Ireland politicians would have been concerned about the risk of an auction as they saw it and that they would have expressed those concerns. It is also understandable that the

Minister for Finance would have sought, in the spirit of positive North-South engagement, to accommodate their concerns on this point. However, it is also clear that from the beginning the Minister for Finance understood and supported NAMA's policy in regard to open marketing.

NAMA was willing to consider the wishes of the two governments on the sales process because it was our view that the appropriate sales process for Project Eagle commercially was a targeted one that focused on key investors with the financial wherewithal and the appetite to purchase this portfolio. We did not believe that a fully open sales process would yield any additional benefit in terms of identifying other credible bidders or of getting a higher price. We were very cognisant of the potential damage that a fully open process could cause to the Northern Ireland property market and to the wider Northern Ireland economy. We are a commercial State body but we do not operate in a bubble that ignores the bigger issues on the island of Ireland. That might apply to entities that are not affiliated to the State but it does not apply to us. When news of the prospective sale became public in February 2014, it was our judgment that there would be no advantage to opening up the process to all comers at that stage, as all the main investors had already been approached or were about to be invited into the process. I believe that our judgment was right on this issue and that view is supported by a review of European loan sales activity in the period from 2013 to 2015.

The board appointed Lazard to run a targeted sales process that engaged all potential credible bidders - bidders with the financial wherewithal to submit serious bids for a portfolio of this size and granularity. Between them, the nine bidders that Lazard invited into the process accounted for 88% of all European and 92% of all UK and Irish commercial real estate loan sales worth more than €1 billion between 2013 and 2015. The potential bidders who were refused access to the process accounted for a negligible share of the market during the same period. This objective evidence shows that no credible potential bidders were excluded from this process.

By contrast with that objective evidence, the report puts forward the hypothesis that there might have been other credible bidders, but it gives no indication of who they might have been. Lazard advised that:

... the process was open to the most qualified and credible potential counterparties. There were fewer participants in this process than in some other transactions because there were fewer investors that were sufficiently qualified and credible.

No credible market-based evidence has been produced by the Comptroller and Auditor General to counter the expert advice provided to NAMA by Lazard. Hypothesis is not evidence. Critically, Lazard also categorically stands over its key recommendation to the NAMA board in April 2014 that there was sufficient competitive tension in this sales process right until the end. Again, no evidence is advanced to counter that of Lazard.

Some commentators have questioned how a process in which nine potential bids were reduced to two final bids could be described as a competitive one. The report did not compare Project Eagle with non-NAMA sales and with sales in other jurisdictions, but if it had, it would have found that the vast majority of loan sales tend to result in two to three final bids. Even within the ambit of NAMA sales, Project Arrow involved 18 initial expressions of interest which culminated in two final bids. The Project Jewel-Dundrum Town Centre sale also involved two final bidders.

If the Comptroller and Auditor General had sought market advice on loan sales, he would have discovered that loan sales, like many other types of auction, tend to attract a fair number

of what might be called “tyre kickers”, in other words, those who want to have a look but have no serious interest or capacity to buy. The key to a competitive sales process is not the number of people who want to get into the auction room but the financial capacity of the much smaller number who are in a position to write the cheque. Our concern in the case of Eagle was to ensure that all those who could have written the cheque were offered the opportunity to review the portfolio and to bid for it, if they were interested.

I now wish to address the suggestion that the NAMA board should have halted the sale when it became aware in March 2014 of PIMCO’s proposed fee arrangement with Mr. Frank Cushnahan. Let me say first this was not a straightforward or an easy decision. On the one hand, we had discovered that an individual, who had served on NAMA’s Northern Ireland advisory committee, NIAC, who had been strongly endorsed by the Northern Ireland Government and who appeared to have been a respected figure in the Northern Ireland business community, was also involved with the PIMCO bid. On the other hand, we had to weigh up the potentially serious costs and consequences for NAMA, for other State-owned banks and for the sovereign of halting a major loan sale, particularly at such a late stage in the process when investors were fully engaged and committed. We had to consider whether major international investors, which had spent large sums of money on due diligence, would come back to the table if the portfolio were put back on the market again at a later stage. Was the market likely to ignore a collapsed Project Eagle when forming its view on subsequent loan sales in Ireland, sales by NAMA and sales by other sellers? What about the risks to the sovereign? Would Ireland’s reputation suffer if the first major loan sale by Ireland’s asset management agency was pulled? Would a halted Eagle sale create new uncertainty over the State’s contingent liabilities just as Ireland was exiting the troika programme? There was also the fact, which has been confirmed by this report - the Comptroller and Auditor General’s report - that the external members of the NIAC had no access to confidential NAMA information. The net issue for us was whether we were going to allow Mr. Cushnahan’s alleged manoeuvrings in Belfast to seriously damage the interests of Irish taxpayers. Our judgment then, and one that we stand over now, was that the interests of Irish taxpayers took precedence. Commercially, we considered that there was a compelling case for selling this portfolio. All of this was predicated on an outcome where we would achieve our £1.3 billion minimum price.

The issue has been raised as to whether we should have removed Mr. Cushnahan from the Northern Ireland advisory committee, given his declared involvement with six of the 56 Northern Ireland debtors. There has been an attempt over recent months to inflate the significance of the NIAC and its influence on NAMA strategy. The facts are as follows. The terms of reference of the NIAC were written so as to ensure it had no role whatsoever in relation to NAMA debtors or to the assets securing their loans. No discussion on debtors or particular assets was ever permitted at NIAC meetings. No information relating to debtors or assets was ever provided to external members of the NIAC - this is confirmed by the Comptroller and Auditor General’s report. The NIAC had no decision-making powers. There had been a determined and concerted attempt in 2011 by the external members of the NIAC to change that. They proposed that the terms of reference be changed to allow NIAC members to be provided with “relevant confidential information”. The NAMA board flatly rejected that proposal. There were other later attempts to discuss particular debtors and assets but they were always resisted.

A lot more has recently come to light about Mr. Cushnahan’s various alleged activities but I would ask the committee, in the interests of fairness, to consider NAMA’s decision by reference to what we knew in 2012 and 2013. Based on allegations that have emerged more recently, we have made two separate complaints to the Standards in Public Office Commission,

SIPO, and we have made a report to the Garda, but we could not have done this on the basis of what we knew in March 2014. It would appear that Mr. Cushnahan, who was peripheral in the context of NAMA's Northern Ireland strategy, may have presented himself in Belfast as a key player who was in a position to influence NAMA. Quite frankly, this was nonsense. He was an external member of the NIAC which was, in effect, a cross-Border diplomatic conduit set up at the behest of the two Governments in order to channel the general views of Northern Ireland strategic and economic interests to NAMA. Clearly, we listened to the views of the two external members but they were never under any illusion as to the fact that NAMA's strategy for Northern Ireland was determined by the NAMA board. The two external NIAC members often, in fact, complained to me as Chairman that they got no specific information and that they were kept in the dark. That was exactly the intention of the NAMA board. In fact, I cannot recall a single strategic or other decision by the NAMA board that was directly influenced by the views of the NIAC.

For that reason, and despite the NIAC's very limited role, removing Mr. Cushnahan from the committee before his resignation in November 2013 would have been seen as a very significant and controversial move and one that would have caused tensions in the positive cross-Border political engagement that has served the island of Ireland so well over recent decades. Given that the removal of Mr. Cushnahan would have been presented as a slight to Northern Ireland interests, we could not have done so without being satisfied that such an action was justified and proportionate. From 2010 to 2013 we had no reason to take such action and we are satisfied that we managed Mr. Cushnahan's conflicts of interests appropriately. In any event, I say again, the NIAC did not discuss debtors or assets, so in effect the committee was of little consequence.

The recent BBC TV programme that featured Mr. Cushnahan included references to a document which purportedly included NAMA's confidential valuations of properties owned by a NAMA debtor. It is clear to us that the allegedly confidential NAMA valuations were not our valuations at all. They were, in fact, significantly lower than NAMA's actual valuations, by up to 80% in one case. Therefore, whatever services Mr. Cushnahan may allegedly have been offering to debtors and investors in Belfast, he certainly was not in a position to offer them confidential NAMA information or any influence over NAMA.

For the avoidance of any doubt, we had no knowledge in March 2014 of the allegations that have subsequently emerged surrounding Mr. Cushnahan. If we had known, in 2013, what we now know about these allegations we would have terminated Mr. Cushnahan's involvement with the NIAC, regardless of the intergovernmental difficulties that might have arisen. Mr. Cushnahan may well have been an influential figure in Belfast, he may have sought to represent himself as a key pivot between debtors, investors and politicians but he had no influence with NAMA. If he managed to persuade some people that he had an influence on NAMA, they were blatantly misled. To some in Northern Ireland, and perhaps to himself, Mr. Cushnahan was a NAMA insider but as far as NAMA is concerned he was peripheral.

Clearly, given the National Crime Agency's investigation in Northern Ireland, I cannot comment on any alleged wrongdoing that may have taken place there. If there has been wrongdoing, the relevant Northern Ireland authorities will no doubt take appropriate action and believe me, nobody wants to see that happen more than I do. But whatever went on in Northern Ireland, I cannot see how it can be conflated with the outcome of the Project Eagle sales process, which saw sales proceeds of £1.322 billion ultimately realised by NAMA.

We are aware that allegations have been made concerning NAMA's former head of asset recovery, Ronnie Hanna, by at least two sources, Deputy Wallace and Mr. Cushnahan. So far as

we can see, neither party has produced evidence to substantiate these allegations. As there are investigations ongoing by the National Crime Agency in Northern Ireland concerning Project Eagle, investigations with which NAMA is fully assisting, we will not comment in any detail on these allegations. What we can say is that NAMA has no evidence or knowledge that would go any way towards substantiating the allegations.

For the avoidance of any doubt whatsoever on the matter, let me say unequivocally that the price for Eagle was set by the NAMA board and the decision to accept the winning bid was set by the NAMA board and made by the NAMA board and not by anyone else. Nobody else influenced the NAMA board in this – no Minister North or South and certainly not the two external members of the NIAC. I reiterate the Board’s belief that any informed analysis of Project Eagle or, indeed, any of NAMA’s loan sales, will find that NAMA acted commercially and that our decisions were, at all times, guided by the best interests of Irish taxpayers. In this instance, the Comptroller and Auditor General has come to a different view but, for reasons which have been outlined by Mr. McDonagh, the rationale for the Comptroller and Auditor General’s position is not one that could reasonably be accepted by anyone with knowledge and expertise in loan sales.

We very much respect the competence and expertise of the Comptroller and Auditor General’s office in the normal audit work that they carry out in regard to our financial statements. I very much appreciate the way in which the Comptroller and Auditor General gave evidence to this committee this morning. It was very fair and balanced. He acknowledged that we have a good professional working relationship. Our engagement with them on the Project Eagle examination, however, has been difficult and our decision to challenge his key conclusions has not been taken lightly, believe me. This is a serious professional disagreement and we feel strongly that his conclusions would have been different if he had engaged specialist expertise in property and loan sales that he himself recognised as being necessary at the start of his examination.

I also believe that the Comptroller and Auditor General’s review relied too heavily on the narrow range of evidence provided by board papers and minutes. Ultimately, the papers presented to the board were no more than the starting point for the extensive and wide-ranging discussions that followed. It should be borne in mind that the board was comprised of people who are very experienced across a range of commercial disciplines, including business, property, capital markets, accounting, insolvency, public administration and governance. The decisions made in regard to Project Eagle, as with any other decision, were informed by their individual and collective experience and expertise in these different disciplines.

As regards board minutes, they are, by their nature, no more than a summary of what was ultimately agreed. The Office of the Director of Corporate Enforcement quotes one of the leading texts on the role of company secretaries as stating that minutes “are meant to record decisions, rather than discussions”. They are not intended to act as a transcript of board discussions and they can never capture all the complexity and nuances of the deliberations that ultimately lead to a board decision.

In terms of the key decision to sell the portfolio at a minimum price of £1.3 billion, the board decision was unanimous but that does not mean that all members arrived at the decision for the same reasons. That is why it would have been useful for the Comptroller and Auditor General to have discussed this directly with board members as part of his evidence gathering process. Our offer, unfortunately, was declined.

In that context, I very much welcome the decision of this committee to meet with the in-

dividual NAMA board members and to provide them with an opportunity to put forward their individual perspectives, an opportunity which was denied to them during the section 9 examination. If there is a common theme between my remarks and those of the CEO it is that a desktop review of papers, with no input from commercial experts, is totally inadequate as a means of reviewing the complexities associated with a major commercial transaction such as Project Eagle.

I also welcome, Chairman, the fact that the inquiry to be established by the Oireachtas provides an opportunity to bring an informed market perspective to bear on the financial outcome of the Project Eagle transaction. NAMA does not believe that the price achieved on the Project Eagle sale represented a “probable loss” to Irish taxpayers and we look forward to making our case to an inquiry which should, I hope, have the resources to evaluate the commercial issue with appropriate expertise and market knowledge.

I thank the Chairman.

Chairman: I thank Mr. Daly. The members have indicated in the following sequence - Deputies McDonald, MacSharry, Kelly and Madigan. I ask others to please indicate so that the clerk can take a note.

As Chairman of the Committee of Public Accounts I must ask NAMA the following. NAMA has criticised the Comptroller and Auditor General because he had no credible market-based evidence. In other words, he did not have knowledge of the market of valuation. At no stage did NAMA value the underlying properties that were part of the collateral. How can NAMA criticise the Comptroller and Auditor General on the market value of properties when NAMA, at no stage in this process, valued the same assets that NAMA criticises him for not having valued? Who thought of that?

Mr. Frank Daly: It is not correct, Chairman, to say that at no stage did we value those properties. In fact, we had read book values for many of them at the year end. In some of the individual ones, for example, one of the biggest assets in that whole portfolio was a UK asset and we had a value for that of €200 million. We had other sales going on during the period prior and after. Sales are the very best indication of property values. We would say, in fact, that approximately 50% of the Project Eagle assets were directly or indirectly based on valuations. We adopted a bespoke process in this and we accepted that certain features of the normal sales process would not actually apply, including the commissioning of property valuations. That was related to sensitivities about the Northern Ireland market and the fact that if we had started doing that it would have been very apparent very quickly that we were about to embark on a sale of the portfolio. I believe we would have been totally frustrated by some of the debtors if they got wind of that.

Chairman: Was that information made available to the Comptroller and Auditor General?

Mr. Brendan McDonagh: Yes.

Mr. Frank Daly: Yes.

Chairman: Fine.

Mr. Frank Daly: I think the other point is-----

Chairman: We will come back to the point that valuations were available.

Mr. Brendan McDonagh: Yes.

Chairman: I did not sense that in any of the documents that we have received up to now. I will move on.

My next question is on appendix D, on page 162, but the witnesses need not go there. It is about what NAMA supplied about purchaser discounts. Does NAMA consider Project Eagle a non-performing loan portfolio?

Mr. Brendan McDonagh: Yes.

Chairman: Even though payments were being received.

Mr. Frank Daly: There were payments being made but one has to look at the proportion of them, and one finds the-----

Chairman: I am asking the question.

Mr. Brendan McDonagh: There was net €80 million of income coming on the portfolio with a valuation of over €1.6 billion, so there is about 5% income.

Chairman: Right. Will NAMA accept that the document talked about purchaser discount and that is relevant to the purchasers?

Mr. Brendan McDonagh: Yes.

Chairman: NAMA was the seller.

Mr. Brendan McDonagh: Yes.

Chairman: Does NAMA accept that there is a difference between the discount that a purchaser would apply and a discount that NAMA, as sellers, would apply? They are two different issues but NAMA has not said what it applied the discount to.

Mr. Brendan McDonagh: No. The 5% discount rate is EIR under IAS 39, which people who are accountants will know. It came up quite regularly at the Banking Inquiry about how IAS 39 looks at historic incurred losses. It does not look at future losses and one cannot do so. We could not have done that either under IFRS.

The market that we are in is that every single asset that NAMA has will have to be sold at some stage. It is what the buyer is going to pay for the asset that is the important thing. It is like me having a house and saying my house is worth €300,000 but when I go to Sherry FitzGerald and the agent says to me, "Okay, Brendan, I will put it on the market but it is only worth €250,000" and bids come in at €250,000. There is no point in me ignoring the market.

Chairman: I will call Deputy McDonald. I want to make this an orderly meeting as there are a number of people from NAMA here. I think we will direct the questions to Mr. Daly and he can decide whether he or his colleagues will answer. I do not want to pick between the four people who should answer each question. I suggest for a little longer that members direct questions at Mr. Daly, as Chairman, and he can pass it along as he sees fit rather than have us deciding who should answer.

I call Deputy McDonald. I remind Members that opening speakers have 20 minutes, the second speaker has 15 minutes, everybody has ten minute slots after that and everybody will get an opportunity to come back in a second time.

Deputy Mary Lou McDonald: I thank the Chairman and welcome back the gentlemen. It is not their first appearance before this committee and I have a sense that it will not be their last visit.

I am struck, in the first instance, at the very trenchant criticism levelled by NAMA at the Comptroller and Auditor General. It is in marked contrast to the approach taken by that office at our hearing this morning. If I heard Mr. McDonagh correctly, he fell just slightly short of accusing the Office of the Comptroller and Auditor General of not just incompetence but almost malice. He said that things were not put into a proper market perspective and he asked why not, as though there was some connivance on the part of the Comptroller and Auditor General to produce a critical report of NAMA. Mr. Daly said that NAMA's decision to criticise was not taken lightly but it was certainly taken very swiftly because NAMA was out like a rocket once the report was issued to decry it from a height. Does NAMA have a difficulty with oversight? Is it simply the case that when that oversight produces a criticism that NAMA is resentful?

Mr. Frank Daly: I have absolutely no difficulty with oversight. I watched the proceedings this morning and the Comptroller and Auditor General acknowledged that the audit history with the Comptroller and Auditor General, including two special reports, had been pretty much non-contentious. There had been one small point of disagreement, but in the end we accepted the Comptroller and Auditor General's recommendation. Therefore, we have absolutely no problem with oversight.

We did not take a very quick overnight decision to challenge the report. I have been dealing with the Office of the Comptroller and Auditor General for decades and nobody like me lightly challenges the Comptroller and Auditor General.

Deputy Mary Lou McDonald: Therefore, Mr. Daly's criticism is-----

Mr. Frank Daly: In this case-----

Deputy Mary Lou McDonald: I do not wish to interrupt Mr. Daly, but as we have limited time, he needs to keep his answers tight. His criticism of the Comptroller and Auditor General is not an accusation of incompetence or, heaven forbid, malice.

Mr. Frank Daly: Absolutely not.

Deputy Mary Lou McDonald: I want Mr. Daly to clarify it.

Mr. Frank Daly: It is a professional disagreement about the way in which the report was-----

Deputy Mary Lou McDonald: As Mr. Daly tuned in this morning, he will know that the Comptroller and Auditor General contests the assertion he has again made that expertise was missing from the team, that he had sought and failed to acquire it. The Comptroller and Auditor General explained to the committee that, in fact, he required additional resources, not for the purposes of the investigation into Project Eagle but for other work. Mr. Daly heard that testimony. Does he accept it?

Mr. Frank Daly: It was certainly my understanding all along that the Comptroller and Auditor General was particularly looking for expertise in the context of the section 226 report, the first element of which was to be Project Eagle.

Deputy Mary Lou McDonald: The Comptroller and Auditor General has now clarified for

Mr. Daly that that was not the case. Does Mr. Daly accept that?

Mr. Frank Daly: I am not sure that in our toing and froing and meetings with the Comptroller and Auditor General I would fully accept it. Maybe it is a misunderstanding-----

Deputy Mary Lou McDonald: It appears it might be.

Let us move on. Mr. Daly rather helpfully described the process for Project Eagle as “bespoke”. Therein lies the issue. Let us talk about NAMA’s bespoke process. There was the decision, in the first instance, to dispose of the assets of North-based debtors in a single portfolio. Mr. Daly will accept that, as reflected in the report, this was a marked shift from the established or initial plan in avoiding a fire sale in dealing with these assets. It was a change, was it not?

Mr. Frank Daly: It was, indeed. It was an opportunity that NAMA could not ignore. I think that if we had ignored it, we would probably be here answering different questions.

Deputy Mary Lou McDonald: Of course, that opportunity came in the form of Brown Rudnick speaking on behalf of two clients, one of which, as we know, was PIMCO, with the other being Cerberus.

Mr. Frank Daly: We do not know who the other one was. I do not think that has ever been established.

Deputy Mary Lou McDonald: The opportunity, as Mr. Daly describes it, came in the form of the approach by Brown Rudnick. Is that correct?

Mr. Frank Daly: It came in the form of a letter to the Minister for Finance who, quite properly, passed it to us and said: “This is a matter for NAMA.”

Deputy Mary Lou McDonald: Yes. We are familiar with the choreography, but there was a letter from Brown Rudnick.

Mr. Frank Daly: Yes.

Deputy Mary Lou McDonald: Given that there is nothing in the papers presented with which to establish there was a really deliberate thinking of alternatives to the portfolio sale, from the evidence before us, Project Eagle was not so much a creation of NAMA but a creation of Brown Rudnick and the clients for which it was acting or speaking.

Mr. Frank Daly: It is not at all unusual for us to get what we call reverse inquiries - rather than putting something on the market or saying something is for sale, one will receive an approach from somebody or on behalf of somebody saying, “I am interested in that asset or that portfolio.” That is what regarded as a reverse inquiry. We looked at it and said: “Is there an opportunity here for NAMA?” We evaluated and said: “Yes, there is and we can get a good result out of it.”

Deputy Mary Lou McDonald: I thank Mr. Daly.

Mr. Frank Daly: However, we laid down a lot of ground rules, to which I am sure the Deputy will come.

Deputy Mary Lou McDonald: I am coming to it. We have established that the strategy in dealing with the Northern assets takes a shift in response to this approach from Brown Rudnick and this forms the view.

Mr. Frank Daly: Absolutely. I am strongly of the view-----

Deputy Mary Lou McDonald: Mr. Daly can tell me what his strong views are; if he does not mind, I want to work my way through this sequentially. That was the first move in a bespoke arrangement. Second, we know that PIMCO initially required exclusivity in its dealing with NAMA but that NAMA knocked this back.

Mr. Frank Daly: We did.

Deputy Mary Lou McDonald: That is reflected. Given the nature of the sales process NAMA had adopted, it did not allow for exclusivity, but it certainly narrowed the field and went some way at least towards meeting that demand. Let me explain why I am putting this to Mr. Daly. NAMA stepped outside its own established procedure in a two-stage sales process which was established for dealing with assets worth €50 million and more. It appointed loan sale advisers, but it seems it only gave them a verbal briefing and a very limited role. It included not inviting them to carry out the valuation process. It gave them instructions that it would be a focused and “time-limited” process. I accept that other bidders were invited and participated, but that is certainly bespoke and represents, if not exclusivity, a very significant shift from NAMA’s established practice and a narrowing of the process.

Mr. Frank Daly: I do not think we have ever been anything other than upfront about the approach we took to this sale. The focused time-bound approach was, as I said in my opening statement, one driven by sensitivities because of the portfolio and North-South relations. It was a focused time-bound approach with the right players - the right people with an interest in and a capacity to acquire it. That seemed to us to go a very considerable way towards having a competitive sales process. The two-stage process the Deputy has mentioned - I am being very brief; I could go on-----

Deputy Mary Lou McDonald: Mr. Daly should continue being brief.

Mr. Frank Daly: It was, in effect, a two-stage process. I think Mr. McDonagh adduced in his opening statement to the very fact that an awful lot of sales - loan sales, portfolio sales - not just in NAMA by the way but also in others, did come down through a process to one or two bidders.

The Deputy talked about there being a limited role for Lazard. Again, there were issues about the sensitivity of the sale. The key role for Lazard, as far as I was concerned, was to find credible bidders with the capacity to bid and write a £1.3 billion cheque. At the end of the day, everybody who had that-----

Deputy Mary Lou McDonald: That is not convincing. Does Mr. Daly accept that NAMA modified or changed its established procedure for Project Eagle; that it had a single-stage sales process.

Mr. Frank Daly: I accept that we developed a bespoke process for it.

Deputy Mary Lou McDonald: Yes.

Mr. Frank Daly: The Deputy is saying we had a policy for Northern Ireland or a policy on loan sales that was absolutely written in stone. We have policies, but NAMA is a commercial organisation. If an opportunity comes along, it is not just right to do it, it is also our responsibility to actually look at it.

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Deputy Mary Lou McDonald: In terms of there being a bespoke arrangement, whatever about being flexible, the very idea that when an opportunity presents itself, one should throw the rulebook out the window is not a good way to operate and is not one that would inspire confidence on any level, including in its delivery of best value for the taxpayer.

Mr. Frank Daly: No.

Deputy Mary Lou McDonald: That is why NAMA has procedures and processes in the first place.

Mr. Frank Daly: We did not throw any rulebook out the window. At the end of the day, the NAMA board sets the policy. If it decides along the way that we want to modify a policy or that there is an opportunity that needs modification of a policy, that is absolutely within its remit. It would not be throwing the rulebook out the window; we were set up to be a commercially minded organisation to try to get the best value at the end.

Deputy Mary Lou McDonald: Yes, one that acts in the interests, as NAMA is mandated to do, of taxpayers first.

Mr. Frank Daly: Absolutely.

Deputy Mary Lou McDonald: Therefore, when NAMA is audited and the team concerned makes the very fair observation, as conceded by Mr. Daly, that NAMA had a bespoke arrangement - he can call it irregular, flexible or what he will - why decry those who carried out the audit and simply established, as a matter of fact, that NAMA had radically changed its sales strategy and that the sales process was different? If not exclusive, it was limited. Those facts are established. Mr. Daly said in his own evidence that hypothesis is not evidence. Bluster is not evidence either.

Mr. Frank Daly: Hypothesis, not the-----

Deputy Mary Lou McDonald: The report and the supporting documentation establish, as a matter of fact, that NAMA changed its asset disposal strategy and, as a matter of fact, that it changed its sales process or stepped outside its established practice. Can I have a “Yes” or “No” answer?

Mr. Frank Daly: We are not arguing that there was a change or a bespoke process here. We never have and that is very clear from our responses to the Comptroller and Auditor General and from our statements here today. What we are saying is that the process that was put in place - bespoke, as it were, or whatever the Deputy likes to call it - had all sorts of checks and balances, that it was not what PIMCO was looking for, which was a closed sale, and that at the end of the day, it got the best value for the taxpayer. The hypothesis-----

Deputy Mary Lou McDonald: Let us come-----

Mr. Frank Daly: Hold on. I said hypothesis is not evidence. That, in particular, is related to the conclusion in the Comptroller and Auditor General’s report that if we had done a different sales process, almost as if one had used a different auctioneer-----

Deputy Mary Lou McDonald: Probable loss. We will come to that-----

Mr. Frank Daly: That is not directed to the probable loss. That is a view that if a different type of sales process had been done, one might have got a different result. One might but one

might have got a worse result.

Deputy Mary Lou McDonald: That is a hypothesis also but we might come back to that. Mr. Daly would accept a change in asset disposal strategy and a change in terms of the sales process. If I have time I will come back to the sales process but I might suggest that the most bespoke element of all this is the issue of conflicts of interest. Mr. Daly's contention, which he has repeated time and again, is that he managed these conflicts of interest. He was aware, and he has made this plain, that Mr. Cushnahan had a relationship with seven debtors, accounting for in excess of 50% of the value of Project Eagle. In previous conversations with Mr. Daly, I have established that he knew about his relationship with Tughans and so on. The question that arises in the report is when the ultimate conflict of interest emerged, when Mr. Daly discovered that Mr. Cushnahan was in line to receive a fixer's fee and what he did or did not do in that regard. By any objective standard, when the test was set for Mr. Daly around that issue of conflict of interest, the report reflects very badly on him and on NAMA.

Mr. Frank Daly: Is the Deputy asking me to comment on that conflict of interest in regard to the PIMCO success fee?

Deputy Mary Lou McDonald: Yes. I would like Mr. Daly to tell me when the success fee was agreed with Mr. Cushnahan.

Mr. Frank Daly: I do not know-----

Deputy Mary Lou McDonald: Why does he not know?

Mr. Frank Daly: -----because we were told first on 10 March 2014 by PIMCO that it had a success fee arrangement in place. That was our first knowledge of it. It must be remembered that Mr. Cushnahan was gone from the NIAC since the previous November. We had two or three other phone calls with PIMCO over the next few days. The consequence was that PIMCO exited the process. Mr. Cushnahan, and I am not here to defend him by any means, has denied there was any such arrangement with PIMCO. We do not know when, if ever, there was such an arrangement. All we know is that on 10 March when we became aware of it and given the fact that Mr. Cushnahan was gone quite some time, we took steps to make sure that PIMCO did not continue in the process.

Deputy Mary Lou McDonald: I will come to that in a moment. Mr. Daly was also told by PIMCO that negotiations began in April 2013.

Mr. Frank Daly: We were told that negotiations on its interest in the portfolio began in April 2013. That did not refer to any negotiations with Mr. Cushnahan or-----

Deputy Mary Lou McDonald: On the fixer's fees.

Mr. Frank Daly: Success fees.

Deputy Mary Lou McDonald: Or success fees.

Mr. Frank Daly: We will agree to differ on the terms.

Deputy Mary Lou McDonald: It is a matter of semantics what they are called. Mr. Daly does not know whether the success or fixer's fee was negotiated and agreed in April 2013, which, bear in mind, predates the letters going through the political system and winding their way to him. Why does he not know that and what did he do to establish whether that was the

case?

Mr. Frank Daly: PIMCO did not disclose that to us.

Deputy Mary Lou McDonald: Did Mr. Daly ask for it?

Mr. Frank Daly: No.

Deputy Mary Lou McDonald: Why did he not ask for it?

Mr. Frank Daly: Because as far as we were concerned at that stage, we were taking steps to exit PIMCO from the process, and Mr. Cushnahan was gone.

Deputy Mary Lou McDonald: Notwithstanding the fact that Mr. Cushnahan was gone from the Northern committee at that stage, I put it to Mr. Daly that he still had a responsibility to establish the chain of events? Having discovered that he was due for one of these fees, and that was what PIMCO was telling Mr. Daly, he had an absolute responsibility to establish exactly when that deal was struck.

Mr. Frank Daly: No.

Deputy Mary Lou McDonald: I would find it astonishing, given how frank PIMCO was with Mr. Daly, if it would have refused him that information. I do not believe it would have refused him that.

Mr. Frank Daly: I believe it probably would but we can differ on that. My view is that our responsibility, when we became aware of that, was to assess it in terms of the impact on Project Eagle and PIMCO's continued involvement in that. We did assess that and we took the view that it should exit, and it did.

Deputy Mary Lou McDonald: I do not accept Mr. Daly's answer. If I might suggest, Chairman, that in our correspondence with PIMCO, given that Mr. Daly did not seek that information, we might pursue that matter directly with PIMCO to see if we get a response from it as to when it was agreed that this fixer's fee would be paid.

Mr. Frank Daly: Can I just say-----

Deputy Mary Lou McDonald: On a previous occasion-----

Mr. Frank Daly: -----because there is other correspondence, which is probably protected in some way or another, that Mr. Cushnahan's solicitor has made it very clear to us, and this is correspondence that has gone to the Standards in Public Office Commission, SIPO, that there was no agreement with PIMCO on a success fee for Mr. Cushnahan?

Deputy Mary Lou McDonald: That is fine, and we will pursue those matters in the appropriate way, but Mr. Daly, as the head of NAMA, could not answer a question I have put to him today that I regard as germane. I would have expected him to establish when Mr. Cushnahan struck this deal in terms of the success fee.

Mr. Frank Daly: It is not that I did not answer the Deputy's question. I answered it by disagreeing with her.

Deputy Mary Lou McDonald: No. He told me he did not know when Mr. Cushnahan-----

Mr. Frank Daly: I do not know. It is not that I did not answer the Deputy's question.

Deputy Mary Lou McDonald: On a previous appearance here, Mr. Daly contended that he got PIMCO to withdraw from the process. That is not true. That had been contested from the get-go by PIMCO but we now have documentary evidence to demonstrate that is not true. Mr. Daly did not get PIMCO to withdraw.

Mr. Frank Daly: What is the documentary evidence?

Deputy Mary Lou McDonald: PIMCO withdrew. I point Mr. Daly to appendix E in the report - Communications between PIMCO and NAMA. It refers to a conference call on 10 March 2014 and conference calls on 11 and 12 March. I am very sure that Mr. Daly has read these and what they reflect is the series of events in which PIMCO approaches Mr. Daly, tells him what has happened, signals its willingness to leave, signals its willingness to leave again and then, for a finish, informs him that it is leaving. They also reflect an effort by NAMA not to banish PIMCO from the process but to figure out a way to keep it on the pitch. Is Mr. Daly familiar with this appendix?

Mr. Frank Daly: I am, yes. I refer the Deputy to the board minutes of 11 March when it was discussed whether PIMCO's bid at this stage was fatally flawed, given the potential perception that it might have benefited from information as a result of Frank Cushnahan's involvement. The board agreed that the success fee arrangement in respect of Frank Cushnahan represented a significant issue for it and we asked that PIMCO be advised of this. There was a series of telephone conversations on 11, 12 and 13 March, as a consequence of which PIMCO withdrew. Let us not be in any doubt about it - it withdrew because it knew we would not let it continue. In fact, in one of the telephone calls on 10 March it was asked by PIMCO whether, if the fee arrangement could be moved out of the picture, it could continue. What members are reading in a subsequent question from NAMA, as to whether there was any way in which it could be restructured, is a follow-up to the question from PIMCO which was very anxious to stay in the process.

Deputy Mary Lou McDonald: Let us just go back to the minutes to which Mr. Daly refers-----

Chairman: The Deputy is on her last question in the first round of questioning.

Deputy Mary Lou McDonald: We can return to this issue. I will quote from the minutes: "PIMCO, ostensibly in the spirit of transparency, wish to advise NAMA about the success fee arrangement" ... "and sought NAMA's agreement that it was appropriate". Two things strike me. First, there is a hostile vibe in respect of PIMCO which is evident in the use of the words "ostensibly in the spirit of transparency". The issue arises as to why the notes on telephone and conference calls read as they do. One of two scenarios is possible: either the minutes are inaccurate or whoever was on the telephone was having a different conversation than the one which had been had at the board.

Mr. Frank Daly: No, I do not think there is any difference. The minutes read: "PIMCO, ostensibly in the spirit of transparency, wish to advise NAMA about the success fee arrangement and sought NAMA's agreement that it was appropriate". I am not sure what is wrong with that. It was saying: "We have this and think it is okay. Can we stay in?" Our view was totally and utterly different. One should remember that PIMCO's advice on the fee arrangement came not from its commercial side that was negotiating and bidding but from its compliance unit and

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counsel who at a very late stage in reviewing the draft letters of engagement saw the possible conflict and then insisted on us being told straightaway. That was the sequence of events. One would need to look also at the telephone call which I think was probably made on 12 March, in which it confirmed that it was withdrawing from the process and that our head of legal stated that what had been disclosed by PIMCO had made its withdrawal inevitable.

Deputy Mary Lou McDonald: Let me read from the minutes of 12 March: “PIMCO advised NAMA that it had no option but to withdraw from the process. The fee arrangement was a serious issue for it and NAMA. PIMCO was unwilling to proceed in the absence of disclosure of interest it expected”.

Mr. Frank Daly: It had no option to withdraw from the process because it knew very well that we were not going to let it continue in it.

Deputy Mary Lou McDonald: It would be interesting if we were to hear from PIMCO on whether that version of events tallies with NAMA’s.

Chairman: I thank the Deputy who will have an opportunity to come back in.

Deputy Marc MacSharry: I thank the witnesses for taking the time to be with us. I must ask this question first: why would NAMA make contact with selective members of the Committee of Public Accounts the week in advance of publication of the report?

Mr. Frank Daly: I presume the Deputy is referring to the fact that our head of public affairs contacted members to find out whether a briefing was needed in the context of publication of the report. He also contacted the Chairman. At that stage, by the way, as far as I know, the report had not been published.

Deputy David Cullinane: On a point of clarification, not all of us were contacted.

Deputy Marc MacSharry: I am getting to that.

Mr. Frank Daly: There was contact with the Chairman and the Vice Chairman.

Deputy Marc MacSharry: Yes, I understand.

Mr. Frank Daly: It was in the context of the logistics. We were reading in the newspapers and hearing about this meeting and a further six.

Deputy Marc MacSharry: As I have even less time than Deputy Mary Lou McDonald, I need Mr. Daly to be brief.

Mr. Frank Daly: Yes.

Deputy Marc MacSharry: It was perfectly reasonable for NAMA to make contact with the secretariat, the clerk, the Chairman and even the Vice Chairman if the Chairman could not be contacted, but I am interested in the contact with other members whom I know were contacted. I was not one of them. It is also clear that Senator David Cullinane was not one of them either. What criteria were adopted by the head of public affairs in determining who should be contacted and why? Did that direction come from Mr. Daly?

Mr. Frank Daly: It was in relation to the two officers, if I could put it that way, the Chairman-----

Deputy Marc MacSharry: Will Mr. Daly confirm that, as far as he is aware, nobody other than the Chairman and the Vice Chairman was contacted by his staff?

Mr. Frank Daly: Our head of public affairs is in regular contact with Deputies, Ministers and everybody like that.

Deputy Bobby Aylward: Perhaps people might hold up their hand if they were contacted.

Deputy Marc MacSharry: I was finance spokesperson in the Seanad when the NAMA legislation was going through and in those eight short years I was not contacted once by NAMA's head of public affairs. Between now and our next meeting, in the interests of clarity, perhaps Mr. Daly might be in a position to tell us why there is contact with members of the Committee of Public Accounts other than the Chairman and the Vice Chairman? Is it selective?

Chairman: On this issue.

Deputy Marc MacSharry: On any issue.

Chairman: To be clear, we all make representations. There is a system in place.

Deputy Marc MacSharry: I am not talking about representations. We all know what we are talking about.

Mr. Frank Daly: Does the Deputy not want to hear about the other side of the equation where Deputies contact us also?

Deputy Marc MacSharry: That is a matter for NAMA. When we prepare for such meetings, I find it curious that an agency of the State, paid for by taxpayers' money, would select, on criteria unknown to me, to contact individual people. It is clear that one of the criteria is picking the people who have tabled parliamentary questions about NAMA. I was not contacted.

Mr. Frank Daly: We cannot win because for seven years we have been told that we need to improve our contacts, relations and engagement with Members of the Oireachtas.

Deputy Marc MacSharry: I appreciate that. In the context of what was coming up the following week I suggest it was inappropriate not to contact all members. Perhaps Mr. Daly might provide an explanation for all of us because it is a perfectly reasonable question.

Mr. Frank Daly: The main point concerns the logistics-----

Deputy Marc MacSharry: They amount to ringing the clerk. As we are all professional people, let us have respect for one another's intelligence.

I have to move on. Mr. Daly said in his opening statement that NAMA was willing to consider the wishes of the two Governments. What section of the Act allows NAMA to supersede section 10 in considering the wishes of the government of another jurisdiction?

Mr. Frank Daly: The Deputy should look at section 10 in which there is a clause that has been spoken about here and in other committees several times that NAMA has to have due regard to the social and economic interests of the State.

Deputy Marc MacSharry: Yes. In the absence of Articles 2 and 3 of the Constitution, which were removed some years ago, Northern Ireland, unfortunately, still falls under the jurisdiction of the Queen and the Northern Ireland Assembly. Will Mr. Daly tell me what aspect of

section 10 or any other section states NAMA should take cognisance of the views of a politician outside the jurisdiction?

Mr. Frank Daly: Could section 2 be brought up on screen?

Chairman: Yes.

Deputy Marc MacSharry: While that is being done-----

Mr. Frank Daly: Let me also say-----

Deputy Marc MacSharry: No. While section 2 is being brought up on screen, I will move on a little further and ask Mr. Daly whether it would be fair to say that while NAMA had agreed to consider the wishes of the two Governments, it ultimately embraced the wishes of both and kept things discreet and confidential?

Mr. Frank Daly: No. I think if we had been talking about embracing the wishes of the two Governments, we would certainly have embraced the wishes of the Northern Ireland Government that it be a closed sale, which we flatly rejected. We went a way towards accommodating the sensitivities of the matter. The Deputy referred to the amendment of the Constitution. I cannot see how anybody would argue that NAMA should not take account of the all-island dimension of what we are doing. Surely the social-----

Deputy Marc MacSharry: In fairness to Mr. Daly - I must press him on this issue -and notwithstanding my very strong republican credentials, his contributions in the past tended to focus very much on the commercial mandate of NAMA. I am bound to say that so far today it looks a little more diplomatic and political than commercial. I am wondering whether section 10 was the core principle before NAMA officials sat down in advance of appointing Lazard as the sales agent.

Mr. Frank Daly: Of course.

Deputy Marc MacSharry: Was it section 10 or was it that Michael and Peter had been on the telephone and NAMA had better take cognisance of the discretion and confidentiality that people are looking for? In essence, therefore, how can we be certain that section 10 was achievable?

Mr. Frank Daly: Section 10 requires us to get the best achievable financial outcome for the taxpayer. Our view is that the sale of the Northern Ireland portfolio at that time, and broadly in that manner, was the best way to achieve that. Then, we go to whether we accommodated the views of the North-South Governments. We did, up to a point. As I said in my opening statement, we do not operate in a bubble as a commercial organisation. At the end of the day, the other issue is we would not have gone this route if we were not sure we would get our minimum price and, therefore, achieve the best possible outcome.

Section 10(c) also requires us to take account of any other factor which NAMA considers relevant to the achievement of its purposes.

Deputy Marc MacSharry: Surely NAMA would not have to consider the socioeconomic impact on the island of Fiji if property was being sold in Sligo. Therefore, why would it?

Mr. Frank Daly: With respect, I think there is a difference between the relationship between Northern Ireland and Ireland and Fiji.

Deputy Marc MacSharry: NAMA is governed under legislation that is relevant to the State and the people. I like where NAMA is coming from politically on this issue, but, unfortunately, we are dealing with a commercial mandate. It is about the bottom dollar. It is not about those on the NAMA board asking how the people in County Down are going to wear a given transaction.

Mr. Frank Daly: If Deputy MacSharry likes where I am coming from, I am a little puzzled because that is not the impression that I am getting. Let us come back to the origins of NAMA, the NAMA Act and NAMA board and the Northern Ireland advisory committee. What does Deputy MacSharry think was behind all of that?

Deputy Marc MacSharry: Time is short.

Mr. Frank Daly: What was behind all of that, except to take account of the unique relationship, North and South?

Deputy Marc MacSharry: In essence was the judgment of NAMA commercially led? In essence, was the action and information going into the boardroom tempered or influenced by diplomatic concerns rather than section 10?

Mr. Frank Daly: No, it was absolutely influenced by the commercial outcome, the price we would get. It was influenced by sensitivities, but we reconciled the two. If anything was suggested to us - the best example is the closed sale process - that compromised the commercial objective, we would not have gone with this.

Deputy Marc MacSharry: Let us move on. Let us say a developer connection in County Westmeath was selling ten houses and NAMA decided to sell those ten houses. Mr. Daly should correct me if I am wrong, but I have some knowledge of the process. Would it not have been the case that NAMA would ask the developer connection to identify three sales agents to get three sales proposals and valuations from those sales agents? Then, those three proposals would get in to NAMA with proposed fees and so on. Then, NAMA would take a decision based, presumably, on internal NAMA expertise to the effect that agent number A will do and the minimum price will be A. Is that not correct?

Mr. Frank Daly: Chairman, you invited me to pass questions on. Can I pass that question on to the chief executive?

Deputy Marc MacSharry: Would that be correct or not?

Mr. Brendan McDonagh: Yes, that is what we do. We take advice of the appropriate agents.

Deputy Marc MacSharry: In terms of the process, NAMA would request three. Is that not correct? Those three proposals would come in. NAMA's internal expertise would decide that proposal A was best and to run with that. Then, NAMA would set another price, which would not necessarily be the price on that, it could be higher or lower in terms of the minimum value. Is that not the case? Then, the process would begin and those involved would be given a timeframe to operate in. Is that all correct?

Mr. Brendan McDonagh: Yes, we would be informed by the market and expertise in the market, but also by people internally who have experience.

Deputy Marc MacSharry: I understand that. In that example there were ten houses in

Westmeath. I imagine there are umpteen examples of this in the NAMA portfolio. Why would that demand such a thorough bespoke process? Let us suppose the average price of a house was €150,000 and, therefore, for ten, the price would be €1.5 million. Why would that demand such a level of scrutiny and due diligence in which three proposals were acquired and assessed? NAMA would do all of this for that process but then - when talking about assets that were originally supposed to be worth £6 billion, were bought in at £2.5 billion odd and which NAMA was going to sell for £1.3 billion - the agency internally designed a sales process it very much prescribed for Lazard, rather than seeking the advice of that company on how best to achieve that. Why, for relatively low prices would NAMA have a very detailed process but for something so big - the biggest transaction in the history of the State from a property point of view - NAMA appeared to flaunt, at least in the context of Project Arrow and Project Tower, its own best practice?

Mr. Brendan McDonagh: The difference in this portfolio is that there are approximately 900 assets in the portfolio. The top 55 assets represented approximately 80% by value of the portfolio. As our chairman commented in answer to a previous question, for part of the year-end audit for 2013 we had valuations from relevant people for approximately 50% of that portfolio. For all the major assets, they were the ones of major focus and where the value lay. There was one particular asset in that portfolio, which was the last big asset in that portfolio. It represented 16% of the value of the portfolio alone.

Deputy Marc MacSharry: Would Mr. McDonagh say the approach NAMA takes for the disposal of relatively low-priced assets, as I have said, was less thorough than that undertaken for the £1.6 billion transaction?

Mr. Brendan McDonagh: No, I will not accept that at all.

Deputy Marc MacSharry: Does Mr. McDonagh believe they were equal? Why would NAMA look for three proposals and look for none in the context of something that was so big?

Mr. Brendan McDonagh: The reality is that we had a valuation of the portfolio which fell into the 31 December 2013 audit. I do not think that is a matter of contention between ourselves and the Comptroller and Auditor General in terms of cashflow.

Deputy Marc MacSharry: It is the taxpayer who is paying me.

Mr. Brendan McDonagh: Absolutely, and I am very conscious of the taxpayer in terms of NAMA. The reality is that we go through processes. We try to get the most up-to-date information we can in terms of deriving the value. The board set a minimum price for the portfolio. The minimum price for the portfolio is not fundamentally based here on what the value of the underlying assets was. It was a difference of opinion about the appropriate discount rate.

Deputy Marc MacSharry: The bigger the gig, the less people get consulted.

Mr. Brendan McDonagh: No, that is not the case.

Deputy Marc MacSharry: It is three for ten houses in Westmeath but it is the board and, at a later date, Lazard, when it comes to the biggest transaction in the State.

Mr. Brendan McDonagh: No, not at all. Deputy MacSharry is trying to imply something which is not the case.

Deputy Marc MacSharry: Then Mr. McDonagh should point to the two other companies,

other than Lazard. Before NAMA designed the sales process, other than the diplomatic wishes which we took cognisance of, who did NAMA consult externally on the best way to do this process, other than the two Governments?

Mr. Brendan McDonagh: The reality is that we got a reverse inquiry to sell this portfolio as a whole.

Deputy Marc MacSharry: I must interrupt Mr. McDonagh there. Let us go back to the example of the ten houses in Westmeath. How many times did someone walk in the door in a reverse capacity for a small purchase and NAMA agreed to go for it, narrow the process, have it over a month, have a data room for some weeks for one, then open it up to everyone else and then let it go? In fact, can Mr. McDonagh tell me of any instance where NAMA sold something that was lower-priced and that followed that same way?

Mr. Brendan McDonagh: We have had reverse inquiries for groups of assets. In some cases they were not selling and people would come and make an approach.

Deputy Marc MacSharry: I am sure NAMA has received countless telephone calls over the years from individuals throughout the country asking whether NAMA is selling a house at number 10 on the high street in the town. Did NAMA ever say to such a person that the offer was fair enough?

Mr. Brendan McDonagh: We have said to persons that offers were fair enough. Deputy MacSharry will be aware of this.

Deputy Marc MacSharry: As has already been declared to the clerk, by the way.

Mr. Brendan McDonagh: Sometimes people would approach us about the sale of a single house and ask whether a given house is for sale and whether it is in NAMA. We get numerous queries every week along those lines.

Deputy Marc MacSharry: Has NAMA ever sold one of those?

Mr. Brendan McDonagh: We have sold to people-----

Deputy Marc MacSharry: Has NAMA ever done so on the basis of a reverse inquiry?

Mr. Brendan McDonagh: Yes. If a property was on the market and we took advice or determined ourselves that the price was appropriate, we would sell it, yes.

Deputy Marc MacSharry: When NAMA would do that, would the practice of NAMA be to get an independent valuation before letting it off?

Mr. Brendan McDonagh: The standard practice is to get an independent valuation, yes.

Deputy Marc MacSharry: Why did NAMA not do that in this instance?

Mr. Brendan McDonagh: I said to Deputy MacSharry that in terms of the-----

Deputy Marc MacSharry: Was that because NAMA would have had a stock valuation on that property from the previous year end?

Mr. Brendan McDonagh: Sorry?

Deputy Marc MacSharry: NAMA would have had a stock valuation, as with the assets

in terms of Project Eagle. Mr. McDonagh said it had valuations at the end of 2013. If an individual comes in and NAMA is happy with the price quoted, NAMA would get an independent evaluation at that stage to verify that it was getting value for money. That is what Mr. McDonagh is saying.

Mr. Brendan McDonagh: We try to ensure that the valuations are as up-to-date as possible.

Deputy Marc MacSharry: Why would NAMA not have done the same for the biggest transaction in the State?

Mr. Brendan McDonagh: The reality is that we had up-to-date valuations for the biggest assets in the portfolio. We had up-to-date valuations for 48 out of the 55 biggest assets in the portfolio.

Deputy Marc MacSharry: I am nearly there.

Chairman: The Deputy has another minute.

Deputy Marc MacSharry: Can the witnesses confirm that NAMA was aware that Mr. Cushnahan and Mr. Rowntree were directors of the Northern Ireland Housing Agency for a period?

Mr. Frank Daly: I believe they were.

Deputy Marc MacSharry: Would NAMA have been equally aware that they resigned following a report into certain activities of that organisation?

Mr. Frank Daly: Certainly one of them resigned. One of them may already have left. I am not sure of the details.

Deputy Marc MacSharry: Can Mr. Daly confirm that following this report, which may have led to the resignation of one or both of these individuals, NAMA renewed the contract of Mr. Cushnahan?

Mr. Frank Daly: No, we did not. That report had not been issued at the time they were reappointed.

Deputy Marc MacSharry: Mr. Daly mentioned that he met Mr. Cushnahan for the very first time when he was first appointed to the Northern Ireland advisory committee. A month later, I think both of them ended up on the same board of a company called-----

Mr. Frank Daly: It is a charity.

Deputy Marc MacSharry: It is a charity but, nevertheless, it is a registered company. How did that happen? Did Mr. Daly invite him or did he invite Mr. Daly to join the board? Was it a pure coincidence?

Mr. Frank Daly: I think it was a pure coincidence. It is a charity operated by the Redemptorists. He was on the board for quite some time. I know some Redemptorists in Dublin and was asked whether I would join the board. It was not a month later. As far as I know, it was probably the best part of a year later.

Deputy Marc MacSharry: When did Mr. Daly resign or is he still on the board?

Mr. Frank Daly: I am still on it.

Deputy Marc MacSharry: Is Mr. Cushnahan still on it?

Mr. Frank Daly: No, he is gone.

Chairman: We will move on now.

Deputy Marc MacSharry: That will do for now.

Chairman: There might be another opportunity shortly. I call Deputy Kelly. There are ten minutes for each group.

Deputy Alan Kelly: I need even shorter answers. It might almost be a quick-fire round. In respect of what Deputy MacSharry said earlier, I was one of the people who got a telephone call and I do not believe it was anything to do with logistics. I just want to put that on the record. I believed it was a formal briefing and, to this day, I believe that by the look of things, it was a selective briefing. In such circumstances, I would like Mr. Daly to reply because I expect that he will be here on a number of occasions in the coming months. I have a straight question. There is a huge amount of detail here which we have all gone through. Does Mr. Daly believe NAMA did anything wrong in respect of the sales process for Project Eagle?

Mr. Frank Daly: We certainly did not do anything wrong.

Deputy Alan Kelly: Does Mr. Daly believe that-----

Mr. Frank Daly: It was three or four years ago. With hindsight, would we have done something differently in light of our subsequent experience? Possibly, but it would be because this is the type of organisation we are. We learn.

Deputy Alan Kelly: Does Mr. Daly believe NAMA could have handled aspects of this sale better?

Mr. Frank Daly: We might have tweaked it here and there but I do not believe that we would have got a different result.

Deputy Alan Kelly: Let us stick to what I am saying here. Does Mr. Daly believe NAMA could have handled aspects of this better?

Mr. Frank Daly: Not really, no.

Deputy Alan Kelly: So NAMA would do everything the same way now?

Mr. Frank Daly: There might be tweaking here and there but nothing significant that would have changed in terms of-----

Deputy Alan Kelly: We are interested in the word "tweaking". What tweaking?

Mr. Frank Daly: It may have been around the documentation because that has been criticised by the Comptroller and Auditor General. We might have gone into more detail on it.

Deputy Alan Kelly: Will Mr. Daly provide examples?

Mr. Frank Daly: The actual sales process-----

Deputy Alan Kelly: We will leave the sales process. What examples of documentation can Mr. Daly give us?

Mr. Frank Daly: Again, I am not cutting across my view that minutes of meetings should record decisions and not discussions but if one gets to a stage where alternatives or a different sort of pricing have been discussed, we might do that in the future. Can I make a general point about this?

Deputy Alan Kelly: Very quickly.

Mr. Frank Daly: This was 2013 and involved a loan sale. Loan sales were few and far between - not just in the context of NAMA but internationally.

Deputy Alan Kelly: I am taking what Mr. Daly has to say as read. It is interesting that Mr. Daly says it because my next question concerns whether there was a belief that this was the right time to get out of Northern Ireland because of diplomatic requirements, political pressure, business risk and the lack of ongoing quality debtor engagement.

Mr. Frank Daly: I think it was the right time for a number of reasons.

Deputy Alan Kelly: We cannot analyse that for the very reason mentioned by Mr. Daly, which is NAMA's weakness, because decisions are recorded in the minutes but there is a big gap as regards the logic the board used in respect of those four things I just outlined, namely, business risk, debtor engagement, political pressure and diplomacy. That is not recorded anywhere for us to see if it was the logic behind the decision because of the weakness outlined by Mr. Daly.

Mr. Frank Daly: Business risk, debtor engagement and fractious engagement are certainly mentioned in NAMA papers. They might not necessarily have been mentioned in the minutes of the board meeting. It was the right time for a number of reasons. First of all, we had an interest. Second, the engagement with Northern Ireland debtors was increasingly fractious. Contrary to views that have been expressed here and elsewhere, we did not see any great evidence that the Northern Ireland economy was growing.

Deputy Alan Kelly: I am not saying that what NAMA did was necessarily wrong. What I am saying is that, in light of the minutes that are outlined, the committee cannot garner information on the decision-making process across those four variables because of the weakness outlined by Mr. Daly earlier.

Mr. Frank Daly: I see that point but in the extensive engagement with the Comptroller and Auditor General, which, in fairness to him, is reflected in the report, we have given that rationale in terms of what we were discussing.

Deputy Alan Kelly: We will move on.

Mr. Frank Daly: A much bigger point is whether we were right to get out of Northern Ireland. In 2016, post-Brexit, we certainly were.

Deputy Alan Kelly: To be honest, that is not the remit of this committee because we must study it from the time the decision was made so that comment is irrelevant.

Mr. Frank Daly: I do not think it is irrelevant because it is relevant to the question of whether we got value for money.

Deputy Alan Kelly: Mr. Daly should follow my questioning. He has only a limited amount of time. In my opinion, it is irrelevant because we are analysing the decision at the time rather than post-----

Mr. Frank Daly: Brexit was in our decision process at the time.

Deputy Alan Kelly: So NAMA was able to predict the outcome of the referendum?

Mr. Frank Daly: At the same meeting on 13 December at which we discussed this, we had a paper relating to another debtor who has extensive interests in the UK. A risk was identified relating to Brexit in that paper because the former British Prime Minister, David Cameron, had just announced the referendum.

Deputy Alan Kelly: Mr. Daly should remind me the next time he is going gambling and I will seek advice from him. In respect of Mr. Cushnahan - a Walter Mitty-type character who makes a considerable number of appearances throughout in the documentation - did NAMA ever enforce on any of the six or seven debtors that Mr. Cushnahan was-----

Mr. Frank Daly: Yes, we did.

Deputy Alan Kelly: How many?

Mr. Frank Daly: There was part enforcement on two of those debtors.

Deputy Alan Kelly: When?

Mr. Brendan McDonagh: It was in 2012 or 2013.

Deputy Alan Kelly: Out of the six or seven, were they significant players as regards-----

Mr. Frank Daly: Out of the six or seven, yes.

Deputy Alan Kelly: Did Mr. Cushnahan submit a statement of interests to NAMA on an annual basis, as required under the 2009 code of governance regarding State bodies? Did he do it each year?

Mr. Frank Daly: Yes, he did each year from 2010 to-----

Deputy Alan Kelly: Did Mr. Daly, as chairman, ensure that all procedures in place to protect against conflicts of interest under that code - sections 2.6, 2.7 and 5.5 - were adhered to?

Mr. Frank Daly: I did, in conjunction with the-----

Deputy Alan Kelly: Is Mr. Daly satisfied absolutely? Did he refer back to the compliance division in the NTMA at all times?

Mr. Frank Daly: I did so each year because it is a requirement of our compliance with the-----

Deputy Alan Kelly: I need to get on the record that Mr. Daly is 100%-----

Mr. Frank Daly: Absolutely.

Deputy Alan Kelly: We can come back to that as needs be. When did NAMA tell the Department of Finance about the success fees and PIMCO?

Mr. Frank Daly: I told the Department on 13 March after our board meeting that day that ended at about 5 p.m. or 6 p.m.

Deputy Alan Kelly: Did Mr. Daly ask them for any advice, subsequently?

Mr. Frank Daly: No.

Deputy Alan Kelly: Did they offer any advice, subsequently?

Mr. Frank Daly: No, they did not: it was by way of information.

Deputy Alan Kelly: Was there surprise?

Mr. Frank Daly: There was.

Deputy Alan Kelly: Was there shock?

Mr. Frank Daly: Were we appalled at the idea that somebody who had been on the NIAC would be in line for a success fee, yes we were.

Deputy Alan Kelly: Did Mr. Daly feel - I accept this is subjective - that as a result of that the Department would be taking action or would be referencing that into the future? In other words, it would feed into the political context of the Department.

Mr. Frank Daly: I would presume that it would. I did not get any specific indication of that.

Deputy Alan Kelly: Okay. In regard to the same Department, did Mr. Daly have any conversations on the Comptroller and Auditor General and the standards of expertise staff etc. as a result of the engagement process over the four different report versions that he saw?

Mr. Frank Daly: Yes, we had engagement with the Department because we were keeping it up to date on where this report was going. They were general discussions in that we were not seeking to influence the Department in any way.

Deputy Alan Kelly: There were discussions on the expertise and competence of the Comptroller and Auditor General .

Mr. Frank Daly: Yes. We have a monthly meeting with the Department at which all ongoing issues in a general sense are discussed.

Deputy Alan Kelly: Did the Department officials express any opinion on which Mr. Daly would like to elaborate?

Mr. Frank Daly: They expressed the strong view that they were surprised that the Comptroller and Auditor General did not engage this type of expertise. I think there would have been agreement between us on that or, certainly, our opinions would have been the same.

Deputy Alan Kelly: In regard to Lazard - we will have to come back to this issue eventually - the fact that it received £4.3 million for a role that was very confined in comparison with the roles of organisations of similar type in regard to other projects is perplexing. Why was it not involved in portfolio valuations and the sales process? Why was it not asked to be involved in that process? Why, afterwards, was it not given all the information required to undertake an analysis to ensure the integrity of the marketing and sales process and decision-making thereon was as accurate as possible? My view, based on my reading of the report, is that the role of

Lazard was seen to be one of rubber-stamping a process.

Mr. Brendan McDonagh: Lazard does not rubber-stamp anything. It stood over the process. It was engaged with the process and it was told by the board to-----

Deputy Alan Kelly: Why was Lazard not briefed on the objective of the loan sale?

Mr. Brendan McDonagh: It was briefed on the objectives of the loan sale.

Deputy Alan Kelly: In detail?

Mr. Brendan McDonagh: Yes.

Deputy Alan Kelly: Verbally?

Mr. Brendan McDonagh: Yes.

Deputy Alan Kelly: We cannot see any documentation to that end.

Mr. Brendan McDonagh: There is a document which was available to the Comptroller and Auditor General.

Deputy Alan Kelly: But it is not available to us.

Mr. Brendan McDonagh: It is available to the committee. I have no problem with anybody seeing it.

Deputy Alan Kelly: Has anybody seen it?

Mr. Brendan McDonagh: It forms part of the documentation. It is quite a generic document. As part of the engagement with any investment bank or loan sale adviser it makes a pitch in what is known as a “pitch book” in terms of who they should target and the type of buyers in the market, which they tier into division one, two or three buyers and so on.

Deputy Alan Kelly: It sounds like soccer.

Mr. Brendan McDonagh: That engagement took place. There was a meeting and they came back-----

Deputy Alan Kelly: The committee has not been provided with documentary evidence in that regard. That is a problem.

Fortis made it to the end but it was not involved in the first or second call. Mr. Daly has eloquently stated that 80% of potential investors were invited to engage in the bidding process. Fortis was not invited to do so on the first or second occasion. If the process was exhaustive and accurate why was Fortis not invited to participate in the first or second call?

Mr. Brendan McDonagh: Fortis was invited to join the process at the same time Cerberus was invited to join it.

Deputy Alan Kelly: That is not my question.

Mr. Brendan McDonagh: My response to the Deputy’s question is that Lazard advised us to approach particular people first to see if they were interested. It was an iterative process. By 13 February, Fortis and Cerberus both had been contacted about coming into the process. As

I said, there is a league table. We take Lazard's advice in terms of who should be approached. We were not going to second-guess that. It approached some of the big players, some of whom expressed an interest and others did not and it then progressed down through the list.

Deputy Alan Kelly: It disproves the idea that everyone was brought in.

Mr. Brendan McDonagh: No, it does not disprove the idea, Deputy, because-----

Deputy Alan Kelly: I disagree.

Mr. Brendan McDonagh: I disagree with the Deputy.

Deputy Alan Kelly: Fine. Mr. McDonagh is entitled to do so.

Mr. Brendan McDonagh: The top nine people were approached and invited to have a look at this portfolio. Some of them chose to come in and some of them did not. Some chose to come in and then dropped out.

Deputy Alan Kelly: But Fortis was not invited in the first or second time.

Mr. Brendan McDonagh: They were all invited in within the same phase.

Chairman: We need to move on. Before I call Deputy Madigan, in regard to additional documentation that could assist the committee in its work but has not been received today, I made a conscious decision not to communicate with any of the people presenting here in regard to the provision of additional documentation in advance of our first public meeting. I want this to be the start of our work. From today, we can seek information. Valuation documentation was mentioned, of which I was not aware. There may also be documentation available on the appointment of Lazard. We will compile a list of information required subsequent to today's meeting. I did not want to go there before we heard the opening statements.

Deputy Josepha Madigan: I thank the witnesses for being here today. We appreciate their taking the time to do so.

I was struck earlier by Mr. Daly's statement that running a commercial entity involves making commercial decisions. That is all fine and well if it is the local sale of work but in this instance we are speaking about NAMA. I find it very difficult to listen to what Mr. Daly and Mr. McDonagh are saying today, with respect, *vis-a-vis* the report from the Comptroller and Auditor General. It strikes me that there are a lot of "Nos" in the report. From my reading of the Comptroller and Auditor General's report, there are no records of any discussions around the sale of Project Eagle, which to my mind would be a basic administrative secretarial duty; there are no formal valuations of the property collateral and so there are no clear valuation methods. As we know, the *sine qua non* of conveyancing is a proper valuation, which is clearly absent in this regard. Formal expert advice was only received retrospectively. There was no contact with Mr. Cushnahan re his fee arrangement and no considered approach of the sales scheme. It appears to me that haste was put before any due diligence or prudence. There was a lack of openness in relation to the bidding process. I do not accept what the witnesses had to say regarding the sensitivities in Northern Ireland. I think that is convenient. There are no conflict of interest evaluations, no adherence to standard NAMA sales and, even worse, there is no admission of wrongdoing today. The witnesses did state there could be some tweaking but they do not overall accept the premise of the Comptroller and Auditor General's report.

Even taking into account a divergence in relation to valuations, for the taxpayer there is a

huge dichotomy in relation to the £190 million. Whether the amount is £150 million or £160 million, it is still a huge amount of money. Taxpayers want an answer as to the reason what the witnesses are saying here today is so completely at odds with the Comptroller and Auditor General's report. In that regard, I put it to Mr. Daly and Mr. McDonagh, that NAMA's handling of Project Eagle was at best sloppy and unprofessional and at worst rushed and opportune. Again, this is just my reading of it.

Obviously, the witnesses accept there are fundamental differences between what they are saying here today and what is contained in the Comptroller and Auditor General's report but do they accept the Comptroller and Auditor General was professional in the manner in which he conducted his report and in that regard do they accept his professional experience and that of his team in compiling this report? That would also encompass his bona fides in respect of this report and the conclusions he has made therein. Mr. Daly said, in respect of the £190 million, that the Comptroller and Auditor General had a misplaced attachment to an accounting value rather than a real world value. I find that difficult to reconcile when no proper valuations were procured at all. Mr. Daly also says, in the context of the open process not leading to advantage, that there were eight out of ten rejected bidders post-2014. Why were these not deemed credible? What criteria were used?

Mr. Daly went on to mention reputational damage caused by media leaks, which are unfortunate. Nevertheless, more damage has been done by the fact that the sale went through and we now find ourselves discussing the matter at this public forum. I do not accept what Mr. Daly says regarding reputational damage. Perhaps he can enlighten us in this regard.

Mr. Frank Daly: I might share those questions with my colleagues if that is all right. Let me deal with the one about the Comptroller and Auditor General. I thought I was at pains in my opening statement - and I hope I was - to say that I have no quarrel with the Comptroller and Auditor General or his office in terms of their professional capacity, their bona fides or their experience. Remember there are six, seven or eight Comptroller and Auditor General's reports on NAMA, which we have never challenged, except on one narrow point. Our net disagreement on this one is that property loan sales is a specialist area. It is an area where there is a skill set and an experience that is not widespread but it is there and I feel the Comptroller and Auditor General's office did not have that experience. That is the expertise we are talking about. We are not talking about-----

Chairman: Was this one of NAMA's first ever loan sales?

Mr. Frank Daly: This was our second.

Chairman: In fairness then, even NAMA did not have much expertise in loan sale project, so it would have been difficult for the Comptroller and Auditor General. Mr. Daly is criticising him but NAMA did not have much more experience.

Mr. Frank Daly: That is why we used Lazard.

Deputy Josepha Madigan: Is it correct that the asset recovery section of NAMA agreed the valuations or approved the portfolio?

Mr. Frank Daly: No. The asset recovery section presented the paper to the board. The figures in the paper, particularly the end-2013 impairment figures, are collated by the chief financial officer's unit in NAMA, assisted by asset recovery, legal and a whole lot more. That is where it comes from.

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Deputy Josepha Madigan: Does Mr. Daly think there would be a different outcome or different conclusions if another auditor had compiled this report?

Mr. Frank Daly: If they had experience and expertise in respect of loan sales and discount rates and the reality of markets, I do. That is probably at the core of our-----

Deputy Josepha Madigan: Is Mr. Daly saying that the Comptroller and Auditor General did not have the experience to compile this report at all.

Mr. Frank Daly: No, I am saying he did not have this expertise in loan sales or discounting in the market. We have said that from the start.

Deputy Josepha Madigan: That is Mr. Daly's view.

Mr. Frank Daly: It is, and I would not like to go away from here today with any suggestion that NAMA has a general problem with the Comptroller and Auditor General's office; we certainly do not. As Mr. McCarthy said this morning-----

Deputy Josepha Madigan: I appreciate that but, at the same time, Mr. Daly can appreciate that what he is saying is the office did not have the necessary skills set to say anything about the-----

Mr. Frank Daly: It is a professional disagreement. It is back to the point I mentioned - which the Chairman kindly allowed me to make before my opening statement - to the effect that one gets back to three figures here and the kernel of the issue is the discount rate. Should it be 5.5% or 10%? We have diametrically opposed views on that.

Deputy Josepha Madigan: We have gone through much of that.

Mr. Frank Daly: On the valuation point, to a certain extent we have answered that. I might invite my colleagues-----

Deputy Josepha Madigan: I have only a few more questions. How does NAMA respond to interested parties regarding the lack of information and time to consume what is available in respect of the bidding process? Does Mr. Daly accept the resulting concerns about competitiveness?

Mr. Frank Daly: In general?

Deputy Josepha Madigan: Yes. With regard to the Northern Ireland advisory committee, can Mr. Daly confirm whether it was Sammy Wilson who appointed Mr. Cushnahan to the role?

Mr. Frank Daly: On the NIAC question, it is our understanding that the names of Frank Cushnahan and Brian Rowntree were recommended to the then Minister for Finance, Brian Lenihan, by the Northern Ireland Department of Finance. Sammy Wilson was the Minister at the time. That was the process. The Minister referred the names to us and we appointed them to the board.

On the Deputy's question about complaints, I might hand over to Mr. McDonagh.

Deputy Josepha Madigan: We have gone into the minutiae in respect of the difference of opinion and some of my colleagues have asked Mr. Daly whether he accepts that NAMA has engaged in any wrongdoing with Project Eagle. He said, "None whatsoever".

Mr. Frank Daly: Absolutely not. I do not accept that NAMA has been involved in any wrongdoing in respect of this sale. It is quite obvious from-----

Deputy Josepha Madigan: It is difficult for the taxpayer to hear that in light of the Comptroller and Auditor General's report.

Mr. Frank Daly: What is happening here - I have to be careful because of what is going on in Northern Ireland with the National Crime Agency, NCA - is that, on the side of this, there seem to be questions to be answered, but not by NAMA. The NCA has made it clear to us on a number of occasions that it is not investigating NAMA. Was there wrongdoing there? Let us leave that to the NCA. Was there wrongdoing by NAMA? Absolutely not.

Deputy Josepha Madigan: So Mr. Daly thinks there was wrongdoing with the-----

Mr. Frank Daly: I am leaving that to the NCA, which is the legally appropriate thing to do.

Deputy Josepha Madigan: Is there anything Mr. Daly wants to say to the public?

Mr. Frank Daly: We got very good value for this portfolio. We got €1.322 billion. We exceeded our reserve price. We used that €1.322 billion to reduce the debt, which was a contingent liability on this State and, in the long run, that is what will contribute to a surplus or a profit by NAMA in a couple of years when we are finished of least €2.3 billion.

Deputy Josepha Madigan: Notwithstanding the sale being expedited, Mr. Daly maintains NAMA got good value for money.

Mr. Frank Daly: When one strips out an awful lot of the other stuff, the other theme running through this is that if one had held on to these assets and sold them piecemeal or some other way between now and 2020, one would have gotten a better figure. That is something I find absolutely hard to believe. Even if Brexit is left aside - and Brexit is a huge argument in this-----

Deputy Josepha Madigan: Would Mr. Daly have done anything differently?

Mr. Frank Daly: As I said to Deputy Kelly earlier, because there has been a lot of talk about the documentation around this, I still believe that board decisions are what is appropriate to record in minutes, we would look at that-----

Deputy Josepha Madigan: Mr. Daly made a magnanimous gesture in the sense that he said the committee or the Comptroller and Auditor General could meet the board members and find out about the decision-making on this sale. If he is offering that now, why could that information not have been available at the time?

Mr. Frank Daly: We have been offering that since the Comptroller and Auditor General's examination started.

Deputy Josepha Madigan: Why was a contemporaneous note not taken? Surely that would have been an elementary thing to do.

Mr. Frank Daly: There are lots of notes and lots of papers. There are board minutes, which, ultimately, record the decision.

Deputy Josepha Madigan: That is unfortunate because it would go to the crux of the matter.

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Chairman: I thank the Deputy. Members have indicated in the following sequences: Deputies Cullinane, Connolly, Burke and Aylward. They will have ten-minute slots. We will take a break at 4.30 p.m.

Deputy David Cullinane: I welcome all the witnesses, especially Mr. Daly who is a fellow Waterford man.

Mr. McDonagh, when referring to the Comptroller and Auditor General's report in his opening remarks, said, "A report which is prepared to make such a resounding and serious comment must be properly supported by convincing, formidable and sufficient evidence." I support that view. We have asked questions of the Comptroller and Auditor General this morning and we will have further opportunities to put questions to him. We must hold Mr. Daly's testimony to the same benchmark that he set for the Comptroller and Auditor General. Mr. Daly's contentions and opposition to many of the findings of the Comptroller and Auditor General's report must also be backed up by convincing, formidable and sufficient evidence.

Before I get to that, I would like to establish that Mr. Daly is still on the same page as he was on 9 July last when he gave testimony to the committee on conflicts of interest and success fees, which are issues that are linked. I want to zone in on these issues. I will quote Mr. Daly's contribution on 9 July and ask him whether he holds to what he said on that day. A simple "Yes" will suffice and if he wishes to change or modify his position, he should feel free to do so. Mr. Daly stated that "if PIMCO did not withdraw, NAMA could not permit it to remain in the sales process". Does he still hold that view?

Mr. Frank Daly: I still hold that view.

Deputy David Cullinane: Mr. McDonagh stated: "We went back to PIMCO and informed it that the board viewed this as a very serious development [This was the success fees.] and did not think it was tenable for PIMCO to remain in the process". Does Mr. Daly still hold to that view?

Mr. Frank Daly: Yes.

Deputy David Cullinane: Mr. Daly also stated:

I do not think there is any indication that the involvement of those in PIMCO indicated that they were trying to pull themselves out of the sale. In fact, the whole tenor of their approach on this issue around Frank Cushnahan was to stay involved.

Does he still hold that view?

Mr. Frank Daly: Yes.

Deputy David Cullinane: Basically, what Mr. Daly and Mr. McDonagh stated on 9 July and in their opening statements today is that the board of NAMA was made aware of very serious issues and it took a decision to try to remove PIMCO from the sales process. What happened was that the board of NAMA and action that was taken following the board's decision led to PIMCO leaving the stage. That is Mr. Daly's and Mr. McDonagh's position.

Mr. Frank Daly: That is pretty much it. It was done through a series of telephone calls involving, in particular, our legal department because the interaction at that stage-----

Deputy David Cullinane: We will get to that in a moment. That is Mr. Daly's contention.

Page 116 of the Comptroller and Auditor General's report features minutes of a meeting of the NAMA board. Mr. Daly stated in response to Teachta McDonald and others that the board minutes reflect his view and not the view that is reflected in Appendix E, which we will discuss in a few minutes. According to Mr. Daly, the board minutes reflect his view that the board was the instigator of PIMCO's withdrawal or exit from the process. Let us read the minutes of the meeting and put that contention to the test.

The minutes, as cited on page 116 of the report, state: "However, the Board acknowledged that Frank Cushnahan would be knowledgeable about NAMA's strategy with respect to NI and noted that the involvement of Frank Cushnahan with PIMCO raised a significant reputational risk to NAMA". I am assuming the board would have known previously about the six or seven debtors and Mr. Cushnahan's association with them.

Mr. Frank Daly: Yes.

Deputy David Cullinane: According to the minutes, as set out on page 117: "The Board noted that, in light of the co-location of offices between Frank Cushnahan and Tughans Solicitors (Belfast), there were some reservations in respect to a success fee payment to the latter". The phrase used is "some reservations". It subsequently states:

However, the Board members raised concerns [We can read into that what we want.] in relation to the payment of a success fee to Frank Cushnahan, who had failed to disclose a potential beneficial interest with respect to the success fee to NAMA. The Head of Asset Recovery advised the Board that three bidders remained in the bidding process ...

Ronnie Hanna was still the head of asset recovery at that time. Is that correct?

Mr. Frank Daly: Yes.

Deputy David Cullinane: The final paragraph of the minutes states: "Following consideration, the Board agreed that the success fee arrangement in respect of Frank Cushnahan as advised by PIMCO on the conference call of 10th March 2014 represented a significant issue for the Board". The reference is to this being a "significant issue" for the board and to concerns being raised. Mr. Daly cannot, with any credibility, point to anywhere in the minutes as meaning that his view, namely, that the board essentially took a decision to force PIMCO out, holds any water. That is how I see it. Maybe Mr. Daly will respond before we move on to Appendix E.

Mr. Frank Daly: If the Deputy reads that whole forward minutes, including, in particular, the parts he has highlighted, what certainly comes across to me is obviously a very serious concern about the success fee arrangement that had been disclosed to us. Remember, further up in those minutes, it talks about PIMCO, ostensibly in the spirit of transparency, advising us about the arrangement and seeking NAMA's agreement that it was appropriate, which it would never have got. All of this leads to a decision by the board that PIMCO should be contacted and it should be told that the board regarded this as very-----

Deputy David Cullinane: With respect, Mr. Daly is being extremely subjective and one could read different interpretations from what the minutes say. Mr. Daly's very strong contention is that the board took a decision to force PIMCO out of the game. There is no way he can say that the minutes clearly state that. There is-----

Mr. Frank Daly: I can tell the Deputy there is always a kind of process involved in something like this.

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Deputy David Cullinane: Does Mr. Daly have documentation to support the process?

Mr. Frank Daly: We said that the PIMCO bid was fatally flawed. That is on page 117. There is, therefore, no doubt about the board view. That was conveyed to PIMCO that day, outlining the board reaction to the PIMCO disclosure that it was a very serious issue. Two days later, PIMCO came back and confirmed to us that it had withdrawn. We can argue the semantics here. We were in no doubt, and I and my colleagues here were at the board meeting, that PIMCO was going out of this.

Deputy David Cullinane: This is not semantics but what is reflected in the minutes.

Mr. Frank Daly: But we did. The words “fatally-----

Deputy David Cullinane: I have heard Mr. Daly’s response and he has given his view on and interpretation of the minutes. To be fair, that has been reflected.

Mr. Frank Daly: Do the words “fatally flawed” not mean anything?

Deputy David Cullinane: The words used were “whether PIMCO’s bid, at this stage, was fatally flawed”. The word is “whether” but, as Mr. Daly said, we can disagree on the wording.

Mr. Frank Daly: The thrust of those minutes is that PIMCO was on the way out.

Deputy David Cullinane: That is Mr. Daly’s opinion.

Mr. Frank Daly: It is not just my opinion, There are two board members here and we are-----

Deputy David Cullinane: The Comptroller and Auditor General has a different opinion and the opinion expressed in the report is also different. We will get to that in Appendix E. Let us tease that out.

Mr. Frank Daly: He is entitled to that.

Deputy David Cullinane: With respect, the test of whether Mr. Daly’s version of the minutes holds any water is in Appendix E, which we will go through line by line. Before we do so, Appendix E, as I read it, is a summary of communications and conference calls between PIMCO and NAMA. This information was given to the Comptroller and Auditor General and it is his synopsis of what happened. We will go through it line by line and then put Mr. Daly’s hypothesis to the test, to use his phrase. It states:

On 7 March 2014, PIMCO’s Legal and Compliance Unit requested a conference call with NAMA Legal in relation to Project Eagle. The call took place between PIMCO’s legal counsel (internal and external representatives) and NAMA’s Senior Divisional Manager Legal and Head of Asset Recovery on 10 March 2014.

Is NAMA’s senior divisional manager legal present?

Mr. Frank Daly: No.

Deputy David Cullinane: The head of asset recovery was Ronnie Hanna. Is that correct?

Mr. Frank Daly: Yes.

Deputy David Cullinane: Appendix E continues as follows:

PIMCO informed NAMA that its external legal advisors, Brown Rudnick, had initially proposed the Project Eagle deal to PIMCO and that a success fee arrangement was in place between PIMCO and Brown Rudnick. Following enquiries, PIMCO had learnt that the fee was to be split three ways between Brown Rudnick, Tughans and Mr Frank Cushnahan, a former NIAC member. [This is the information that was relayed to NAMA's legal division.]

PIMCO asked the Head of Asset Recovery if NAMA was aware that Mr Cushnahan stood to gain in the event of PIMCO acquiring the Project Eagle loans. The Head of Asset Recovery [Mr. Hanna.] confirmed that NAMA was unaware of that situation and stated that NAMA would need to consider the matter further. [That is fair enough.]

The Head of Asset Recovery asked how the matter came to light and was informed that when PIMCO's Legal and Compliance Unit reviewed the engagement letter, it had noted the success fee arrangement.

It goes on to state that PIMCO was still investigating the matter but wanted to be transparent. I read from this that there was a discussion around the concerns, that NAMA wanted to be transparent and that the head of asset recovery was being made aware of the existence of the success fees. The report goes on to state, "The Head of Asset Recovery asked whether PIMCO would continue to proceed with its work on the proposed transaction if what had been outlined was an issue for NAMA". He had to go back to the board of NAMA and he did so. It also states, "PIMCO confirmed that its legal due diligence would not proceed until NAMA's position was clarified". PIMCO is saying to NAMA's people that it cannot proceed unless it gets clarification from them. The next bit reads:

[I]f NAMA considered the fee arrangement to be an issue, PIMCO would have concerns over continuing to deal with the three counterparties and would need to consider if the transaction could be progressed without their involvement. The Head of Asset Recovery agreed to revert to PIMCO the next day if possible.

We know what the board minutes reflect and we have had a discussion on them, and maybe a disagreement. The conference call on 11 March 2014 is the important one.

Chairman: Can the Deputy hurry up?

Deputy David Cullinane: This is an important line of questioning. The report goes on to state:

Following a special meeting of the NAMA board of 11 March 2014, a call was convened with PIMCO. During a call later that evening (11 March 2014) PIMCO expressed its disappointment that disclosures of interest had not been made to NAMA. PIMCO stated that it did not want to remain in a process that could be associated with impropriety for either PIMCO or NAMA and that it was willing to withdraw completely from the process. The Head of Asset Recovery, Mr. Hanna, inquired about 'other options'.

He was not forcing anybody out of the game or asking them to leave. When PIMCO asked what he meant by this the head of asset recovery asked if the deal could be "shaped differently for the arrangement fee to come out". He advised PIMCO that NAMA's concern was about the proposed success fee payable to Mr. Frank Cushnahan. PIMCO's willingness to withdraw was again reiterated and in regard to a further conference call, the report states:

Around 5 p.m. on the following day, 12 March, PIMCO advised NAMA that it had no

option but to withdraw from the process. The fee arrangement was a serious issue for it and NAMA. PIMCO was unwilling to proceed in the absence of disclosures of interest it expected would have been made to NAMA, particularly given the quantum of the fee (£15m to £16m). PIMCO further stated it could not see how any ‘change’ would allow the organisation to continue with the transaction.

So it left. NAMA’s head of legal expressed an appreciation of PIMCO’s position and of the fact that alternatives had been considered. She expressed disappointment but accepted the decision.

The synopsis of the Comptroller and Auditor General’s examination of the conference calls and the communications seems to suggest something different from what Mr. Daly said in his earlier testimony from what he has said today.

Mr. Frank Daly: There are two footnotes, which the Deputy has not read out.

Deputy David Cullinane: Mr. Daly can read them

Mr. Frank Daly: Footnote 1 states, “NAMA has stated that the context for this question [about other options] was the conference call on 10 March during which PIMCO said that if its disclosure was an issue for NAMA, PIMCO would need to consider if the transaction could be progressed without the proposed recipients of the success fee. It was PIMCO which started the conversation about whether there was another one. Footnote 2 states:

NAMA has provided the following context which was not set out in the contemporaneous notes. The NAMA Head of Legal thanked PIMCO for bringing the matter to NAMA’s attention and expressed disappointment only to the extent that what had been disclosed by PIMCO had effectively made PIMCO’s withdrawal inevitable.

Deputy David Cullinane: What was discussed were other options and how they could shape the arrangement differently for the fee to come out.

Mr. Frank Daly: This came from PIMCO first.

Deputy Mary Lou McDonald: That does not change the fact.

Deputy David Cullinane: That does not alter the reality of the discussion and the fact that the reading of this does not corroborate what Mr. Daly said earlier. PIMCO withdrew from the process and there was what was described earlier as a “graceful transition” of two of the actors in respect of success fees, who moved lock, stock and barrel over to Cerberus. Again, NAMA took no action. While PIMCO had the sense to get out of Dodge City when they saw there was a problem, Mr. Daly and his organisation continued with the process, even though they were aware of what was happening and aware of the arrangement between PIMCO and the three actors involved in the success fees. The charge from the Comptroller and Auditor General is that NAMA did not carry out due diligence but relied on letters of comfort from Cerberus around whether or not anybody associated with NAMA would benefit and did not drill down into the matter, which is what I am trying to do here. I am trying to be fair to Mr. Daly and to understand his thinking but he did not ask Mr. Cushnahan about when there would be fixers or success fees or how he would be paid.

Mr. Frank Daly: We did ask him.

Chairman: There will be no supplementary questions. Once Mr. Daly has finished, we

will adjourn for 20 minutes and Deputy Connolly will be next. We will come back to these questions. I always say to members that if they have ten minutes and talk for ten minutes, they cannot expect much in the way of answers. There will be plenty of opportunity to come back in. I ask Mr. Daly to be brief.

Mr. Frank Daly: I read Appendix E and the board minutes completely differently. Consistent with what we said to the Committee of Public Accounts on two other occasions, they state that NAMA took the view that PIMCO could not continue in this.

Deputy Mary Lou McDonald: Mr. Daly did not take a decision. There is no record of that decision.

Chairman: I am suspending the meeting for 20 minutes until 4.45 p.m. when we will take Deputies Connolly, Burke and Aylward. Everybody else will have an opportunity to come in a second time but in fairness to those who have not asked questions yet, they will be facilitated next.

Sitting suspended at 4.25 p.m. and resumed at 4.45 p.m.

Chairman: We are back in public session.

Deputy Catherine Connolly: I am not sure if the break has helped my concentration, but I hope that it has helped that of the witnesses. I thank them for attending and giving us an opportunity to question them.

Mr. Daly stated that he had watched this upstairs. I appreciate that he got a room. He stated that, for the most part, this had been fair with some exceptions. What did he mean by that?

Mr. Frank Daly: I am sorry. I did not hear that.

Deputy Catherine Connolly: Mr. Daly said that the process, as he watched it, had been fair - indeed, he praised the Comptroller and Auditor General for his fairness - but with some exceptions. What did he mean by that?

Mr. Frank Daly: It might have been confirmed for me in the past couple of hours. I came here today assuming that we were in a process of four, five or six meetings in an examination of the report, yet I felt at times - the Deputy may disagree - that what was being asked of us was simply to confirm a pre-formed view in respect of some aspects of the report. It is that more than anything else.

Deputy Catherine Connolly: Mr. Daly thought that was evident from this morning while he was watching.

Mr. Frank Daly: I thought that there was a touch of it this morning and there is probably more of a touch of it this evening, but I am not questioning. That is the way the committee operates, but-----

Deputy Catherine Connolly: I did not feel that. I read what the witnesses have put before us today and their previous statements and none of them was shy about going to the press - the *Sunday Business Post* and the *Irish Independent* - and outlining their reactions. Would it not have been better to wait until today to give their reactions?

Mr. Frank Daly: I do not think it would. It probably relates to my first point this morn-

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ing extempore, namely, that this started with an unfortunate leak of the report four or five days before it was published, with, I suspect, some guidance attached to the leak, that implied that irregularities had been identified in the report. We were on the back foot straight away.

Deputy Catherine Connolly: Mr. Daly felt that he was on the back foot and took the opportunity many times, as did Mr. McDonagh, to set the record straight from their point of view.

Mr. Frank Daly: Absolutely. To have waited several weeks to do so at this meeting would have been damaging to NAMA.

Deputy Catherine Connolly: Okay.

Mr. Frank Daly: We are a State body.

Deputy Catherine Connolly: I understand.

Mr. Frank Daly: We are not loved and we are controversial, but confidence in us is important.

Chairman: To interrupt for a moment, I want to be clear. No member of our committee had any sight of any aspect of the report or draft thereof.

Mr. Frank Daly: I am not suggesting that.

Chairman: Mr. Daly was not, but I am saying this just in case. We did not get the report until half an hour after it was in NAMA's office.

Mr. Frank Daly: No, and I specifically mentioned this morning that I also did not believe, and never would, that the Comptroller and Auditor General's office leaked the report.

Mr. Seamus McCarthy: May I make a comment on that?

Chairman: Briefly.

Mr. Seamus McCarthy: Absolutely no way was this leaked from my office.

Chairman: As a matter for the public record, when the Comptroller and Auditor General produced his report, he sent versions of it to NAMA-----

Mr. Seamus McCarthy: Yes.

Chairman: -----and the Department of Finance.

Mr. Seamus McCarthy: My obligation when a report is finished is to submit it to the Department of Finance.

Chairman: And NAMA.

Mr. Seamus McCarthy: Yes.

Chairman: Anybody else?

Mr. Seamus McCarthy: No.

Chairman: And the Comptroller and Auditor General's office.

Mr. Seamus McCarthy: And my office.

Chairman: I thank Mr. McCarthy.

Mr. Frank Daly: For the record, it did not come from NAMA.

Deputy David Cullinane: There is only one man left standing.

Chairman: Ask him next week.

Deputy Catherine Connolly: Did any member of this committee approach NAMA?

Mr. Frank Daly: Regarding the report?

Deputy Catherine Connolly: Yes.

Mr. Frank Daly: No.

Deputy Catherine Connolly: That is that cleared up.

I will ask a number of questions, as my time is limited. I suggest to Mr. Daly that NAMA went to the newspapers to shape the narrative because it did not like the findings. I have an open mind and have read all of the documents, and I now put it to Mr. Daly that NAMA was shaping the narrative in the newspapers concerning the facts - they are not conclusions - as set out by the Comptroller and Auditor General. NAMA did not accept them and decided to shape the narrative. "Yes" or "No"?

Mr. Frank Daly: We decided to answer the big issue. The headline was "NAMA has probably cost the taxpayer £190 million". We do not believe for a minute that we did. We have a very strong case. Interestingly, much of today's debate has moved away from the issue of price and discounts, although I am sure that it will return. If the report had taken no view on whether NAMA had lost or gained, I am unsure as to whether there would have been the same sort of noise around this.

Deputy Catherine Connolly: Just one second.

Mr. Frank Daly: It was legitimate for us to-----

Deputy Catherine Connolly: I am suggesting that it was not. In any event, we are coming back to the report, which refers to much more than just the price. It seems-----

Mr. Frank Daly: I-----

Deputy Catherine Connolly: Please, Mr. Daly. It seems to me that NAMA wanted to shape the debate on the price alone so that we would be fighting over figures and who said what as opposed to the substantial statement of facts in the Comptroller and Auditor General's report. Today was the first time that NAMA addressed a conflict of interest in its reports. I have the documents before me. Prior to this, NAMA simply addressed the issue surrounding the money and the difference in value.

I am asking the witnesses a number of questions about the sales process. NAMA has repeatedly pointed out that there were nine bidders or more and that the process was open to all nine. I will set out my understanding, which is at variance with that. It was a limited, focused, time-based sales process, Lazard was employed with limited instructions and it asked for three

bidders in its initial attempt. Is that correct?

Mr. Brendan McDonagh: Lazard approached three people first.

Deputy Catherine Connolly: That is correct. Of the three bidders, one came forward. Who was that bidder?

Mr. Brendan McDonagh: Lone Star.

Deputy Catherine Connolly: Then Lazard invited three more bidders. Is that not correct?

Mr. Brendan McDonagh: Yes.

Deputy Catherine Connolly: Two came forward that time.

Mr. Brendan McDonagh: Yes.

Deputy Catherine Connolly: Mr. McDonagh has this at his fingertips.

Mr. Brendan McDonagh: Yes.

Deputy Catherine Connolly: Three bidders came forward out of six. There were never nine. There were three to start with and then three more. Subsequently, there was a leak in February and NAMA was forced to tell Lazard to get more bidders. Is that not correct? Out of the ten that came forward, Lazard rejected eight. Is that correct?

Mr. Brendan McDonagh: At the end, there were two bidders.

Deputy Catherine Connolly: Listen to what I am asking, please, Mr. McDonagh. NAMA accepted the three bidders and there were never nine. It was three and then two subsequently came forward. After the leak, ten came forward, of which Lazard rejected eight and accepted two.

Mr. Brendan McDonagh: Yes.

Deputy Catherine Connolly: That was the process. Of those, neither of the witnesses has dealt in these papers or today with the reasons for those bidders not continuing. Some withdrew, some refused to participate. The Comptroller and Auditor General has set out reasons, but the witnesses did not address these. There was a complaint that PIMCO had an advantage, having been in the process for a very long time. The witnesses did not deal with that issue. They did not deal with the fact that others withdrew because the timespan was too limited and access to the data room was limited, considering that PIMCO had access for something like eight to ten weeks prior to the process. Is all of that not correct?

Mr. Brendan McDonagh: That is all set out in the report.

Deputy Catherine Connolly: Is all of it not correct?

Mr. Brendan McDonagh: It is part of the reason, yes.

Deputy Catherine Connolly: Therefore, it is correct. It astounds me that the agency did not deal with any of it and persists in stating there were nine bidders when there were not. The process was limited and it was only after a leak that this was discovered. That is my interpretation of the bidding process.

Mr. Frank Daly: On the bidding process, there are other logical reasons one could use to say why there were only two bidders at the end. It was a large, complex, granular portfolio. It was not a good fit-----

Chairman: Will Mr. Daly explain for the public what the word “granular” means? Does it mean “lots of little bits”?

Mr. Frank Daly: It means “all over the place” or what we used to call “the box of unmentionables” in a jumble sale.

Deputy Catherine Connolly: Mr. Daly has had ample time to set this out, but he has not done so. He has repeated that there were nine bidders. I am just correcting the record based on what I have seen. That is simply all I am doing. He has not objected to this and-----

Mr. Frank Daly: There were nine participants. We have never said there were nine bidders.

Deputy Catherine Connolly: Mr. Daly actually did earlier. If I picked him up incorrectly, I apologise.

Mr. Frank Daly: If I said “bidders” instead of “participants”, it was just a slip of the tongue.

Deputy Catherine Connolly: Was Fortress invited?

Mr. Brendan McDonagh: Yes.

Deputy Catherine Connolly: Is the delegation sure of that? I understand Fortress was invited to enter the process.

Mr. Brendan McDonagh: Fortress contacted me on 13 February 2014 about the bid process. I referred it to a colleague to ask that Lazard be let know that it was expressing an interest. It came into the process. It was Lazard that recommended to us who should come into it.

Deputy Catherine Connolly: Did Fortress have to write to anybody to get into the process? Did it have to write to any politician?

Mr. Brendan McDonagh: It is in the public domain.

Deputy Catherine Connolly: My question is on whether it had to write to anybody to express interest in the project.

Mr. Brendan McDonagh: The senior managing director of Fortress is a guy I met in 2009. He had my email address and telephone number. He emailed me on 13 February 2014 because he had my contact details directly. He inquired about the process and I referred him to Lazard to contact him about it. He came into the process.

Deputy Catherine Connolly: That is the way he got in.

Mr. Brendan McDonagh: Yes.

Mr. Frank Daly: If I am right, there was a suggestion in the media that Fortress had to contact the Taoiseach’s office to get in. There is no truth in that suggestion. The Taoiseach’s office has confirmed this and we certainly had nothing to do with that office.

Deputy Catherine Connolly: The witnesses will have heard the Comptroller and Auditor General say this morning that there could have been a better follow-up-----

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Mr. Frank Daly: Let me follow through on one point because the Deputy has talked about the reasons people gave for exiting the process. It was not just a matter of process, accessing the data room or timing. Starwood, for example, gave three reasons. It referred to a lot of deals in progress and a concern that if it advanced with Project Eagle, it would be spread too thinly. In the absence of access to valuers, it did not have the internal resources required to price the portfolio. It was being selective regarding which major portfolios presenting an opportunity it would follow. Blackstone, for example, stated it was not particularly familiar with the Northern Ireland property market and did not typically invest in properties as small as-----

Deputy Catherine Connolly: Mr. Daly-----

Mr. Frank Daly: Lone Star withdrew from the process owing, I believe, to insufficient capacity, given the number of other-----

Deputy Catherine Connolly: Mr. Daly is selecting, as I am. The point I am making is that there were bidders which were unhappy with the process. Is that not correct?

Mr. Frank Daly: They said they were unhappy with the process. I am not sure.

Deputy Catherine Connolly: Good. That is reported in the statement of the Comptroller and Auditor General.

Mr. Frank Daly: It is, indeed.

Deputy Catherine Connolly: That is all I want to know. Let us move forward to the follow-up. Mr. Daly has listened. When my colleague asked him whether he had learned anything, I was absolutely astounded by his reply. I have sat on this committee only since March. I have been a member of the committee since I was elected, but I do not know of anybody who came here and said he or she had nothing to learn-----

Mr. Frank Daly: I did say I had something to learn.

Deputy Catherine Connolly: What was that? Was it “tweaking”?

Mr. Frank Daly: I said I had something to learn and that we would have something to learn about the process, particularly about documentation and record-keeping. What I said, in relation to whether we would have achieved a better outcome if we had proceeded otherwise, was that I did not believe we would have.

Deputy Catherine Connolly: If I appear to be going fast, it is simply because I am time focused. I would much prefer if I had another hour to go slowly through it.

Mr. Daly said he would have tweaked different things, perhaps in respect of record-keeping. I do not see it written anywhere, based on anything he said publicly, including today, that he has acknowledged the concern of the Comptroller and Auditor General about record-keeping was legitimate and that he has learned and is going to change. That is what I would have expected.

Mr. Frank Daly: I have said it to the Deputy and said it earlier to Deputy Josepha Madigan.

Deputy Catherine Connolly: May I continue, Chairman? I was interrupted at the beginning when Mr. Daly started and my whole train of thought went.

Regarding the follow-up, the Comptroller and Auditor General said Mr. Daly should have written to Mr. Cushnahan whom Mr. Daly knew personally as he sat on a charity board with

him. Is that not correct?

Mr. Frank Daly: Yes, but I had had no contact with him since the day he left NAMA in November 2013.

Deputy Catherine Connolly: Will Mr. Daly just listen to my question? He knew Mr. Cushnahan personally.

Mr. Frank Daly: I did.

Deputy Catherine Connolly: Did it come as a shock to Mr. Daly-----

Mr. Frank Daly: I am sorry, but I knew him professionally as a member of the board of the charity and as a member of the Northern Ireland committee. I would not say I knew him personally.

Deputy Catherine Connolly: Why did the agency not write a letter to him when the shocking news came out that he was going to benefit? He had been a member of the Northern Ireland advisory committee. Why did Mr. Daly not follow up with a letter to him, at the very least?

Mr. Frank Daly: Because we considered whether there would be anything to be achieved by that and whether there was any obligation to do it. We took a legal view on the matter. Subsequently, we contacted the head of NTMA compliance who told us that we were right in the approach we had taken and that there was nothing more it would have advised us to do.

Deputy Catherine Connolly: Looking back, knowing what we know now, does Mr. Daly believe he should have done something differently? I acknowledge that I am asking with the benefit of hindsight and having seen the “Spotlight” programme.

Mr. Frank Daly: In relation to writing to Mr. Cushnahan-----

Deputy Catherine Connolly: I refer to any action Mr. Daly, as chairperson of NAMA, saw fit to take in respect of Mr. Cushnahan when he made the discovery.

Mr. Frank Daly: Would I write to him? Knowing what we now know, certainly. The Deputy should remember that we did write to him afterwards when we received other information on his activities. Knowing what we knew in March 2014 which was nothing other than PIMCO’s statement that he was to participate in a success fee arrangement and knowing that he had been gone from the committee for several months at that stage, we took the view - the Deputy has her view and I have mine, which is quite legitimate-----

Deputy Catherine Connolly: I understand all that and Mr. Daly has confirmed it. I am asking him whether, knowing what he now knows with the benefit of hindsight, he has learned that perhaps he should have done more.

Mr. Frank Daly: Knowing what I know now.

Deputy Catherine Connolly: Yes.

Mr. Frank Daly: That is with the benefit of total hindsight.

Deputy Catherine Connolly: Absolutely, but it is still a legitimate question.

Mr. Frank Daly: If I knew then what I know now about Mr. Cushnahan, or allegedly-----

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Deputy Catherine Connolly: Mr. Daly is consistently-----

Mr. Frank Daly: It is totally hypothetical.

Deputy Catherine Connolly: He is sticking to it. Let me ask about the political background to this matter.

Chairman: I am going to move on.

Deputy Catherine Connolly: I am going to finish on the political background. I am sorry, but it is important and I have waited.

When Mr. Daly gave evidence to the committee on another occasion, he referred to political considerations. On 9 July, he said, “no pressure from any source ... political or otherwise,” influenced NAMA in the decision to sell the loans. That was his position. Today he has stated: “The sales process adopted in the case of Project Eagle was initially influenced by the stated preference of both Governments, which is on the public record, that the sale be conducted in a discreet and confidential manner.” Does Mr. Daly remember his letter to the Department of Finance complaining about the Comptroller and Auditor General’s report?

Mr. Frank Daly: To the Minister. Yes.

Deputy Catherine Connolly: Yes. Mr. Daly points out to the Minister that the sale of Project Eagle was in accordance with the policy of accelerated deleveraging. Is that correct?

Mr. Frank Daly: Yes.

Deputy Catherine Connolly: Was that political?

Mr. Frank Daly: No, it was a general policy. On a strategy day after the issuing of the section 227 report by the Comptroller and Auditor General reviewing NAMA after three years - I cannot remember the actual date - NAMA held a day-long session at which we took the view, given what was happening in the markets and different sectoral areas and geographies, that we should accelerate as a general policy where we could, pay off our debts earlier and pay off the bonds earlier.

The Deputy quoted my statement of July 2015.

Deputy Catherine Connolly: To the Committee of Public Accounts.

Mr. Frank Daly: Will she read it again?

Deputy Catherine Connolly: Mr. Daly said there was “no pressure from any source ... political or otherwise.”

Mr. Frank Daly: To sell.

Deputy Catherine Connolly: Yes.

Mr. Frank Daly: Yes.

Deputy Catherine Connolly: Is Mr. Daly standing by that?

Mr. Frank Daly: What I have said today is that we took account of sensitivities in the process, not the decision to sell.

Deputy Catherine Connolly: I understand the distinction Mr. Daly is making. However, a record of minutes from way back, 14 June 2013, states: “Just a short note on the meeting yesterday afternoon between Sammy Wilson Minister for Finance of Northern Ireland and Minister Noonan”. Point 2 reads:

Min Wilson raised concerns about NAMA’s operations in the North and its commitment to retaining [...] staff based there. He also queried if NAMA would consider full divestment of its NI portfolio as this was something that they had been approached about. [I presume this is a reference to Minister Wilson.] Min Noonan stated that this was matter for NAMA [quite rightly] but that they have shown to be very committed to being as open as possible in their operations in the North ... In relation to specific proposals for the acquisition of NI assets this was a matter for NAMA ... Min Noonan committed to raising the matter with the NAMA Advisory Committee later that evening.

Mr. Frank Daly: No, that is not the Northern Ireland advisory committee. That was a ministerial advisory committee on NAMA which the Minister, Deputy Noonan, set up in 2011. It was chaired by Michael Geoghegan from HSBC and included Denis Rooney and myself. It is a totally different entity.

Deputy Catherine Connolly: It is referred to here as the Northern Ireland advisory committee.

Mr. Frank Daly: It certainly was not. I take it the Deputy is referring to minutes from the Department of Finance.

Deputy Catherine Connolly: The name Declan Reid is at the top; Gary Hynds sent it to Ann Nolan and others.

Mr. Frank Daly: I think that is a mistake.

Deputy Catherine Connolly: Okay.

Mr. Frank Daly: For the record, neither the Minister, Deputy Noonan, nor the previous Minister, Deputy Brian Lenihan, ever met the Northern Ireland advisory committee.

Deputy Peter Burke: I thank the witnesses for appearing before the committee. I will first focus on the change in strategy to group all of the assets. Obviously, it was the biggest loan portfolio sale NAMA had undertaken at that point and it was a huge change in strategy to group all of the assets. I note from the Comptroller and Auditor General’s report that there is no detail of the other options discussed or of a discussion of what other options were available to execute the disposal. Is it acceptable, for an auditor trying to understand the processes NAMA undertook to make this decision, that this is not clearly documented?

Mr. Frank Daly: First, it is not correct that there was no discussion of the other options. There was, throughout the process. It was whether to sell the portfolio, sell asset by asset out to 2020 or break it up into sectoral or other bundles. In the paper that went to the board on 12 December 2013 there was a reference to the fact that the top five connections amount to 66% of NAMA debt and account for 29% of property assets. There was a discussion around that and if that would be a way of doing it. To go back to a point-----

Deputy Peter Burke: The Comptroller and Auditor General is very clear that there is no evaluation of other options in the board minutes.

Mr. Frank Daly: I think there is an evaluation in the board paper-----

Deputy Peter Burke: Either there is or there is not. It is black and white. We are getting mixed reports about tenders and who did or did not do something. It is very clear that there either is or is not an evaluation of other options in terms of this strategy.

Mr. Frank Daly: All I can say is that, in my view, there is an evaluation in the board paper and there certainly was a discussion about it at the board. I accept the fact that it is not noted specifically in the minutes of the board meeting but that is a general area where, perhaps, there is a learning curve for us.

Deputy Peter Burke: Does Mr. Daly accept that this puts the Comptroller and Auditor General in a difficult position? I am not speaking for him but if the discussions NAMA had are not outlined clearly in the minutes it is difficult to formulate a detailed response to that. The processes are not in place, and this is consistent throughout all of this. The record keeping for major decisions appears to be very poor.

Mr. Frank Daly: I can understand that from the Comptroller and Auditor General's point of view. However, this report has been six or seven months in gestation and there was a huge amount of toing and froing, quite correctly, between ourselves and the Comptroller and Auditor General on it. To return to another point, and my colleagues might wish to speak on this, that is what would have been one of the great advantages of the Comptroller and Auditor General meeting the individual board members of NAMA, to get a better understanding or better flavour of the totality of the debate that took place around Project Eagle, from the decision and the strategic change of direction which the Deputy mentioned, to the pricing, the PIMCO exit, the conflicts of interests and the ultimate decision to accept the Cerberus bid. The chairman of the audit committee might wish to comment on that.

Mr. Brian McEnery: The previous Deputy referred to the ministerial advisory group that was established with Mr. Geoghegan. He carried out a review of NAMA long before we took the Northern Ireland portfolio to market. In fact, in part of the process around interacting with the ministerial advisory group Mr. Geoghegan's initial suggestion was that perhaps we should get rid of the entire UK portfolio in one block. We decided as a board at the time that it was not the appropriate thing to do. It was too early and the portfolio would have been too big. At board level, from considerably earlier and long before we brought this sale to market, we had considered bulk sales and individual sales. Quite frankly, as Frank Daly indicated, the reason we got involved in this is that we received an opportunistic approach. There is no dispute about the amount of £1.67 billion which was the projected cash flow out to 2020. Ultimately, we took the decision - and I made my decision as a board member - on the basis that a discount which a purchaser, and remember a purchaser is the flip side of a seller because one cannot have a sale without a purchaser-----

Deputy Peter Burke: In fairness, I am not discussing the discount rate at present. My question is specific. The witness says there was discussion about whether these should be sold individually or in bulk. Is that documented at board level in the minutes?

Mr. Brian McEnery: We were coming towards the end of the year end audit in 2013-----

Deputy Peter Burke: Is there a "Yes" or "No" answer to that?

Mr. Brian McEnery: Yes, there is. We were continuing on the basis that we were going to do individual asset sales, because that is how we analysed it. It has been said here that there

was no analysis of the valuation of the assets at the end of 2013. There were underlying property assets for about 50% of the portfolio, but every asset had a cash flow analysis carried out. Ultimately, an asset is worth how much money it will earn into the future. The cashflow is the ultimate valuation we should have been working from, that is, what we saw as the cash. We saw that amount as £1.674 billion, undiscounted. When we brought in a market related discount, and this is the fundamental issue around whether there is a loss to the taxpayer, we decided a market discount was at least 10%.

Deputy Peter Burke: To be fair, I am familiar with cash flows. I am an accountant by trade. I wish to clarify the board minutes. The Comptroller and Auditor General's report is very clear that no evaluation of other options was discussed, in terms of the strategy. The witness is saying that, detailed in board minutes, options were discussed. Is that correct?

Mr. Brian McEnery: In respect of the Northern Ireland portfolio-----

Deputy Peter Burke: Is it "Yes" or "No"?

Mr. Brian McEnery: -----we continuously assessed whether we should do this-----

Deputy Peter Burke: So it is in the board minutes.

Mr. Brian McEnery: No, we continuously assessed. At every meeting we had in respect of those assets we assessed whether we should deal with them individually as asset sales or collectively as a loan sale. We absolutely did. It was the fundamental decision we had to make as board members.

Deputy Peter Burke: I cannot get evidence from talking to the witness that it was documented, so I will move on. I refer to evidence to support NAMA's assertion that a fractious relationship was building with its Northern Ireland debtors. What is meant by that and what evidence is there to suggest it? These were non-performing loans in the majority of cases. What is meant by the difficult or political relationship that was evolving, or should I say fractious relationship?

Mr. Brendan McDonagh: The political relationship does not come into it as far as I am concerned, because I look at it from a business perspective. The issue was that we had bought a portfolio for approximately €2.5 billion, but only €100 million worth of assets were sold between 2010 and 2013. This was too slow in terms of NAMA's lifecycle. We were putting a lot of pressure on the debtors to put assets on the market and do other things such as secure rental income to us. This is part of the process we do with all of our debtors whether in the North, the South, the UK or wherever else. These debtors were dragging their heels. They were coming up with all sorts of reasons that they did not want to sell the assets. We were getting very frustrated by this. We have a formal review of every debtor twice a year and the big debtors come to a decision-making authority. The biggest debtor goes to the board, the next biggest debtors go to the credit committee and the next layer of debtors go to me and somebody else. Nobody in NAMA can control anything as an individual. There must always be more than one person in terms of reviewing a debtor's case. The reality was that towards the end of 2013, we were at frustration point with some of the bigger debtors in the portfolio. We had this opportunity to sell the portfolio as a whole, but if we did not sell the portfolio we would have been going down the enforcement route. Obviously, I cannot discuss individual debtors here, but the Comptroller and Auditor General can look at it. On the files of some of the biggest debtors, it is clearly documented that effectively the debtors were not co-operating. They were missing their

milestones and sales targets. We were then in a process, which we were obliged to do legally, of having fair procedures with debtors where we have to write to them and state they missed their milestones and give them an opportunity to fix that, and if they do not fix that we propose alternative action. Alternative action usually leads to enforcement unless the debtor accedes to it. That is the reality.

Deputy Peter Burke: I will move on to Lazard and its engagement with NAMA. This obviously is a very narrow focus in my view, just from reading the report, but in terms of NAMA's engagement with it in terms of the initial briefing it gave, there does not seem to be written evidence of it. Why is this?

Mr. Brendan McDonagh: What happened here, and this is not unusual for NAMA or for anybody else, was that the board decided to invite Lazard to be our loan sales adviser. The team was mandated to go off to contact Lazard. It had a discussion with NAMA. It had a pitch book in terms of the broad outline of what we wanted to do. It met the team and had a discussion, and then came back taking account of our views and their own views on the appropriate process to target the largest loan sale buyers that were available. As I said, it was like division one, division two and division three. As I said to Deputy Kelly earlier, we were not asked for the pitch book for here, but it was available to the Comptroller and Auditor General. That is a standard process to engage in. We meet them, discuss the parameters we want to work with and it goes off and formulates a proposal, and it formulated that proposal to NAMA.

Deputy Peter Burke: Just to be clear because I am getting confused on this, does NAMA have a written brief that it gave Lazard? It is a "Yes" or "No" answer.

Mr. Brendan McDonagh: The brief was the decision of the board in January 2014 to approach Lazard to appoint it as loan sales adviser within the parameters set by the board.

Deputy Peter Burke: But there is no explicit brief between both.

Mr. Brendan McDonagh: It is outlined in this Lazard document because it clearly says that further to discussions with NAMA this is its understanding of what NAMA's decision is and this is the process it recommends in terms of----

Deputy Peter Burke: Again, what we are hearing back and forth is that a lot of discussions were allegedly taking place, but it is very hard for us looking in to assess them when there seems to be a huge lack of documentation to back up these discussions. It concerns me that the record-keeping throughout the whole process seems to be very poor. I do not think that is acceptable for such a high-level transaction. I am sure Mr. McDonagh could not disagree with that.

Mr. Brendan McDonagh: The Chairman talked about board minutes, but in terms of Lazard there is a document which sets out the board's process, what it requires and how it intends to go about implementing that process.

Deputy Peter Burke: In terms of Project Arrow, the report contains a comparison in terms of the information that was available to it. I think there were 2,800 documents for 850 properties for Project Eagle in comparison to 22,000 documents for 1,900 properties for Project Arrow. The whole information process seems to be very exclusive from that.

Mr. Brendan McDonagh: It is not as different or diverse----

Deputy Peter Burke: Was there a reason for that?

Mr. Brendan McDonagh: There is, because Project Eagle has 56 debtors, so if we divide 56 into 2,800 we get about 50 documents per debtor on average. If we look at Project Arrow, there are approximately 22,000 documents and 300 debtors so there are approximately 70 documents per debtor. There is an important point I need to make. There was a change in the loan sale market in late 2014 and 2015. Bidders said they were spending a load of money on bidding on portfolios, not just with NAMA but with everybody else, and there is only one winner. They said that to reduce bid costs sellers of portfolios had to put more data into the data room. It was not NAMA that decided this; this is the way the loan sales market developed. As part of this, additional documents had to be put into the data room about, as I said in answer to the previous question, engagement with the debtors, what type the debtors were, had the debtors met their milestones or were they missing milestones. These were the extra documents which went in, and this had changed between the time Project Eagle was on the market and Project Arrow was on the market. Another fundamental difference which happened was that to get buyers for a portfolio, the seller had to commission loan sale valuations and put them into the data room. Sellers did not have to do this at the time of the Project Eagle process. This happened about a year later, when the loans sales market changed. Bidders were spending so much money on bids and they asked why should they bid any more and they needed to reduce their due diligence costs.

Deputy Peter Burke: I want to focus on the discount rate. In terms of property sales in NAMA, prior to Project Eagle how often was a 10% rate used? We have set out the policy in terms of the 5.5% rate, but Mr. McDonagh said there was flexibility. How often was this flexibility exercised?

Mr. Brendan McDonagh: At the same time as Project Eagle was on the market, we were preparing Project Tower to go on the market. As part of this, UBS in its review of Project Tower stated we should expect to discount the cashflows at a rate of approximately 10%. This portfolio was much better than the portfolio in Project Eagle. The next big portfolio to be compared was Project Arrow. Again, it was a granular portfolio, much the same as Project Eagle, and it went on the market about a year and a half later. Even though interest rates had come down and people were seeking yields, we were advised by Cushman & Wakefield, a completely different broker, that effectively we should expect to discount the cash flows at about 15%. Subsequent to this, earlier this year we put Projects Eagle and Gem - sorry, Emerald and Ruby - on the market. Cushman & Wakefield were the loan sales advisers on this, and they said that the discount rate should be around 12% because this was the targeted return of bidders. There is nothing inconsistent here in that.

Chairman: Mr. McEnery will come in now.

Deputy Peter Burke: If he could when he is answering, will Mr. McEnery give a flavour of the type of properties that had a 5.5% discount rate so we can get a comparison?

Mr. Brian McEnery: If I can. This is the reason I wanted to meet the Comptroller and Auditor General. I am transactions partner in our practice. I can see today that assets which have the HSE as a tenant in a 30 year lease are going at a discount of 7%. They have a 30 year covenant, and there is a harp on that lease. Effectively, they are State leases, and they are going at a 7% yield, and some even slightly higher. I fundamentally believe that an asset which has the HSE as a tenant going at approximately 7% is a fundamentally much better asset than the Northern Ireland portfolio, which was over 80% between Northern Ireland and the north

of England. I do not believe that a 5.5% discount was appropriate in valuing and discounting those cashflows. That is why I wanted to meet the Comptroller and Auditor General. I know of a number of instances where transactions do not go near a 5.5% discount.

To answer the Deputy's question, probably the best yield we got related to what was probably the best asset in the portfolio, which was about 3.6%. That was for the best asset, which was the Dundrum shopping centre. The truth of it is that if one takes what is now trading in the market, in 2016, which is a better market, with the HSE as a tenant, they can be transacted on the market at about a 7% discount on the cash flows. This report is saying that we should be using a 5.5% discount. I fundamentally think that anybody who is in the marketplace around discounting future cashflows to this lack of quality of a portfolio would say that is absolutely the wrong discount factor.

Chairman: That is noted, but will Mr. McEnery tell us where in the minutes of the board meetings for all the discussions on Project Eagle is what Mr. McEnery is telling us, two years later, recorded as discussed and agreed?

Mr. Brian McEnery: It is actually-----

Chairman: At the time; not two years later.

Mr. Brian McEnery: No, but I think that is very fair.

Chairman: Show me where the evidence is that NAMA had that opinion then and were happy with it. This is a big issue. Is this 10% being brought in in 2016 or was it part of the thinking - part of the board pack and part of its decision - to use that 10% in advance?

Mr. Brian McEnery: It is in Appendix C. It is page 146. One cannot have a seller if one does not have a purchaser. Is that not the truth? We are saying-----

Chairman: We are going to lose everyone on this page now. That is all I am going to say.

Mr. Brian McEnery: We are saying that we need at least 10% to reflect the associated risks and costs of purchasing the loans. That is what I made my decision on in relation to Project Eagle. It was at least 10%. In actual fact-----

Deputy Mary Lou McDonald: I am sorry, a Chathaoirligh, but where is the passage to which Mr. McEnery refers?

Chairman: What page?

Mr. Frank Daly: It is page 146. It is on the screen at the moment.

Chairman: Yes, but that is about the purchaser's discount.

Mr. Brian McEnery: But-----

Chairman: No. The big issue here, which we will come back to later-----

Mr. Brian McEnery: Sure.

Chairman: Every time NAMA talks about the 10%, every document it has produced so far, including Schedule D, is about the purchaser's discount. We are talking about a purchaser's discount here again. NAMA was not the purchaser.

Mr. Brian McEnery: I agree.

Chairman: If we were using someone else's - the other side of the equation-----

Mr. Brian McEnery: Ultimately-----

Chairman: Where is the document telling us about the seller's discount in NAMA's minutes?

Mr. Brian McEnery: Ultimately, if one is to have-----

Chairman: Where is that document?

Mr. Brian McEnery: One has to have a purchaser. If one is going to sell, one has to have a purchaser. One will not sell if one does not get it somewhere into the market range of where a purchaser will buy. The clear alternative was that we would work out those assets to 2020. If we cannot make a sale because a purchaser will require at least a 10% discount, then we were not going to make a sale and Project Eagle could not have happened as a bulk loan sale. That is the fact of it. In saying that a purchaser was going to apply a discount of at least 10% means that we could not have sold it if we did not price in at least that 10% discount. It is the flipside. It is the two sides of the one coin.

Chairman: We understand, and this is an issue we will consider again. We will move on to other Deputies. However, that sentence refers to the discounted value of the underlying security, meaning the valuation of the asset, but NAMA had not conducted a full valuation of all the assets. It had a valuation on some of them. This was on the basis of a valuation of the underlying assets. What I am saying is this. Appendix D is about advice received in January 2016 about purchaser discounts. Has NAMA a document in its possession dealing with the seller's discount? NAMA has produced two documents about the purchaser's discount, but it was not the purchaser. Can Mr. McEnery give us a document from that period dealing with the seller's discount? Does such a document-----

Deputy David Cullinane: And years 2013 and 2014.

Chairman: Yes. If Mr. McEnery can produce that document, that would be very significant.

Mr. Brian McEnery: In reality-----

Chairman: A document on the seller's discount.

Mr. Brian McEnery: When we say the purchaser will only purchase if X, that means we can only sell if X. They are the two sides of the one coin. Someone will not purchase if we do not sell at that discount.

Chairman: So the purchaser was setting the agenda.

Mr. Brian McEnery: No.

Chairman: Is that what Mr. McEnery is telling us?

Mr. Brian McEnery: No, I am not.

Mr. Frank Daly: Chairman, if we could go back to the-----

Chairman: No; this has been a big bogey issue. We will come back to it and we might

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have to get third party expertise, but Mr. McEnery is now saying that this was driven by the purchaser. That is actually what he is now telling us. It is all about the purchaser's discount and NAMA had to follow him.

Mr. Frank Daly: No. Sorry, Chairman-----

Chairman: Correct me if I am wrong.

Mr. Frank Daly: If we go back to the paper of June 2013-----

Chairman: At the 5.5% in exceptional circumstances-----

Mr. Frank Daly: It is the exceptional circumstances clause or section of that paper that is important. It is very clearly recognised that the 5.5% is effectively for accounting purposes and that in sales transactions one would always consider other issues including risk, quality-----

Chairman: Correct.

Mr. Frank Daly: -----and qualitative measures.

Chairman: All we are asking the delegates - NAMA coming from the seller's perspective - is where it noted that flexibility in its minutes in considering this.

Deputy Mary Lou McDonald: A Chathaoirligh, just to-----

Chairman: We will park it for now but I think the delegates understand there is an issue in relation to this.

Deputy Mary Lou McDonald: When the NAMA delegates come back, they might also reflect on the fact that it did exercise the flexibility. It ran at 5.5% and then also at 2.5%. Did it not?

Mr. Frank Daly: That is only in the papers-----

Deputy Mary Lou McDonald: Mr. McEnery has also cited other deals and portfolios. The key distinction is that in the recommendation of those discounts, the loan sales adviser gave that advice. Does Mr. McEnery have a piece of paper where Lazard or anyone else gave NAMA that advice, and not in a generic sense but in respect of Project Eagle? It seems from the documentation that NAMA does not have that. To simply ask us to take the delegates' word on it is a very long stretch when coming before an Oireachtas committee.

Mr. Frank Daly: Deputy-----

Chairman: I am moving on to Deputy Aylward now.

Mr. Frank Daly: We set the price, but, Chairman, we are here giving evidence and the Deputy says it is stretching things to say she believes us. I have been coming to committees such as this one for decades - longer than I care to remember-----

Chairman: Probably before any of us got in here.

Mr. Frank Daly: I have never come to a committee of this House and given evidence - I know the committee does not take evidence under oath - but I approach evidence to this committee, and I know all my colleagues do too, as if it were given under oath. I think we are entitled to the presumption that we are telling the truth here.

Chairman: Correct. Is Deputy McDonald happy with that? Does she accept what they are saying is that there is a presumption of truth? “Yes” or “No”, please.

Deputy Mary Lou McDonald: I accept that the delegates are giving their view but I am stating categorically that they have nothing documented to substantiate that that was objectively arrived at, discussed and offered in the course of the process.

Chairman: Okay. We are moving onto Deputy Aylward now.

Deputy Mary Lou McDonald: The documentation reflects that.

Mr. Frank Daly: You are accepting that there is a-----

Chairman: There is an issue here. I think Mr. Daly can see that there is quite an issue bubbling under the surface and he is getting a feel for it. We will not finish that issue today. I call Deputy Aylward now, to move on.

Deputy Bobby Aylward: My first question is to the Chairman. Is there a possibility we will get PIMCO representatives in here to ask them questions directly?

Chairman: We as a committee will discuss that in private session in due course either this evening or-----

Deputy Bobby Aylward: I hope we will make a request to them.

Chairman: The committee will decide that. We will consider it.

Deputy Bobby Aylward: I would like to see it happening anyway.

Chairman: Okay.

Deputy Bobby Aylward: To go back to the sequence of events again, PIMCO was the original bidder. It wanted a closed sale. NAMA rejected that. It was still in the running until NAMA found out about the success fees. Then, according to the delegates’ own evidence today, NAMA excluded it. Whether it was excluded or it withdrew or it was requested of them is still open to interpretation.

Mr. Frank Daly: I wish to make a point on that, because it goes back to the discussion we had with Deputy Cullinane earlier. We are talking about Appendix E and we are talking about board minutes. However, there is a way to exit people and it is a tactical approach. We would have had considerations at the time about ensuring that we were not in any way exposed to an action by PIMCO for exiting it from a process at a very late stage, where it had probably spent millions on due diligence. There is a process. I do not think that, at the end of the day, there is a huge difference, but we had a tactical approach. We wanted it out but we wanted to ensure we were not leaving ourselves exposed.

My apologies to the Deputy for interrupting him.

Deputy Bobby Aylward: That is okay. That is an explanation.

When PIMCO was excluded, were Cerberus and the others on the scene at the time? Were they bidding at that stage? Were the other eight or nine that were not bidding involved? PIMCO was excluded.

Mr. Brendan McDonagh: There were three remaining bidders on the portfolio at that stage, PIMCO, Cerberus and Fortis.

Deputy Bobby Aylward: That clarifies that. In the final analysis, Cerberus was the winner but why was the other name withdrawn, excluded or not in the open?

Mr. Brendan McDonagh: It was Fortis.

Deputy Bobby Aylward: It was Fortis. Sorry, I did not know that. That explains it.

NAMA made a big play about the Comptroller and Auditor General's refusal to meet NAMA board members. The witnesses argue it was wrong and it would have made a difference if there had been a meeting. Will they elaborate on that? What difference would it have made to the Comptroller and Auditor General? He gave reasons today for not meeting the board but the comments of the witnesses seem to contradict that. Why would it have made a difference to the Comptroller and Auditor General's final report?

Mr. Frank Daly: I will let my colleagues come in on this but it would have given the board and its members an opportunity to engage with the Comptroller and Auditor General and go into more detail than was, I admit, available in the papers to the Comptroller and Auditor General. There were volumes of documentation going back and forth between us and the Comptroller and Auditor General during this process. There were four drafts, I think, before the final report. It seemed to us all along that a meeting where we could sit down, listen to the Comptroller and Auditor General and where he could listen to us would certainly have advanced that process. In terms of good process, it might have been an appropriate thing to do. I still believe that. My colleague may want to add to this as he has experience of it elsewhere.

Mr. Brian McEnery: I do. I specifically indicated at board level on a few occasions that I would like to get the opportunity to meet the Comptroller and Auditor General for a few reasons. First, that is what I do. I deal occasionally with loan purchasers. I deal with transactions in my day-to-day life. The Comptroller and Auditor General mentioned verbal evidence not being strong. I am an accountant and auditing processes indicate that a valuable source of evidence is verbal evidence. I would like to have gotten the opportunity to meet with the Comptroller and Auditor General to tell him what I could see on a day-to-day basis right through 2014, 2015 and even into 2016 as the discount factors applying in the market. Frankly, I have much transaction experience leading me to the fundamental belief that the discount factor is wrong. Fundamentally, if a discount factor is wrong, to my mind, the conclusion of the probable loss of £190 million is wrong. That is why I would have liked to have gotten that opportunity. It is what I do in my day-to-day work. I interact with parties in respect of transactions.

Deputy Bobby Aylward: With regard to the bulk sale, as against individual or small-scale sales in Northern Ireland, there was mention that because Northern Ireland is a small economy, the agency did not want an adverse effect on it. Why was the relationship with Northern Ireland debtors deteriorating? There was mention of political consequences as well as impairment. Was that an influence on the decision to go for a big loan sale? In hindsight, would it have been better from a financial perspective to have sold it in smaller blocks, as the witnesses mentioned, over five years to 2020? Would the agency have realised more money in that case? I know it is a hypothetical position. Was that considered or did it factor in the criteria?

Mr. Brendan McDonagh: As I mentioned to Deputy Burke, the important issue is that debtors were not co-operating and had only sold €100 million of assets in over three-----

Deputy Bobby Aylward: In what sense were they not co-operating?

Mr. Brendan McDonagh: Effectively, it meant they would not put assets on the market. We wanted them to find sales agents to put the assets on the market but they were stalling and coming up with all sorts of reasons not to do it. They were clearly trying to get themselves out of NAMA through various mechanisms and we were telling them they could not and that we wanted them to put the assets on the market. In my view, the only way we could have executed the sales of these assets in Northern Ireland was if we went in for wide enforcement against the Northern Ireland debtors.

Contrary to many reports and misinformation out there, we had already enforced against 22 of the 56 debtors in Northern Ireland.

Chairman: Somebody's phone is still going off in the room and it is upsetting the proper recording of proceedings. Phones should be placed in airplane mode and not just on silent mode.

Mr. Brendan McDonagh: We had enforced against 22 of the 56 debtors in the portfolio, or 39% of them. The enforcement rate in the rest of our portfolio was 38%. We had enforced against Northern Ireland debtors the same as everyone else. We enforce against a debtor and not the assets, as generally it is the debtor rather than the asset that is not co-operating. We had to engage in large-scale enforcement against debtors and the top five debtors accounted for two thirds of the portfolio. We anticipated we would get legal challenges and this would slow the process of disposal. Although we believed we would ultimately win, we could have been years in the courts before the receivers would have been in a position to sell those assets. That is what was happening when the opportunity came along to sell the portfolio in bulk. We had not anticipated that anybody would have been interested, to be honest, and when the opportunity arrived, we were duty bound to evaluate it. We said it was a good opportunity to sell a portfolio at what we thought was a good price.

Mr. Frank Daly: There were many considerations in there and I mentioned in my opening statement that different board members may have had different factors influencing them as we went through the decision process. For me, it was a really basic question - back to square one - of whether £1.3 billion in our hands better for us than the possibility of £1.4 billion or something like that in ten or five years.

Deputy Bobby Aylward: Were there evaluation criteria for five years ahead?

Mr. Frank Daly: Yes. One takes into account three factors. There is the time value of money; £1.3 billion now is better than £1.3 billion in four, five or six years. There is NAMA's cost of capital, which over the period to 2020 will probably be 4% or 5%. There is also the risk of whether cashflows will keep coming and will market price for the asset be achieved when we go to sell it. I was influenced by many factors. I was chairman of the Northern Ireland advisory committee for five years and I spent much time in Northern Ireland talking to business people and economists. I did not form a very positive view of the way the Northern Ireland economy was going and I believe that view has been borne out. In 2014, the Northern Ireland economy grew by 2.3% but in 2015 it fell by 1.8%. I mentioned Brexit earlier but was kind of shot down because it might be seen as hindsight but there was much other hindsight mentioned today in terms of this report, conflicts of interest and so on. If I were in the position now of still having that portfolio on our hands, trying to sell it now, next year or the year after, I would be very uncomfortable as chairman of NAMA.

Deputy Bobby Aylward: One of the last statements today from the Comptroller and Auditor General came when he was asked by the Chairman about the method used and his opinion on the procedure followed by NAMA in the sale. He stated something along the lines of he did not think it was the best practice and a better method or system could have been used. What is the delegation's take on that? Have they anything to add or why do they believe the Comptroller and Auditor General would say that?

Mr. Frank Daly: I do not have an awful lot to add. At the end of the day, it is a view on the process that we engaged in and that got us our minimum price. It was a very good result. We might have got more or less if we adopted a different process. If I sold my house and went to the pub the following day, telling a few people having a pint that I got €100,000 for it, I am sure two or three of them would have the view that if I had brought it to a different auctioneer, waited a year or painted it a different colour, I might have got a different price.

Deputy Bobby Aylward: I do not think, as I said, what Mr. Daly is saying back to me is relevant. Mr. Daly has said several times that NAMA followed the best possible practice in the sale, that there is nothing to be gained or learned out of this and that the Comptroller and Auditor General's opinion is just his opinion. NAMA just dismisses it and says it has nothing to learn.

Mr. Frank Daly: We are not saying that. Leave aside the £190 million. The Comptroller also says - I cannot remember the exact phraseology - that he has not been persuaded that a different approach might not have got a different yield. He does not say whether it would have been greater or less. That is a view, but we have a view, given where we were in March 2014 and what we knew about the portfolio, the Northern Ireland economy, the risk involved and the cost of capital. We did an, admittedly, bespoke process which still had competitive tension right to the end. It is inferred from time to time that there were others out there who might have come in. Who? Nobody has ever identified or even suggested to me who the others might have been that would have come in. There is a kind of contradiction here. On the one hand, there is an inference that we underpriced the portfolio. On the other side of it, all these people walked away. There were seven or eight of them. Do people think that seven or eight of the cutest funds in the world would walk away from a portfolio that we might have underpriced? That does not make sense.

Deputy Bobby Aylward: I have to ask the following although Mr. Daly will probably not answer. I have already asked the Comptroller and Auditor General. Does Mr. Daly believe there was any personal gain or inside dealing in the process in Northern Ireland from the word go? Perhaps Mr. Daly cannot comment on it, but I ask if there is any comment on it.

Mr. Frank Daly: The Deputy has not asked it this way but I believe absolutely in relation to any member of staff at NAMA or any board member or anything like that there was no personal gain. However, I am not making any comment on what may have occurred on the buy side in relation to Northern Ireland because-----

Deputy Bobby Aylward: NAMA has no evidence.

Mr. Frank Daly: Absolutely.

Deputy Bobby Aylward: Leading on from that, why is there an inquiry in the UK, as well as another inquiry outside of our jurisdiction, and why will there probably be one in our jurisdiction? Why are those three inquiries going ahead if there is nothing there to answer for?

Governments do not have inquiries on a whim and we are going to set one up ourselves.

Mr. Frank Daly: In relation to the Northern Ireland inquiry and the one which might be going on in the USA, neither is into NAMA. It has been confirmed to us that they are not investigating or inquiring into NAMA.

Deputy Bobby Aylward: It is not NAMA, but it is-----

Mr. Frank Daly: Let me finish. As far as we are aware - and we are co-operating with the National Crime Agency - that investigation is into events that occurred on the buy side. Let us leave the NCA to come up with a result, as I am sure and hope it will. On whatever inquiry might happen here, I have not heard anything to indicate that it is an inquiry into NAMA in terms of wrongdoing or irregularities. Anything that has been said indicates that it is to go back to the basic point: price. As far as I can understand, it is an inquiry into whether NAMA got the best value for the taxpayer out of this.

Deputy Bobby Aylward: I was not trying to infer that NAMA was being investigated. However, part of Project Eagle is being investigated, which is all interconnected.

Mr. Frank Daly: Once Project Eagle left NAMA, activities beyond that being investigated are not investigations into NAMA. I do not know what way the inquiry here will go, but as I understand it right now, the main issue is price and whether there was a loss of £190 million, as the Comptroller and Auditor General says, or no loss, as we say.

Deputy Bobby Aylward: NAMA will co-operate with any inquiry and make any information available to help an inquiry if it is set up.

Mr. Frank Daly: We are co-operating fully with the National Crime Agency. It has been said recently publicly that we do not co-operate with the Garda Bureau of Fraud Investigation. It is not investigating Project Eagle, but it has been said generally that we do not, which is rubbish. We absolutely co-operate with them. In relation to whatever inquiry occurs down here, we will absolutely co-operate.

Deputy Shane Cassells: I thank Mr. Daly, Mr. McDonagh and all of the staff. I have found the day's proceedings to be great stuff. It has been like a political version of "EastEnders" in here today. It has been great and very engrossing. The witnesses have come here today and made a very stern defence of their process and the net result which they say was a good deal for the Irish taxpayer. The witnesses have really come out swinging. However, we spent the morning in a three and a half hour session here with the gentleman sitting to the witnesses' right who made a very stern case that NAMA did not. I made a note of his comments. He says it was not a well-designed sale process, "This sales process does not give me confidence that the best price was achieved and that there was not another process available." Despite the fact that NAMA has questions about the expertise of his staff or the fact that they did not engage outside expertise, he has robustly defended his position and the findings he produced for the members of the committee to make their summation.

While NAMA has come out today with a fighting spirit, why, if it was such a good deal and everything is in order, do we have, as Deputy Aylward has said, the Taoiseach not accepting it and the Government going down on the issue of price in terms of an inquiry? Why has there not been an acceptance among the public and media commentators of the message on the discount of which NAMA speaks?

Mr. Frank Daly: It goes back to Deputy Connolly asking us earlier why we were defending ourselves and explaining ourselves and getting out of the traps. All we can do is put our point of view. There is no doubt that the Comptroller and Auditor General's view is highly respected and rarely challenged. In the generality of our dealings with the Comptroller and Auditor General, we have absolutely no issues with oversight, conclusions or anything else. I cannot say that often enough. In relation to this, however, it is back again to this net point of £190 million. It is back to the net point of the discount rate in relation to that figure and the net point of the process. Could a different process have yielded a better or different result? That latter one is almost impossible to prove. How does one do that? How can something be looked at three or four years after the event and for it to be decided that had it been done a different way, only £100 million would have been lost, or maybe a gain might have been made or nothing at all lost? I do not know how that will be resolved, but I know that the common thread and need through this pricing and sales process was an informed, independent view by experts in the loan sales process and in the market and that is our disagreement with the Comptroller and Auditor General. If there is to be an inquiry, that should certainly be its focus. I am not saying there are not other issues which are raised by the Comptroller and Auditor General, but at the end of the day, if there had not been a headline of NAMA's probable loss of £190 million, would we be here? I do not know.

Deputy Shane Cassells: Of course, that goes to the heart of the matter. Mr. Daly said the Comptroller and Auditor General's reports were highly respected. Indeed, I was just reading comments from the Minister for Public Expenditure and Reform, Deputy Paschal Donohoe, who said the Government respected this report of the Comptroller and Auditor General. He said this was one of the reasons the Government believed a further investigation was necessary. The Government respects the report and launches an inquiry. In the political world in that context, it is a bombshell. Mr. Daly has come out with a very stern defence today that he believes fully that he achieved the best possible deal for the Irish taxpayer. A very senior Minister with a senior portfolio says he respects the Comptroller and Auditor General's report but the Cabinet is launching an inquiry. Does that make Mr. Daly's position untenable?

Mr. Frank Daly: The same Minister, if I am right, also said he respected NAMA.

Deputy Shane Cassells: Ministers talking out of both sides of their mouth is not-----

Mr. Frank Daly: The comment about NAMA is presumably just as valid as the comment about the Comptroller and Auditor General. If there is an inquiry NAMA will co-operate fully with it but we have set out our stall. I presume that this committee at the end of its deliberations will come to a view as to what extent we have made a convincing argument, have fallen down or whether further inquiry is necessary. We will co-operate. I am not saying we will be rolling over with pleasure at the idea of an inquiry that will go on presumably for months. I have a view of inquiries that the only people who really gain are the legal and financial representatives who will inevitably be involved. That is probably because I have spent most of my life collecting money for the State rather than spending it. Whatever arises we will co-operate.

Deputy Shane Cassells: Mr. McDonagh spoke about the slow pace between 2010 and 2013 and said that influenced the decision. He talked about frustration. Did frustration get the better of him? Was that an instigative factor?

Mr. Brendan McDonagh: No. We have targets to reach bond redemptions. We want to get rid of the contingent liability. The Minister did a review of NAMA, a section 227 report in 2014.

Chairman: What is 227?

Mr. Brendan McDonagh: It is the Minister's review of NAMA.

Chairman: Is that separate from the 226 review?

Mr. Brendan McDonagh: Yes absolutely. That is required under the Act.

Chairman: When Mr. Daly refers to a section could he please explain what it is.

Mr. Frank Daly: The Minister is required to review NAMA after three years and every five years after that to see if NAMA is doing its work properly and if its existence is required. As part of that the Minister endorsed the board's view that effectively we should take advantage of the market. We should sell assets and pay down the NAMA-Government guaranteed bonds as quickly as possible because they are a strain on Government finances.

The only way we can pay off the NAMA bonds is by selling assets. Collecting income is fine and we held assets for several years in the early stage, particularly in Ireland because we felt they were too cheap but we probably sold more into the market. When we deal with debtors we set milestones for them, saying we want the rents mandated and handed over to us unless they are paying off their debts in full. We also want them to sell a certain number of assets each year.

There was constant discussion with the Northern Ireland debtors who effectively said they were not putting the assets on the market. They were slow to put them on the market and would come up with all sorts of reasons for that. It is certainly frustrating for us because we want to deal consensually with them and our experience is that we work consensually with 70% of the debtors, 30% result in enforcement. If the debtor will not co-operate we have to engage in enforcement if we want to get control of the asset to sell it. We were heading in that direction with many of the remaining debtors in the Northern Ireland portfolio because they were stalling and it was getting to the point where we said the assets have to be sold and we believe now is the best time to sell them. The opportunity came along to sell the assets in one go. It was not one we were expecting but it came down to price and the price we could reasonably expect to get for them and whether they would represent value for money.

Deputy Shane Cassells: Mr. Daly has summed it up again by saying that if there was not a headline saying probable loss NAMA would not be here. Mr. McEnery gave a passionate defence of the discount. Does the Minister for Finance accept the rationale, the discount applied and the price achieved for that disposal?

Mr. Frank Daly: I do not want to speak for the Minister. He will be in here next week.

Deputy Shane Cassells: I am not asking Mr. Daly-----

Mr. Frank Daly: I have no reason to believe that he does not, or that his officials do not, accept that the outcome of this was a good one for the taxpayer.

Deputy Shane Cassells: Has there been an interaction between NAMA's office and him or his office to discuss that? Has the Department of Finance sought explanations for the discount and the rationale behind applying it? Have the Department, the senior officials and the Minister accepted NAMA's rationale over the past few months?

Mr. Frank Daly: I do not want to speak for any of the officials.

Deputy Shane Cassells: They are just as important to the running of the State.

Mr. Frank Daly: In my letter to the Minister after the report was published, which was provided to the Cabinet, we set out our views on the discount and have got no pushback from the Department or the Minister on that. We meet the Department officials regularly and there would be discussion of this. It is a matter to take up with the Minister and the Department because I do not want to speak for them. We have a view of the discount; the market has a view on it. In the past week or so when a lot of the noise died down about the initial launch of the report a couple of very well-respected columnists, including John FitzGerald, formerly of the Economic and Social Research Institute, and Paul McNeive in the *Irish Independent*, acknowledged quite forcefully that NAMA's view of the discount and its general approach to the result of the Project Eagle sale was valid.

Before anybody else asks, we had absolutely no interaction with either of those columnists. They are two very highly respected commentators who came in on this. We are back to discount and the question of whether had we held on to it to sell over the next five or ten years would we get a better return. We believe absolutely not. At the end of 2013, and I should have made this point earlier, we took an impairment charge in respect of Northern Ireland of £164 million. That is a very good indication of the way this portfolio was going.

Deputy Shane Cassells: NAMA sent that out in a circular to the Cabinet and because there was no pushback it takes that as acceptance of the rationale for the discount.

Mr. Frank Daly: I would never take it as acceptance of a Cabinet view or anything like that. I am stating the fact that we put our view to the Minister, who took it as I understand it, sent it to the Cabinet with the memo for Government and the report, and we have got no pushback.

Deputy Shane Cassells: Has the Minister not contacted Mr. Daly or any other senior NAMA official to discuss the understanding? It is a topical issue. It is not too often people in the local pub discuss NAMA. The Minister has to be cognisant of the fact that this affects the ordinary person on the street. Has he picked up the telephone and asked Mr. Daly, one to one, his stance on this issue?

Mr. Frank Daly: He knows our stance very clearly on this issue. I have been very careful since this report came out, knowing that we were coming here today and that the Minister is coming in next week, not to engage in that conversation with the Minister because I could be accused of-----

Deputy Shane Cassells: That is perfectly fine. Mr. Daly has been very careful not to engage in that telephone call, was there ever an attempt by the Department or anyone representing the Minister to seek his view on that?

Mr. Frank Daly: The Department is well aware of our views on this. NAMA's response to the report, the letter to the Minister, is very clear about our view of it. If the Deputy is asking did the Minister telephone me to ask what I thought of the report, launched last week, the answer is "No".

Chairman: I will move on to Deputy Rock.

Deputy Noel Rock: I thank Mr. Daly for taking so much time to answer questions today. I will not detain him for too long. I am conscious that he is probably missing himself on the "Six One News" right now.

Mr. Frank Daly: I have no wish to see myself on the “Six One News”.

Deputy Noel Rock: No matter what I say, I will not end up on it.

In any event, I will go through some questions relating to the process, I will probably leave the value-for-money aspect for now because that has been comprehensively covered and then I might have a few extraneous questions relating to Mr. Cushnahan and a few other matters. Is it correct that Lazard was appointed as adviser without a tender process?

Mr. Frank Daly: I will let Mr. McDonagh answer that. There was a two-part-----

Mr. Brendan McDonagh: There was a two-part process to this. We ran a tender competition under an EU framework in 2011. We appointed a panel, which means that we appointed a European loan sales panel and a US loan sales panel. Lazard got on to the European loan sales panel. Under that framework, one can call from that panel. They have to quote their fees, what they are going to charge. When one calls from that panel, one generally knows what their fees are and they cannot charge more than what they tendered for back in 2011.

Deputy Noel Rock: Did NAMA give them a written brief in this instance? It seemed to be inferred earlier that their pitch book to a certain extent was, in effect, the written brief. Is that the case?

Mr. Brendan McDonagh: Yes. Post the board meeting, I asked my senior colleagues to contact Lazard to engage with Lazard and set out the board’s view. Lazard produced what is known as a “pitch book”, which sets out Lazard’s understanding of what the board wanted. There was a meeting where Lazard came to Dublin, it sat down with my team and they went through that, there were discussions, and they came back that evening after returning to London and sent the final pitch book to NAMA. That sets out clearly Lazard’s understanding of the mandate and NAMA’s understanding of the mandate.

Deputy Noel Rock: Did they seek to get a valuation of the underlying lands sought, and if not, why?

Mr. Brendan McDonagh: No. Effectively, the NAMA board had decided the price it wanted. It had set the price as £1.3 billion and Lazard, in its letter of engagement, stated that NAMA had set the price and its job was to find the appropriate buyers who would meet NAMA’s expectations.

Deputy Noel Rock: I suppose this allows me to move on neatly enough here. In terms of finding the buyers then, when was PIMCO initially informed there would be a sales competition?

Mr. Brendan McDonagh: PIMCO was told post the board meeting in January 2014. We always maintained to PIMCO that there was never going to be an exclusive off-market sale directly to it.

Deputy Noel Rock: Do we have the minutes for that board meeting?

Mr. Brendan McDonagh: Yes.

Deputy Noel Rock: It says that in it, okay.

Mr. Daly or Mr. McDonagh stated earlier that there was no e-mail to the Taoiseach from

Fortress seeking-----

Mr. Brendan McDonagh: It was reported in the media that Fortress had to e-mail an official in the Department of the Taoiseach to get access. That is completely untrue. I know the senior managing director of Fortress. I met him a number of times in 2009 and we had stayed in touch over various things. He e-mailed me on 13 February 2014. My e-mail is available - there is nothing in it. Basically, it says, "Brendan, how's it going?". It talked about the rugby match at the weekend, and stated that he had just heard through one of his colleagues that the Northern Ireland portfolio may be on the market, and that it was something Fortress would be interested in. I forwarded that e-mail to my colleague, asking to get Lazard to contact them because I met this guy and I had no issue with him, and I would know Fortress from the previous life. Fortress was contacted by Lazard that evening, on 13 February. They were sent a non-disclosure agreement, NDA, on 14 February and they did not return their signed NDA - one cannot get access to the data room until one signs the NDA - until 26 February. I do not know why it took them 12 days to sign it. Maybe they had to go through their own internal compliance or whatever, but they were invited into the process, on the evening of 13 February but, certainly, on 14 February when they were sent the NDA.

Deputy Noel Rock: I am familiar with Mr. McDonagh's e-mails and I have seen a copy of those. On the same day they did e-mail the Department of the Taoiseach?

Mr. Brendan McDonagh: Yes.

Deputy Noel Rock: Why would they have done that also?

Mr. Brendan McDonagh: I do not know why they e-mailed the Department of the Taoiseach. I personally have not seen such an e-mail, where they e-mailed the Department of the Taoiseach.

Deputy Noel Rock: I have forwarded it to the secretariat and Mr. McDonagh can be provided with a copy.

Mr. Brendan McDonagh: I saw the media report but I was a bit surprised by that because I myself had got an e-mail from the senior managing director of Fortress on 13 February and I had arranged from Lazard to get in contact with him.

Deputy Noel Rock: In a previous appearance before the Committee of Public Accounts, Mr. McDonagh stated, "When we appointed Lazard, then Lazard approached the nine biggest funds in the world - the guys who would have fire power and capital to be able to buy a portfolio like this" and then he listed the nine firms, including Fortress, that he stated had been approached, but it obviously seems, based on the discussion of the e-mail to both the Department of the Taoiseach and Mr. McDonagh, that it was not the case that Fortress was approached. They, in fact, had to approach Mr. McDonagh. Does Mr. McDonagh accept that this quote is now inaccurate?

Mr. Brendan McDonagh: No, I do not accept that is inaccurate because Fortress was one of the parties which were considered to be being approached by Lazard. As I said, there is a league table, in terms of the people - division 1, division 2, division 3 - and as people dropped out we were pushing Lazard to get more people into the process.

Deputy Noel Rock: I am finding this hard to understand. Did Lazard approach Fortress or not? If so, why did Fortress need to approach Mr. McDonagh?

Mr. Brendan McDonagh: All I can say to Deputy Rock is as follows: on 13 February, I got an e-mail from the senior managing director in Fortress and I got one of my colleagues to contact Lazard asking it to contact these people in Fortress and find out if they were interested. I personally do not know whether Lazard was going to Fortress or not, but I do know what happened on 13 and 14 February.

Deputy Noel Rock: Okay, I will accept that.

In terms of the Northern Ireland advisory board - this is a question for Mr. McDonagh or perhaps Mr. Daly - what was the background to that advisory board? How exactly did it come about? Why was it formed? Why was there a board with a specific geographic remit?

Mr. Frank Daly: One has to go back to 2009-10 when NAMA was being set up and when it became obvious that it would be taking over loans related to a considerable number of Northern Ireland debtors - not a considerable number in terms of our overall portfolio from our point of view, but in regard to the Northern Ireland economy and property market it would be quite considerable. There was, as I understand it at the time, presentations, indeed pressure from the Northern Ireland Executive to appoint a NAMA board member from Northern Ireland to represent Northern Ireland interests. The Minister at the time - certainly, it would always have been NAMA's view - took the view that board members would not be appointed to represent particular sectoral interests or any other interests. They would be appointed solely in terms of the broad skill-set and expertise that was needed for the board. The representations and the pressure continued - I suppose, we are back again into the North-South sensitivity area - and the Minister decided that what we would do is create an advisory committee. That was the origin of the Northern Ireland Advisory Committee. The make-up of it was to be members of the board of NAMA and two external representatives, and it is quite clearly stated in the terms of reference of the committee that the NAMA full-board members were always to be in the majority.

That was the origins of it. The pressure, by the way, over the years to have somebody from Northern Ireland on the full board continued. We resisted it, again, on the basis that we did not want any sectoral or geographic interests on the board as we wanted membership on the basis of expertise. That was the background to it.

As I mentioned earlier, when it was set up in 2010, as I understand it, some names were referred to the Department of Finance by the Northern Ireland Executive, in particular, by the former Minister for Finance and Personnel, Mr. Sammy Wilson, MLA. The recommendation was for Mr. Frank Cushnahan and Mr. Brian Rowntree to be appointed. That was sent across to us in NAMA and we appointed them in April 2010.

Deputy Noel Rock: Was it known at the time that Mr. Cushnahan was connected to approximately 50% of the debtors in the portfolio?

Mr. Frank Daly: No, it was not.

Deputy Noel Rock: If that was not known, does the witness think that was poor due diligence?

Mr. Frank Daly: At that stage, there was some politics going on. It was during a very fraught period in the country's history. There were many sensitive decisions being made. North-South relations were quite good and we did not want to do anything to upset that. That is the context in which the decision was made. The Minister received a recommendation from his counterpart in Northern Ireland of two people who, on the face of it, looked to be people of

standing in Northern Ireland. Mr. Brian Rowntree was chairman of the housing executive, on the policing authority and some other bodies, as I understand it. Mr. Frank Cushnahan was a businessman but had been chairman of the Belfast harbour commissioners and I think he also had a role in some office in Stormont, though I cannot quite recall what it was. Here we had two people of standing in Northern Ireland recommended by the Minister for Finance of Northern Ireland to our Minister. I believe it was reasonable for him to take it at face value.

Deputy Noel Rock: Does the witness feel as though, in retrospect, the establishment of a Northern Ireland advisory board was regrettable?

Mr. Frank Daly: I do not think it was regrettable. I think it was a reasonable answer at the time to the sensitivities in Northern Ireland towards NAMA. I cannot tell the Deputy how many times I was in Northern Ireland and was told not to go auctioning Northern Ireland or go putting a for sale sign on Northern Ireland. On one occasion somebody said to me, “You might not have got us in 1922. Do not think that you are going to get us now through NAMA”. It was said jokingly, at least I hope so. I think it was a reasonable political response to that.

Deputy Noel Rock: Based on my reading of the notes, it seems that the last advisory board meeting happened on 7 October 2013 and that seemingly no attempt was made to involve them in the sale of pretty much everything in the portfolio. Maybe it was not the last meeting and there were others that are not noted. Does the witness think that is odd?

Mr. Frank Daly: There were meetings after the 7 October 2013. That was the last one Mr. Cushnahan attended. He resigned after that. There were certainly meetings well into 2014. Once we had sold Project Eagle and had disposed of the vast bulk of our Northern Ireland portfolio, we disbanded the committee.

Deputy Noel Rock: Okay. That must be a misunderstanding based on the notes. I think that is it and I thank the witness for his time.

Chairman: One or two people have asked to come back in a second time. At this stage, we will ask specific questions.

When PIMCO spoke with NAMA on the conference call on 10 March to tell it about the success fee arrangement, did NAMA establish whether or not the success fee had already been paid? I am not going to read any of the transcripts.

Mr. Frank Daly: No. It had not been paid.

Chairman: Can the witnesses confirm that?

Mr. Brendan McDonagh: PIMCO said the success was based on it successfully acquiring the portfolio.

Chairman: So it was not paid. I just want to put that on the record. When Cerberus ultimately notified NAMA of its success fee arrangement, did NAMA inquire of Cerberus how much it was?

Mr. Frank Daly: No. We did not inquire how much it was. What we did with Cerberus was we had decided-----

Chairman: We will come to the letter of undertaking in a moment. In other words, the witness is telling me that PIMCO came to NAMA and said that it had a success fee arrangement

through Brown Rudnick of £15 million to be split three ways. However, because it pulled out and there was no success from PIMCO's point of view, NAMA confirmed that payment was not made. NAMA was aware that £15 million had, as it absolutely insists, nothing to do with the seller side. However, as the witnesses have said several times, the purchaser is the flipside of the same transaction. Those are the witnesses' words. Therefore, if £15 million was available in this transaction, NAMA cannot say it was of no relevance to it because the witnesses have been telling me all day that the purchaser is the flipside of the seller for the same transaction. Moving on to Cerberus, therefore, did NAMA inquire of it how much the success fee was that Cerberus was going to pay? No?

Mr. Frank Daly: I am not aware that we did.

Chairman: Let us understand the sequence. I want to take us through the sequence without going through any transcripts. PIMCO came and told the witnesses that it had a success fee arrangement in place. Its legal advisers in the State said that it must disclose it. NAMA had board meetings on it, it was a major issue of concern and the witnesses say that it was of such significance to the board meeting that PIMCO's bid was fatally flawed because of the seriousness of the situation. Is that correct?

Mr. Frank Daly: Yes.

Chairman: Then we move on to Cerberus. Later on in the process, Cerberus informed NAMA about a success fee arrangement involving the same company. Is that correct?

Mr. Frank Daly: Involving Brown Rudnick?

Chairman: Yes. Brown Rudnick.

Mr. Frank Daly: Yes.

Chairman: Cerberus informed NAMA of a success fee involving Brown Rudnick. Is that correct? Tell me if the sequence is right.

Mr. Frank Daly: The sequence is that first, Cerberus told us about the success fee with Brown Rudnick.

Chairman: Fine. That is what I am saying.

Mr. Frank Daly: Subsequently, it told us that Brown Rudnick would be sharing that with Tughans. I think it is important-----

Chairman: I am going to stop right there. Given the existence of a success fee in respect of PIMCO, as far as NAMA was concerned, PIMCO's involvement from thereon in was fatally flawed because NAMA viewed it as such a serious issue.

Mr. Frank Daly: Because of Mr. Cushnahan.

Chairman: Because of Mr. Cushnahan. Okay, we will come to that. Therefore, NAMA had no problem with a success fee once it did not touch one of its own people. Let us move on. Did NAMA inquire of Cerberus how much the success fee was that Cerberus was proposing to pay?

Mr. Frank Daly: No, we did not inquire that of Cerberus. On the matter of success fees, I do not think it is a matter for the board of NAMA to accept or otherwise become engaged in

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success fees. Success fees are common in loan sales like this. We have no relationship with whomever people might want to pay a success fee to. I do not believe it would have been appropriate for NAMA to have become involved in this. We did not ask what the quantum was. The issue for us-----

Chairman: Would it have been of interest to NAMA-----

Mr. Frank Daly: So long as it was not impacting on the NAMA sale and we had no-----

Chairman: Okay. Let us move on. The witness is saying-----

Mr. Frank Daly: The difference was Mr. Cushnahan.

Chairman: Let us move on to that now, step by step. The witness is saying that Cerberus told NAMA that it had a success fee arrangement with Brown Rudnick. Is that correct?

Mr. Frank Daly: Yes.

Chairman: Cerberus then spelt out in further detail that it also involved Tughans. Therefore, there was an arrangement in which two of the three parties that were involved in the previous success fee issue that the witness said resulted in PIMCO's bid being fatally flawed, but this arrangement was no problem, and NAMA did not even inquire about the amount of the fee. However, Mr. Daly is conscious that he, as chairman of NAMA, had sat at Northern Ireland committee meetings in Tughans' office. He then heard that Tughans were receiving a success fee and he never even inquired how much it was. Does he understand how that looks?

Mr. Frank Daly: I can understand how it looks. I know the Chairman does not want me quoting things but perhaps it would be helpful. First, NAMA asked Cerberus, by the way, in regard to a success-----

Chairman: We will come to the undertaking in a moment.

Mr. Frank Daly: I think the undertaking is important.

Chairman: Okay. Let us move on to the undertaking then. Talk to me about the undertaking.

Mr. Frank Daly: We asked Cerberus to confirm to us, and gave it a particular aspect we wanted it to spell out, about success fees. It told us that it compensates its acquisitions advisers and consultants using a variety of fee arrangements. The Eagle Project was no different. Some advisers were on fixed fees, some on hourly fees and some, where appropriate, on success fees.

Chairman: Is this in our documentation?

Mr. Frank Daly: I am not sure that it is.

Chairman: What is the witness reading from?

Mr. Frank Daly: I am reading from an e-mail from Cerberus.

Chairman: Will he share this with the committee?

Mr. Frank Daly: I will.

Chairman: Essentially, the witness is saying that the letter of undertaking from Cerberus

was drafted by NAMA.

Mr. Frank Daly: No, I am not at all.

Chairman: Sorry. I thought NAMA prepared the draft.

Mr. Frank Daly: I am saying that we needed to know from Cerberus that no payment was being made to anybody connected with the NAMA board or the NAMA executive, former members of NAMA or NAMA committees.

As one of our many advisers, we have retained the law firm Brown Rudnick as a strategic adviser for this process to advise on the bid structure and to advise on doing business in Northern Ireland because they have both experience working with NAMA and in real estate and restructuring-----

Chairman: Tughans?

Mr. Frank Daly: -----activities in Northern Ireland. I do not think Brown Rudnick's experience in Northern Ireland was confined to PIMCO.

This is important in terms of investigations that have been mentioned. Cerberus is subject to the United States Foreign Corrupt Practices Act as well as the UK's Bribery Act which clearly outline inappropriate practices in dealing with foreign governments and their agencies. We take FCPA and UKBA with the utmost seriousness. As part of the agreement with Brown Rudnick, they signed FCPA and UKBA conforming declarations. That, combined with them being a reputable international law firm, gave us complete comfort to retain them under the success fee based arrangement.

Later that day - this relates to Brown Rudnick - we got an e-mail to say that their general counsel, who would presumably be their head of legal compliance, had been travelling internationally the previous night and was only able to review the earlier e-mail after I sent it. He negotiated the Brown Rudnick agreement and suggested that in the spirit of completeness of disclosure that "we inform you that we are aware that Brown Rudnick has sub-contracted part of their work to the Belfast law firm Tughans and that Brown Rudnick would share 50% of its success fee with Tughans".

Prior to retaining Brown Rudnick, we also did a background check on Tughans. In addition, the agreement with Brown Rudnick had as a prior condition to the payment of the success fee that Brown Rudnick shall obtain and provide to Cerberus a written certification from Tughans regarding their conforming to requirements of the FCPA and the UKBA. We are unaware of any other material success fee arrangements which should be disclosed in the spirit of completeness. All of that led to Cerberus, and I have already put it on the record at other Committee of Public Account meetings, giving us an unequivocal declaration in relation to success fees.

Chairman: Did Tughans supply that? Mr. Daly is talking about the requirement that Brown Rudnick would ask Tughans to supply this letter. There is no reference in anything Mr. Daly said as to whether or not Tughans gave it.

Mr. Frank Daly: Cerberus got it from both of them.

Chairman: I am just saying, as a lay person, normally when people give an undertaking, it would cover their servants and agents, not just Cerberus and their own tight organisation.

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Mr. Frank Daly: We had a relationship with Cerberus. That was our engagement, not with Brown Rudnick and not with Tughans.

Chairman: We will move on. Mr. Daly understands he has disclosed information that the committee has not seen before and we will ask him to forward a copy to the secretariat, so it can be e-mailed to us later this evening. What Mr. Daly has read is very important but I had not seen it before.

To complete the circle on this particular issue, will Mr. Daly tell the committee when he was informed by Cerberus that they had engaged Brown Rudnick and Tughans?

Mr. Frank Daly: That was on 3 April.

Chairman: When were these letters?

Mr. Frank Daly: On 3 April.

Chairman: Is Mr. Daly saying it is only when he sought an undertaking from Cerberus that at that stage it emerged that Brown Rudnick and Tughans were working for Cerberus and that he did not know about it up until then?

Mr. Brendan McDonagh: They never told us.

Mr. Frank Daly: No, they never told us.

Chairman: I sigh when I hear that. Under NAMA's method of people bidding and working for it, would it not have been a condition - we have seen it before - that anyone making a bid would inform NAMA of which agents were working for them? Would that not be standard procedure?

Mr. Brendan McDonagh: Absolutely.

Chairman: Now I am being told that Cerberus was in breach of the proper procedures and by not informing NAMA that they had hired-----

Mr. Brendan McDonagh: No-----

Chairman: Explain this to me.

Mr. Brendan McDonagh: The reason they would disclose it to us would be if they arranged for Brown Rudnick or Tughans to access the data room. Brown Rudnick and Tughans had access to the data room up until PIMCO's withdrawal. After PIMCO withdrew, Brown Rudnick and Tughans were no longer allowed access to the data room because PIMCO withdrew them.

Deputy Catherine Connolly: Will the witness explain that?

Mr. Brendan McDonagh: The way this works is that when a firm is bidding on a portfolio, they look for permission for their advisers to access the data room. PIMCO had sought and got permission from us for Brown Rudnick and Tughans to access the data room. When PIMCO left, Brown Rudnick and Tughans no longer had access to the data room. Cerberus was in the data room but they did not use Brown Rudnick or Tughans to access the data room after PIMCO's withdrawal. They never asked our permission for Brown Rudnick or Tughans to access the data room, so we did not see them in the data room because they had no right to be in the data room. It was only after the bids had come in that Cerberus disclosed that Brown Rudnick

and Tughans were in the background working for them. We had no idea that they were there because they were not in the data room.

Chairman: We will just talk this through. I am sorry but I think this is important. When Brown Rudnick and Tughans moved to Cerberus, was Cerberus able to get some advantage from the information that Brown Rudnick had as a result of its access to the data room while working for PIMCO?

Mr. Brendan McDonagh: I presume they were of some value to Cerberus.

Chairman: All along the line, you told me that everybody who had access to these rooms had signed non-disclosure agreements.

Mr. Brendan McDonagh: Yes.

Chairman: So Tughans or Brown Rudnick could not use the information they got when they were employed by PIMCO and give it to Cerberus because they had signed a non-disclosure agreement. Did they go to you to be released from that non-disclosure agreement and then use the information they had to supply to Cerberus?

Mr. Brendan McDonagh: No, they never came back to us.

Chairman: Does Mr. McDonagh understand? Is he saying that anyone who went into that data room, even though they signed a non-disclosure agreement, could use the information they got to go off to someone else? That is what Mr. McDonagh is telling me has happened.

Mr. Brendan McDonagh: No, that is not what I am telling the Chairman. I am telling the Chairman very clearly that Brown Rudnick and Tughans did not access the data room after PIMCO left.

Chairman: What of the information before they left?

Mr. Brendan McDonagh: Whatever they were doing when they joined Cerberus, or whatever they were doing for Cerberus, they could not have used any information they got under the PIMCO process. What the Chairman read out there was that Cerberus' position was effectively their knowledge of the Northern Ireland market.

Chairman: Had Brown Rudnick, other than with Project Eagle, dealt with NAMA before in Northern Ireland?

Mr. Brendan McDonagh: Not in Northern Ireland.

Chairman: Brown Rudnick quoted expertise in dealings with NAMA.

Mr. Brendan McDonagh: We do not know who they dealt with in Northern Ireland.

Chairman: No, it said with NAMA. Go back and read what was said.

Mr. Frank Daly: It said that in doing business, the strategic advisers, to advise on the bid structure and in doing business in Northern Ireland, because they have both experience working with NAMA-----

Chairman: To what were they referring?

Mr. Brendan McDonagh: A partner in Brown Rudnick, when he worked at Morgan Stan-

ley, worked on another portfolio that was sold in 2011.

Chairman: That was Morgan Stanley, not Brown Rudnick.

Mr. Brendan McDonagh: Absolutely, but it would-----

Chairman: How can Brown Rudnick represent themselves as having worked with NAMA-----

Mr. Brendan McDonagh: It was a partner-----

Chairman: -----when they were trying to get in with Cerberus?

Mr. Brendan McDonagh: It was the partner who was selling and no doubt he was saying he worked with NAMA. That is-----

Chairman: Is that correct now?

Mr. Brendan McDonagh: Is the Chairman saying I am not telling the truth?

Mr. Frank Daly: He did not work with NAMA but he was involved with-----

Chairman: Mr. McDonagh has just said no doubt that he said he did work-----

Mr. Frank Daly: He was involved-----

Mr. Brendan McDonagh: No. I said to the Chairman that the senior managing partner of Brown Rudnick was a senior managing director in Morgan Stanley. He dealt with NAMA on the previous transaction. All I can say to the Chairman is that when this partner worked with Brown Rudnick, it was not necessarily the firm that worked, as far I knew, with NAMA-----

Chairman: Representing the firm-----

Mr. Brendan McDonagh: Sometimes the senior partners or senior managing directors move to different firms and they say they have dealt with NAMA before. I do not know, nor does the chairman, what service Brown Rudnick was supplying to Cerberus other than what is in that e-mail.

Chairman: NAMA got that e-mail on 4 April from Brown Rudnick.

Mr. Brendan McDonagh: The e-mail came from Cerberus.

Chairman: We are all at a disadvantage because we do not have the e-mail. In that document, Cerberus is saying to Mr. Daly that it had engaged Brown Rudnick on the basis that it believes Brown Rudnick had some dealings with NAMA. Mr. Daly is now telling me that Brown Rudnick had not had dealings with NAMA but that one person in the firm might have done so in a previous existence. Mr. Daly knew that Brown Rudnick did not have dealings with NAMA outside of Project Eagle, yet he did not raise a query when he saw that.

Mr. Frank Daly: That related to Cerberus's view of what they were gaining from Brown Rudnick. If they have a view that an individual in Brown Rudnick had experience of dealing with NAMA or dealing with Northern Ireland or whatever, that is their view.

Deputy Mary Lou McDonald: May I ask a question?

Chairman: Does Mr. Daly understand my line? This is only opening up because he is reading out this e-mail. The e-mail is giving rise to more questions. I will allow Deputy McDonald to contribute in a moment. What I am saying is that Mr. Daly was aware that Cerberus believed that Brown Rudnick had dealings with NAMA? Obviously, that excludes the PIMCO dealings because it cannot be referring to them.

Mr. Brendan McDonagh: This is what Cerberus believed.

Chairman: Fine, but Mr. McDonagh knew it was not the case and continued then for the letter of undertaking.

Mr. Brendan McDonagh: As regards people buying assets from NAMA, Brown Rudnick could have been in the background. We do not know.

Chairman: Was there an obligation on the people who were bidding to inform NAMA who they were working with? Would that be normal practice?

Mr. Brendan McDonagh: It is normal, but it is mainly for access to the data room.

Chairman: Yes, but it is normal.

Mr. Brendan McDonagh: Yes.

Chairman: Right. It would be good practice that NAMA would know the identities of the legal, financial or property advisers to Cerberus or any other organisation. Cerberus kept NAMA in the dark during this process about the fact that it had engaged Brown Rudnick.

Mr. Brendan McDonagh: We had no idea that they had engaged Brown Rudnick until they disclosed it.

Chairman: So, NAMA did not know.

Mr. Brendan McDonagh: We are not in dispute about that.

Chairman: Pardon?

Mr. Brendan McDonagh: We are not in dispute with about that matter.

Chairman: Is Mr. McDonagh comfortable that NAMA was being kept in the dark about this at that critical stage?

Mr. Brendan McDonagh: The people that Cerberus had in the data room on the law front were Linklaters of London and A&L Goodbody. As far as we were concerned, they were Cerberus's legal advisers.

Chairman: Okay. Deputy McDonald wants to come in on this.

Deputy Mary Lou McDonald: Did Cerberus indicate to Mr. McDonagh when it had acquired the services of Brown Rudnick? Did it give him a date?

Mr. Brendan McDonagh: No.

Mr. Frank Daly: Certainly not in that situation.

Deputy Mary Lou McDonald: Did Mr. McDonagh ask?

Mr. Brendan McDonagh: No.

Deputy Mary Lou McDonald: Okay. Let me take the witnesses right back to the beginning of this process and Brown Rudnick speaking on behalf of two clients. One was PIMCO. Did it ever ask whether the second client was Cerberus? Did it occur to Mr. Daly that, in fact, Brown Rudnick may have been acting on behalf of, or advising, Cerberus and there was not simply a transition? Did that thought occur to Mr. Daly?

Mr. Frank Daly: No, and we have no reason to think that back in that initial letter, which was-----

Mr. Brendan McDonagh: Dated 13 June.

Mr. Frank Daly: -----not to us remember, it was to-----

Mr. Brendan McDonagh: The Northern Ireland Executive.

Mr. Frank Daly: -----Sammy Wilson.

Deputy Mary Lou McDonald: It was passed on to NAMA.

Mr. Frank Daly: Yes. We do not know who the second client mentioned in that was.

Deputy Mary Lou McDonald: It never occurred to Mr. Daly to ask?

Mr. Frank Daly: At that time, no. That was an initial letter in June.

Deputy Mary Lou McDonald: Yes.

Mr. Frank Daly: We got an approach from PIMCO.

Deputy Mary Lou McDonald: I understand the chronology of it and Mr. Daly has made that point well. However, I am simply suggesting that, as people who had been involved in this process and had run into very serious difficulties in terms of success fees that involved Brown Rudnick, Tughans and, in the first instance, PIMCO, I would expect that they would make some effort to join the dots - not to jump to conclusions - and actually ask the question.

Mr. Frank Daly: The issue for us right through this was if any success fee was payable to anybody connected with NAMA.

Deputy Mary Lou McDonald: Mr. Daly has said that repeatedly but that is not the question I am putting to him. Anybody looking at this turn of events would say:

You run into this problem with Brown Rudnick, Tughans, PIMCO and Cushnahan. Cushnahan is off the pitch. Another bidder is in and, lo and behold, it is Brown Rudnick and Tughans.

Let us not forget that further down the process a controversy and an allegation arise again in respect of where fixers' fees were going. I would have thought that if Mr. Daly had his lights switched on at all, just as he should have asked Mr. Cushnahan or PIMCO to tell him when his success fee as agreed, equally Mr. Daly should have had the presence of mind, with all due respect, to put it to Brown Rudnick and ask them when was it that they became advisers, spokespersons or representatives for Cerberus.

Mr. Frank Daly: We never dealt with Brown Rudnick. They were Cerberus's advisers;

they were not NAMA's advisers. We had no relationship with Brown Rudnick.

Deputy Mary Lou McDonald: Yes, but I want to come to this point.

Mr. Frank Daly: Deputy McDonald has referred to events further down the road.

Deputy Mary Lou McDonald: I want to raise two issues. First, Mr. Daly is making a kind of arm's-length argument. As the Chairman pointed out, when it suits Mr. Daly, it is the purchaser and the seller, which are two sides of the one coin. When that argument does not suit Mr. Daly, however, he tries to say, "Well, that had nothing to do with us." Everything that happened in the course of this transaction had everything to do with NAMA because it held the assets. Mr. Daly wrongly says that the problem was all on the buyer's side and that there was no problem on the seller's side. He knew from the get-go that Frank Cushnahan was conflicted because of his relationship with debtors. Mr. Daly then discovered further down the line that he is more than conflicted in terms of his relationship with PIMCO. There are other elements that Mr. Daly has testified to here before around his relationship with Tughans and so on. It would take us hours to set the whole scene out.

Therefore for Mr. Daly to suggest that NAMA is at this turn of events because it was simply problems on the buyer's side if, frankly, to deny reality. I do not know why Mr. Daly persists with it.

Mr. Frank Daly: First of all, Deputy McDonald mentioned Mr. Cushnahan in the context of the conflicts of interest that he had. Remember, we are back now prior to 2014. We managed those conflicts of interest and I do not want to-----

Deputy Mary Lou McDonald: May I respectfully suggest that Mr. Daly did not manage them terribly well because the guy ended up with a fixer's fee and the whole thing went bust on him.

Mr. Frank Daly: My view is that we managed those very well. On PIMCO, the main issue for us - and I cannot say it often enough - was the fact that Frank Cushnahan was allegedly getting a success fee or sharing in a success fee. If one goes forward to Brown Rudnick and Tughans and their involvement with Cerberus, we did not know about it until 3 April. However, the key issue for us was - and still remains - whether anybody connected with NAMA was getting any part of that success fee? We got unequivocal statements from Cerberus that this was not the position. Cerberus were the people we were having the contractual relationship with.

Deputy Mary Lou McDonald: That is Mr. Daly's account of matters. It would be misleading if I told him that I find that convincing because I just do not. However, in the course of this our examinations, we will get to the bottom of it.

I want to raise another matter. A couple of times Mr. Daly has, I think very disingenuously, suggested that the investigation carried out by the Comptroller and Auditor General was positing what happened versus some hypothetical scenario. That is not actually true. What the Comptroller and Auditor General's report does is to take Mr. Daly's bespoke process on its own terms, as documented in his records, and make an analysis thereof. It is to miss the point entirely - and, again, is an attempt on Mr. Daly's part to, perhaps, manoeuvre himself out of the scenario - to suggest that the exercise carried out by the Comptroller and Auditor General was what happened versus some hypothetical never-never land. That is not what this report does.

Mr. Frank Daly: I am sorry-----

Deputy Mary Lou McDonald: It analyses the process on its own terms, and Mr. Daly's records, actions or inaction as they happened.

Mr. Frank Daly: It does and it arrives at two conclusions that we fundamentally disagree with. One concerns the price, or the discount rate, the other, to come to Deputy McDonald's point, is that if there had been a different process, maybe there would have been a different outcome.

Deputy Mary Lou McDonald: No.

Mr. Frank Daly: That is-----

Deputy Mary Lou McDonald: No, sorry, the actual conclusion is that, taking NAMA's process on its own terms, with all the flexibilities or irregularities contained within it-----

Mr. Frank Daly: There were no irregularities in it.

Deputy Mary Lou McDonald: Mr. Daly can use whichever term he wishes. The question is, had NAMA played by its own rule book, what might or what would the probable outcome have been? This is very different from what he is suggesting.

Mr. Frank Daly: No. First, irregularities are not mentioned. I think what the Comptroller and Auditor General did was analyse our bespoke process and then benchmark it against us and nobody else-----

Deputy Mary Lou McDonald: And NAMA's practices and policies, yes.

Mr. Frank Daly: He mainly benchmarked it against sales that came after, rather than before, Project Eagle and came to the conclusion - the one with which we have the difficulty - that it was not the best process in the world and that if we had had a different one, we might have got a better result. That is what we fundamentally disagree with. That is not to say that the Comptroller and Auditor General does not describe our process correctly. He does, because that is the basis-----

Deputy Mary Lou McDonald: No, it is not a description. It is an interrogation-----

Mr. Frank Daly: It is the conclusion.

Deputy Mary Lou McDonald: -----of the process. It is a testing of the process.

Mr. Frank Daly: It is the conclusion. He tests it and he takes a view that there might have been a better process.

Deputy Mary Lou McDonald: Yes.

Mr. Frank Daly: Our view is we would not have got a better result.

Deputy Mary Lou McDonald: No. He interrogates the process, then arrives at a conclusion, based on NAMA's own standards, practices and standards, which NAMA itself had set, and then benchmarks the outcome NAMA achieved. It is not against some never-never land scenario but against NAMA's own policies, standards and benchmarks.

Mr. Frank Daly: I hate to disagree with the Deputy this late in the evening, but I think he benchmarks it as if we had policies written in stone that could never be changed or adapted to

particular circumstances.

Deputy Mary Lou McDonald: That claim is not in the report either.

Mr. Frank Daly: He benchmarks it against a couple of loan sales that we conducted after Project Eagle. It goes back to the view that if a different methodology were applied here, would we have got a better result. I do not believe we would have, and I do not think the Deputy's-----

Deputy Mary Lou McDonald: I will finish up now. Earlier, Mr. Daly was quite happy to benchmark some of his own remarks against those other portfolios when he was citing discount rates.

Mr. Frank Daly: Will the Deputy repeat that?

Deputy Mary Lou McDonald: Mr. Daly was quite happy to benchmark and to use those other portfolios, Tara and Arrow, when he was citing the discount rate earlier.

Mr. Frank Daly: Absolutely.

Deputy Mary Lou McDonald: For me, Mr. Daly-----

Mr. Frank Daly: I have independent evidence from Cushman & Wakefield and Eastdil and all the others.

Deputy Mary Lou McDonald: Yes, retrospectively offered. However, I will say to Mr. Daly, for the purposes of peace, harmony and conclusive findings or observations at the tail end of this process, that for me, the distinction between the Comptroller and Auditor General's observations and account and Mr. Daly's is that everything in this document, this report, is documented - every single assertion. Whether he agrees with it or not, everything is substantiated, and the report is based on the facts as they could have been ascertained. As the fellow says, you can have your own views but you cannot have your own facts. One of the challenges in dealing with Mr. Daly is that, however we structure our discussions to get to the point where we acknowledge that a decision, for example, was not taken at the board to tell PIMCO to hit the road - he may have had reservations; he may have had a discussion - nowhere is it documented that the board resolved that PIMCO had to go. That is the kind of thing I am talking about. For us who represent citizens and taxpayers, that is the standard of reassurance they expect, not a sort of long, elaborate "we are brainier than they are" and "we know about this", which really does not cut any ice. I have a final question-----

Mr. Frank Daly: Sorry, Deputy, hold on. I do not think I have ever said of anybody that I or we are brainier than they are.

Deputy Mary Lou McDonald: That was the implication.

Mr. Frank Daly: What we are saying is that there is-----

Deputy Mary Lou McDonald: Mr. Daly's friend, Mr. McEnery, seemed to imply that.

Mr. Frank Daly: -----an independent expertise which I think could easily have been sourced and which would deal with the issue of the pricing and whether the loan sale process could have been better and got a better result. We do not disagree with many of the facts set out in the Comptroller and Auditor General's report. What we disagree with are conclusions in particular on price and that maybe if we had done it differently, we could have got more.

COMMITTEE OF PUBLIC ACCOUNTS

Deputy Mary Lou McDonald: Did Mr. Daly brief any journalists on this or has he been briefing against the Comptroller and Auditor General? I ask this just for clarification.

Mr. Frank Daly: Absolutely not.

Chairman: We are nearly there. It has been long, but I would prefer to take the extra few minutes to finish this. I would hate to have to come back for an hour. The witnesses will be back at a later date when we have heard from other witnesses.

Mr. Frank Daly: I look forward to that.

Deputy Catherine Connolly: Regarding the 5.5% that Mr. Daly keeps mentioning, he says the Comptroller and Auditor General picked this figure. He did not pick the figure himself. He picked it from NAMA's board meetings. Is that right?

Mr. Frank Daly: Which figure is that?

Deputy Catherine Connolly: The 5.5%.

Mr. Frank Daly: Yes, he picked it from a paper of 23 June-----

Deputy Catherine Connolly: Yes, that is okay. Just a second now.

Mr. Frank Daly: No, I think-----

Deputy Catherine Connolly: No, I will give Mr. Daly time to respond - honestly. I just want to ask my question. If he wants, he can give a longer answer, subject to the Chairman, who is in charge. This 5.5% has been referred to repeatedly, and the debate that the witnesses want and which they are trying to steer is clear in that regard. I put it to Mr. Daly that the Comptroller and Auditor General did not pick the figure out of his head. He picked it from NAMA's board minutes. Is that right? He did.

Mr. Frank Daly: He did, but he ignored-----

Deputy Catherine Connolly: That is okay. Mr. Daly has made that-----

Mr. Frank Daly: -----the other half of the paper.

Deputy Catherine Connolly: That is okay. I have heard him say-----

Mr. Frank Daly: No, Deputy, hold on, please. He picked the 5.5%. It was in there as a sort of accounting standard that we would apply generally across the board in terms of our financial accounts. The second half of the paper, a very important paragraph in the paper, stated that nobody selling, preparing or valuing an asset for sale should take this as absolute, that one had to have regard to other quantitative and qualitative considerations.

Deputy Catherine Connolly: Mr. Daly is reducing it down again. The simple question I asked was whether he took it out of his head. Mr. Daly's answer is "No", that he took it from NAMA's board meetings but he applied it inappropriately. He did not take NAMA's caveat into account.

Mr. Frank Daly: I think he did not take into consideration-----

Deputy Catherine Connolly: I do not agree with Mr. Daly but I hear what he is saying. He made this comment in the context of a report in which conflict of interest was also of major

concern to him, not just the price. Is that right? The conflict of interest got a whole chapter, which Deputy McDonald has gone through, as have others. Looking at it, I see PIMCO having to withdraw and I say, thanks be to God for its compliance unit, because it was its compliance unit that alerted NAMA to this, not NAMA's compliance unit, which I might come back to. That is the first point. Then the two solicitors who were involved in London and Belfast were due fees. Is that right? Now they would lose out and would not get anything. Is that right?

Mr. Frank Daly: PIMCO? Yes.

Deputy Catherine Connolly: Yes, it was a success fee. Therefore, PIMCO was not successful. Is that right? Its advisers would not get anything.

Mr. Frank Daly: Yes.

Deputy Catherine Connolly: For NAMA, PIMCO is gone, so that is its problem gone. It does not need to worry now. It does not need to go after Mr. Cushnahan or write him a letter or anything. That is its headache gone. Then we have Cerberus, which takes on the exact same legal advisers. Mr. McDonagh is shaking his head. I have listened carefully to this. Cerberus comes in and has the exact same legal advisers, does it not?

Mr. Brendan McDonagh: No. Cerberus never presented them as legal advisers. Cerberus's legal advisers were Linklaters in London and A&L Goodbody. "Strategic advisers" is what they termed Brown Rudnick and Tughans.

Deputy Catherine Connolly: I heard that, but they are two legal entities. Is that right?

Mr. Brendan McDonagh: I agree with the Deputy on that, absolutely.

Deputy Catherine Connolly: Absolutely. In fact, some of the Northern Ireland advisory committee meetings were held in Tughans' offices. Is that right? Was Mr. Daly there?

Mr. Frank Daly: I was, yes.

Deputy Catherine Connolly: He was. He was in that-----

Mr. Frank Daly: For two meetings.

Deputy Catherine Connolly: Did it ever occur to him that it might pose difficulties that he was holding meetings in Tughans' offices?

Mr. Frank Daly: The Deputy should remember that at the time, when we held those meetings, we had no inkling of any issue around Frank Cushnahan or Tughans. I have said already at earlier meetings of the Committee of Public Accounts that if I knew then what I know now about Frank Cushnahan and Tughans, we certainly would not have-----

Deputy Catherine Connolly: Used their offices.

Mr. Frank Daly: -----used those offices. We used the Northern Ireland Housing Executive offices while Brian Rowntree was there. I would like to return to what the Deputy said about conflict of interest in relation to price. Although the Comptroller and Auditor General has been very critical of conflict management and everything like that, I do not think he has concluded that this process had any impact on the price. I can be corrected if I am wrong in that regard.

Deputy Catherine Connolly: I agree with Mr. Daly that the Comptroller and Auditor Gen-

eral has set this out very fairly and very clearly.

Mr. Frank Daly: He has.

Deputy Catherine Connolly: I am looking at the facts as they have been stated. I have to raise serious concerns on behalf of the public. We heard the figures that were mentioned a minute ago. Monopoly money is not in it. We heard about more than £4 billion being reduced to £2.5 billion and then to less than £1.3 billion. The only person suffering here is the taxpayer. I am asking my questions in that context. I know that Mr. Daly is more than familiar with taxpayers. I am speaking in that context.

Mr. Frank Daly: Responsibility for the difference between the £4.5 billion that was loaned by the banks and the £2.5 billion that was paid for those loans by NAMA can be laid at someone's door, but I do not think it can be laid at NAMA's door.

Deputy Catherine Connolly: I did not lay it at anyone's door.

Mr. Frank Daly: I know the Deputy did not-----

Deputy Catherine Connolly: Okay, so I am just going to-----

Mr. Frank Daly: -----but other people do.

Deputy Catherine Connolly: I did not. I want to use my time because the Chair is going to come in on me. I am setting the context for the taxpayer. Ultimately, we are here for the taxpayer. A question has already been asked about the offices of the two solicitor groups that came in on behalf of Cerberus, albeit described as "strategic advisers" rather than as "legal advisers". I do not like repetition. Did bells not go off in NAMA when the same advisers came in? Did Mr. Daly not say "Oh God, PIMCO has gone out and these lads - God help them - have lost their fee, they must be getting it a different way now"? Did that not occur to him?

Mr. Frank Daly: I was certainly not worried about their fee.

Deputy Catherine Connolly: No, I am not worried-----

Mr. Frank Daly: The Deputy asked whether bells went off.

Deputy Catherine Connolly: Did it not occur to him that there might be-----

Mr. Frank Daly: The bell that went off related to the need to get an absolute assurance that nobody connected with NAMA was getting any part of this success.

Deputy Catherine Connolly: Did such an assurance not worry Mr. Daly?

Mr. Frank Daly: No. In fairness to Cerberus or any other organisation, when we get an assurance from its chief legal counsel, I would rely on it.

Deputy Catherine Connolly: Did it occur to NAMA at any stage that Cerberus and PIMCO could have been working strategically together? I am not saying they were.

Mr. Frank Daly: That has been asked before in this forum.

Deputy Catherine Connolly: Yes.

Mr. Frank Daly: There is absolutely no indication or interest-----

Deputy Catherine Connolly: No, that is not what I asked. I asked whether it occurred to NAMA.

Mr. Frank Daly: It did.

Deputy Catherine Connolly: Yes.

Mr. Frank Daly: It was one of the things. I remember at one stage we asked whether they could be stalking horses.

Deputy Catherine Connolly: Yes.

Mr. Frank Daly: There is absolutely no evidence anywhere to suggest-----

Deputy Catherine Connolly: Was that discussed at a board meeting or elsewhere? Did NAMA look at that?

Mr. Frank Daly: I think we probably discussed it at the time when we were making the final decision.

Deputy Catherine Connolly: Where could I see it that NAMA discussed these issues?

Mr. Frank Daly: The Deputy will not see it in the minutes.

Deputy Catherine Connolly: No.

Mr. Frank Daly: It was a discussion that did not impact on our-----

Deputy Catherine Connolly: It was a vital discussion. I have said what I need to say on the matter. I would like to ask Mr. McDonagh about the £100 million in sales. He has repeated the assertion he made in his paper that this was up to 2013, but it was actually up to 2012. The figure of £100 million for the period up to the end of 2012 was mentioned in the briefing documents given to the Minister. I want to be precise. As £1 million is a lot to the taxpayer, it is clear that £100 million is-----

Mr. Brendan McDonagh: I will come back to the Deputy on this. I do not think too many other assets were sold during 2013, which is part of it.

Deputy Catherine Connolly: That could well be. I am looking at the briefing documents given to the Minister in 2014 and at other documents. The figure for 2013 sales was £100 million.

Mr. Brendan McDonagh: No, I think it was £100 million up to the end of 2013. I will have to go back and check with my team.

Deputy Catherine Connolly: When I stop talking and somebody else comes in, I am going to quote from it precisely to show where this figure of £100 million comes from. Mr. McDonagh might come back to me at that point. On this occasion, was the data room controlled by NAMA rather than by Lazard? Did NAMA personally control the data room? Who controlled it?

Mr. Brendan McDonagh: In effect, it was controlled by our legal team, Mr. Collison, who is here behind me, and a senior solicitor.

Deputy Catherine Connolly: Are they physically there manning it?

Mr. Brendan McDonagh: It is a virtual data room that is loaded. It is a controlled secure-access data room. The people I have mentioned control what documents go into the data room. It was also with our legal advisers, Hogan Lovells.

Deputy Bobby Aylward: Are they inhouse?

Mr. Brendan McDonagh: Who?

Deputy Bobby Aylward: Are they NAMA's own solicitors?

Mr. Brendan McDonagh: Is the Deputy referring to Hogan Lovells?

Deputy Bobby Aylward: Yes. I apologise for cutting across Deputy Connolly.

Mr. Brendan McDonagh: Our own senior solicitor is obviously inhouse, just as Mr. Collision is inhouse. We appointed an outside firm, Hogan Lovells, to help us to manage the data room.

Deputy Catherine Connolly: Did NAMA discuss the conflict of interest in relation to Mr. Cushnahan with them? Did it seek legal advice from its legal advisers?

Mr. Brendan McDonagh: I do not believe so.

Deputy Catherine Connolly: No, NAMA did not do so. I would also like to ask about Lazard. I forget what answer I received when I raised this initially. Did NAMA tell Lazard why PIMCO had withdrawn?

Mr. Brendan McDonagh: No, we did not tell them.

Deputy Catherine Connolly: Okay. I thank the witnesses.

Chairman: I call Deputy Cullinane.

Deputy David Cullinane: Go raibh maith agat. I know it has been a long day, but it is important for us to try to tease out as much of this as possible. I will pick up where I left off earlier with Mr. Daly and Mr. McDonagh. Some of this has been teased out. I want to come back to it again because I think it is important. Mr. Daly said earlier that people have moved away from the pricing issue. I focused on the conflicts of interest and the success fees because this aspect of the matter is at the heart of the question of whether process was followed appropriately. A big part of the Comptroller and Auditor General's report relates to the failings he has detected in this regard. The witnesses from NAMA might not agree with these findings. We had a lengthy discussion about the minutes of the board meeting of 11 March, at which the conference call of the previous day was discussed. Mr. Daly's view on that issue contradicts the synopsis of the Comptroller and Auditor General, as set out in Appendix E in the report. Mr. Daly's interpretation or narrative is that the board decided that the message which had to be conveyed, and which was conveyed, was that PIMCO was out. Let us imagine for a second that this is the case. I do not accept that it is, but let us take it at face value. If this is the case, Mr. Daly is saying he was alarmed by the success fees that, according to him, involved Mr. Cushnahan.

If the witnesses want to turn to page 17 of the Comptroller and Auditor General's report, they will see that he makes it clear in finding 55 that his problem with the success fee does not relate solely to the payment to Mr. Cushnahan. He argues that "all of the payment – not just the payment to Mr Cushnahan – should have raised concerns for NAMA". That is what he says.

The concerns that I, like other people, think should have been raised were obviously not raised. It stretches people's imagination to unbelievable levels. NAMA wants us to believe that the board was so concerned about the success fees that it forced PIMCO out, but the process continued regardless after it became aware that Brown Rudnick and Tughans were also involved with Cerberus. A decision was made to carry on. NAMA is relying on an e-mail, correspondence or letter of comfort from Cerberus. We need to see that e-mail. We also need to see the correspondence where NAMA wrote to Cerberus. The witnesses are saying that NAMA told them everything was okay because nobody from NAMA, and nobody who had been associated with NAMA, was involved in any success fee. Questions are being asked about why NAMA did not go further - we have been told that alarm bells went off - by going beyond Cerberus and finding out from Brown Rudnick or Tughans whether Mr. Cushnahan was involved at that point. Given that NAMA knew they shared an office with Cushnahan and Tughans, it is extraordinary to ask us to believe it was not reasonable for us to suggest that NAMA should have acted in a more appropriate way.

Mr. Frank Daly: As I said earlier, our contractual relationship was with Cerberus. We were proposing to sell the portfolio to Cerberus.

Deputy David Cullinane: Did anything prevent NAMA-----

Mr. Frank Daly: We did not-----

Deputy David Cullinane: Whatever about the contractual arrangement, in light of what NAMA knew and given that this was not retrospective, did anything prevent it from contacting Brown Rudnick or Tughans?

Mr. Frank Daly: We did not have a contractual relationship with Brown Rudnick or Tughans. We had it with Cerberus.

Deputy David Cullinane: I did not ask whether there was a contractual relationship-----

Mr. Frank Daly: Hold on now.

Deputy David Cullinane: -----I asked whether there was any legal impediment to NAMA inquiring.

Mr. Frank Daly: I do not think they would have engaged with us. However, that is not a legal opinion. We got, from the chief counsel of Cerberus, a very clear, unequivocal statement that Cerberus was not making a payment to anybody connected with NAMA, that Brown Rudnick were not doing it and that Brown Rudnick had given them undertakings to that effect, and that Tughans were not doing it and had given them undertakings to that effect. This is down, at the end of the day, to a statement that we got in writing from the chief counsel to Cerberus. I do not think it is credible that somebody of that stature in an organisation such as Cerberus would have given us that unless it was an absolute letter of comfort to us. We had no reason to question that.

Deputy David Cullinane: The problem with NAMA's world view on this is that Mr. Daly said in his opening statement that - and he spoke about the success fee, Mr. Cushnahan and all of the conflicts of interest, which is fair enough - that NAMA had to weigh up the potentially serious costs and consequences for the agency if it were to withdraw from the process, for other State-owned banks and for the sovereign of halting a major loan sale. He also referred to the impact that might have in the future. By his own admission, the weight of the State, of NAMA

- and its credibility - and of the State-owned banks were on his shoulders. There was pressure. It seems that the pressure was part of the reason the due diligence that should have happened did not happen.

Mr. Frank Daly: Well-----

Deputy David Cullinane: Mr. Daly should allow me to finish. From what I take from Mr. Daly's opening statement, the logic of the position is that he accepts that there were problems on the purchasing side and that the situation was so bad that PIMCO had to go. However, perhaps it was not so bad when some of the same players were involved with Cerberus. Mr. Daly weighed up the consequences and decided that the sale must proceed because in his view he believed that the end justified the means.

Mr. Frank Daly: No. I wish to respond. The Deputy is jumping ahead. The statement that we had to think of the consequences of aborting the sale relates to when the PIMCO issue came to light, not later on when we were talking about doing the sale with Cerberus. They were valid considerations and I have outlined them in my statement. I can elaborate on them if Deputy Cullinane wishes but I think they are self-explanatory. One does not abort a sale like that at the last minute without very good reason. I am older than Deputy Cullinane and I can remember when PPPs were a big issue and where some of them were aborted at the last minute. It was a bit of disaster for the State in terms of getting anybody to engage later on. That point related to the PIMCO issue. We had no reason to believe there was any issue in respect of Brown Rudnick or Tughans. To a certain extent, everybody here is looking at Tughans with the hindsight of what was revealed-----

Deputy David Cullinane: No.

Mr. Frank Daly: I think a lot of people are, because Tughans at that stage was the third biggest law firm in Northern Ireland. There was no indication that there was any issue with their reputation and in fact-----

Deputy David Cullinane: I am sorry, but Mr. Daly-----

Mr. Frank Daly: I need to be fair. I am not sure that there is an issue about Tughans' reputation even now. There are obviously allegations about its former managing partner. Looking at it in 2014, when we exited PIMCO, Deputy Cullinane rightly asked whether there was pressure on us because of the sovereign and the other banks, it was not pressure but there were very valid considerations. As I said, we do not operate in a bubble.

Deputy David Cullinane: We are not talking about hindsight. Mr. Daly has already established and he accepts that NAMA was made aware of the success fees with PIMCO. He knew that those success fees were broken into three parts - for Brown Rudnick, for Tughans and for Mr. Cushnahan. He was also aware that there was a relationship between Mr. Cushnahan and Tughans whereby the former shared office space with the latter and a number of NIAC meetings were held at that same premises. Mr. Daly wants us to believe that when NAMA was made aware of the PIMCO success fee, it was so damaging that PIMCO had to be forced out of the process. He also wants us to accept that we should not really be concerned that Tughans and Brown Rudnick were involved in success fees with Cerberus. The other point is that there was only a three-week gap between the PIMCO withdrawal and NAMA being made aware on 3 April of the success fees relating to the Cerberus deal. It was not as if the process took place over six months or a year - it was a three-week period. Mr. Daly went on to say that the net issue

for NAMA was whether it would allow Mr. Cushnahan's alleged manoeuvrings in Belfast to seriously damage the interests of Irish taxpayers. Mr. Daly said the interests of Irish taxpayers took precedence and that there was a commercially compelling case for selling the portfolio. All of that was predicated on an outcome whereby NAMA would achieve the £1.3 billion. As far as NAMA was concerned, once it got its £1.3 billion, everything was okay.

Mr. Frank Daly: Yes. The whole purpose of the sale was to get the best possible deal we could for the taxpayer, and that was what we got. We were not going to allow Mr. Cushnahan's alleged manoeuvrings to interfere with that. It should be remembered that the only alleged manoeuvrings were the fact that PIMCO had told us that Mr. Cushnahan could share in a success fee. We were not aware of any other manoeuvrings or alleged manoeuvrings of Mr. Cushnahan.

Deputy David Cullinane: We can come back to this matter.

Mr. Frank Daly: We were going to set that against the very significant issues for this State at a stage when it was exiting the troika programme, when other State-owned Irish banks were trying to deleverage-----

Chairman: Mr. Daly's position is well covered in his opening statement.

Mr. Frank Daly: I could not resist saying that.

Deputy Bobby Aylward: Why does Mr. Daly think Cerberus took on a second legal firm? Tughans had been involved with PIMCO. If Mr. Daly could stretch his imagination, does he think that because it had information from its dealings with PIMCO, Cerberus took on Tughans in order that it would know more than would otherwise have been the case? Is it normal practice to have a second set of legal advisers for a deal like this?

Mr. Brendan McDonagh: I would say it was unusual, but it was said they were not legal advisers, they were strategic advisers to advise Cerberus on doing business in Northern Ireland. I am paraphrasing what they said. They never said they were legal advisers, they just said they were to advise them-----

Deputy Bobby Aylward: But Tughans is a legal company.

Mr. Frank Daly: There are an awful lot of legal companies even here that can provide strategic advice to all sorts of people.

Chairman: I will wrap up. I ask that NAMA send a note on its previous experience rather than have us discuss the matter further because the agency has criticised the Comptroller and Auditor General about his lack of expertise in loan sale valuation and sales process. NAMA said this was only its second sale. We want to know the scale of the first one and the extent of NAMA's loan sale experience prior to this event.

We will have to come back to the letter NAMA received from Lazard in which it stated that it was happy about the marketing process, despite the fact that it was not even aware why PIMCO had pulled out, that Brown Rudnick and Tughans were back on the scene on behalf of Cerberus or that a fee had been agreed between Cerberus and those two companies. Lazard was kept in the dark about all of that because the minutes of the board meeting indicate that Lazard would be informed after the meeting of the outcome of the decision in April that the bid was being accepted. NAMA might come back to us on that and it can even send us a note.

I ask people to look at page 103. It is a small point to which I referred earlier. A total of 11

board meetings were referred to from 12 September to 12 June. Most of them were attended by between five and eight members but three were *ad hoc* meetings. For example, only three people were present at the meeting held on 8 January. Other members were in contact on the phone. On 11 March there was another *ad hoc* meeting of the board and only two members were physically present, with the remainder in contact by telephone. On 3 April, when all the decisions were made, Mr. McDonagh was the only person physically there and everybody else was on the phone. I have checked the NAMA legislation and there is specific provision in the legislation for attendance to be recorded by way of conference call once everybody can hear what everybody is saying. We understand that. Given that they were called at such short notice and the meetings were *ad hoc*, how did they get the board pack? Did they all have enough information? Given that 3 April was the key date when NAMA decided about Lazard, why did it rush it so quickly at an *ad hoc* meeting when only person could be there physically? Would it not have been better practice to try to ensure that more than one person was in the room at the time while acknowledging that the others were at the other end of the telephone?

Mr. Frank Daly: In respect of the last point, when we are trying to close a sale and make a decision, we try to do it quickly. You do not hang about if you are satisfied you are going to get the right result.

Chairman: And the board pack?

Mr. Frank Daly: The Chairman is right. These were *ad hoc* meetings and that is why they are done by telephone because it is short notice and people we need to get are all over the country and, in some cases, outside it.

Chairman: How would they have received the board pack?

Mr. Frank Daly: I am not sure whether the BoardPad system was in place at that time but other than that, we send the pack by secure courier.

Chairman: So that means they had to have 24 hours' notice where an overnight courier is used?

Mr. Frank Daly: Secure e-mail. I think Accellion is the name.

Chairman: I am not drawing any conclusions but it would be fair to say that the tone of some of the NAMA statements has not been nice. I will just put it that way. I would use the word "condescending". NAMA referred to the Comptroller and Auditor General only producing a desktop report and queried his expertise. Separately, it described the Northern Ireland advisory committee as a talking shop. This comes across in public as a level of condescension from an organisation. We will not draw a conclusion. I am just making an observation. The Northern Ireland advisory committee was a sub-committee of the board. Other committees include the audit committee, the credit committee, the finance and operating committee, the risk management committee and the planning advisory committee. In Mr. Daly's opinion, are any of the other committees talking shops or was it just the Northern Ireland advisory committee?

Mr. Frank Daly: I do not think I expressed an opinion here that it was a talking shop but I think-----

Chairman: No, but Mr. Daly has said it somewhere.

Mr. Frank Daly: I might have said that in a very lengthy early morning interview. It was

not intended to be pejorative. It was intended to convey the view that this was a committee that could not make decisions.

Chairman: We will take that qualification. Without going into the details and even though there is a press statement on it out there somewhere, could Mr. Daly tell us about the complaints NAMA has made to the Standards in Public Office Commission, SIPO, or to the Garda in order that this committee does not inadvertently trespass on issues that are before SIPO or the Garda? What has NAMA reported to those organisations?

Mr. Frank Daly: Those issues relate to Mr. Cushnahan.

Chairman: All three?

Mr. Frank Daly: All three. If the committee treads warily there, I do not think there-----

Chairman: Mr. Daly understands why I am asking this question because I do not want to tread across something.

Mr. Frank Daly: If the committee treads warily there, it will not cut across.

Chairman: It has been a long day-----

Mr. Frank Daly: By the way, we do not wish at any stage to be, or to appear to be, condescending or offensive.

Chairman: There is a slight tone of-----

Mr. Frank Daly: Okay, I will not go there.

Chairman: We are big people. Has the Comptroller and Auditor General any quick comments to make? He is free to comment at a subsequent meeting but we are not opening up a debate. Is there anything in particular that he wanted to highlight?

Mr. Seamus McCarthy: There are two points from the discussion this afternoon. The first is to say that I think it is incorrect for my report to be characterised as stating that the discount rate of 5.5% was to be used in arriving at a likely market value. That is not what the report says, so I just want to put that on the record and we can talk about it again. The other point I would like to make concerns board members not having the opportunity to present a view. The board members did have the opportunity to present a view. I wanted the views in writing so that there would be no dispute about what those views were so I could take them into account.

Chairman: We will leave it there.

Mr. Brian McEnery: I want to say I think it is unusual, in the gaining of audit evidence where it has been requested, that there would be a meeting in person.

Chairman: With the entire board?

Mr. Brian McEnery: There is-----

Chairman: Did the Comptroller and Auditor General meet the chairman?

Mr. Seamus McCarthy: On two occasions.

Chairman: Is the chairman not an adequate representative of the board to convey the views

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of the board members to the Comptroller and Auditor General directly?

Mr. Frank Daly: Obviously-----

Chairman: Obviously not.

Mr. Brian McEnery: I specifically requested for the reason that I am in the business of doing these transactions on a continuing basis. I know we will come back to it and that I will be back here. I would like to talk at length around what I believe are two important things around audit evidence, which are sufficiency and adequacy.

Chairman: We will bring Mr. McEnery back specifically. He has acknowledged he appreciates the fact that we are inviting other members of the board to appear before us. The plan will be to have two or three for a session, rather than five individuals. We will sort out the logistics such that it can-----

Mr. Frank Daly: There are not that many of them who were involved.

Chairman: On behalf of the Committee of Public Accounts, I thank the Comptroller and Auditor General who has been here since 9 a.m., Mr. Daly, Mr. McDonagh and the NAMA officials, as well as the officials from the Department of Finance who have been here since early morning. It has been a long day. It was worth taking the extra hour or two to complete this part of our work and we appreciate all the documentation and materials. We will contact the witnesses with a list of information we will seek arising from today. At our next meeting on 6 October 2016, we will continue our examination of the report with the Minister for Finance, Deputy Noonan.

The witnesses withdrew.

The committee adjourned at 7.25 p.m. until 2 p.m. on Thursday, 6 October 2016.