

DÁIL ÉIREANN

AN COISTE UM CHUNTAIS PHOIBLÍ

COMMITTEE OF PUBLIC ACCOUNTS

Dé Céadaoin, 14 Nollaig 2016

Wednesday, 14 December 2016

The Committee met at 10 a.m.

MEMBERS PRESENT:

Deputy Bobby Aylward,	Deputy Alan Farrell,
Deputy Peter Burke,	Deputy Josepha Madigan,
Deputy Shane Cassells,	Deputy Catherine Murphy,
Deputy Catherine Connolly,	Deputy Noel Rock.
Deputy David Cullinane,	

DEPUTY SEAN FLEMING IN THE CHAIR.

BUSINESS OF COMMITTEE

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

Business of Committee

Chairman: We are joined by the Comptroller and Auditor General, Mr. Seamus McCarthy, a permanent witness to the committee. He is accompanied today by Mr. John Riordan. No apologies have been received. The first item on the agenda is the minutes of our meetings on 22 and 24 November and on 1 and 8 December last. Are the minutes agreed? Agreed. In terms of matters arising from the minutes, we will take it that any relevant matters arising will be dealt with in the normal course of our work.

The next item on the agenda is correspondence. We have a considerable amount of correspondence to deal with because it has been some time since we had a public meeting. The first item of correspondence is the opening statement from Mr. Brendan McDonagh, CEO of NAMA, which we have noted and published. We will be dealing with that later.

The next item is category B correspondence from Accounting Officers and Ministers. These are follow-up items relating to previous meetings. The first item is No. 201B, an e-mail from Brown Rudnick expressing surprise and disappointment regarding the publishing of details of a letter sent to the committee prior to its consideration by the committee. We did receive a letter and I saw references to extracts from it in the newspapers before it was considered by this committee. It is extremely disappointing that some members chose to go down that route. We note the points made by Brown Rudnick, which are fair comment. We will note it and publish that remark.

The next item is correspondence from Professor Philip Lane, Governor of the Central Bank, regarding State organisations lodging money with the Central Bank. We will note and publish that letter. The next item is correspondence from Ms Niamh O'Donoghue, Secretary General of the Department of Social Protection, providing information requested at our meeting on 20 October. We will note and publish that. The next item of correspondence is No. 217B from Mr. Seán Ó Foghlú, Secretary General of the Department of Education and Skills, providing an update to the committee on the transfer of property under the 2002 indemnity agreement. We will note and publish that. There is other correspondence relating to that general indemnity agreement which I will refer to later.

The next item is No. 219 B (i) and (ii), correspondence from the OPW regarding rents paid by that office and the Department of Social Protection. We will note and publish that. The next item is No. 220B, correspondence from the Minister for Finance providing a response to a request for information from the committee in relation to NAMA and Project Eagle. We will note and publish that and will also include it on the Project Eagle section of our site, which is an internal method of recording all Project Eagle related correspondence for committee members. The next item is No. 221B from Ms Michelle Lowe of NAMA providing a response to a request for information from the committee relating to Project Eagle. We will note and publish that too.

I will now move on to Category C correspondence which is correspondence from private individuals and any other correspondence. Nos. 181C, (i) to (iii), is correspondence from the

COMMITTEE OF PUBLIC ACCOUNTS

North Meath Communities Development Association in regard to an ongoing issue with the HSE. This matter was dealt with in some detail by the previous Committee of Public Accounts, which also wrote to the HSE at that time. However, there was a recognition that this is a matter of a disputed contract and ultimately a matter for the HSE. I would like to defer consideration of this matter to our next meeting to allow members time to study the documentation.

Deputy Shane Cassells: Prior to the summer recess I raised the issue of correspondence issued by the previous committee in January of this year citing that this matter had also been referred to the Taoiseach's Department. This is a matter of great concern to the people involved, in respect of which a large number of public meetings were held during the summer. The body concerned does good work and it needs to be supported. I understand that the Minister of State, Deputy McEntee, has met with the Minister, Deputy Harris, on the issue. It is important that a statement is forthcoming from the Minister on this matter and that it is resolved as soon as possible. We cannot have a situation whereby a community body engaged in this type of work is left with this debt. The previous PAC was very strong in its statement on this matter. I would appreciate it if it could be addressed as soon as possible.

Chairman: As mentioned by Deputy Cassells, this matter has been brought to the attention of the Minister, Deputy Harris and the HSE. Perhaps we should seek a response from the Minister and the HSE on the matter, following which we will consider all of the correspondence.

Deputy Shane Cassells: The HSE has been consistent in its approach to it. I would appreciate if the Minister's appraisal of the matter could be sought.

Chairman: We will write to the Minister on that basis. When the reply has been received we will examine the issue in its entirety, bearing in mind that it was been already considered by the previous PAC. I am not familiar enough with the details to draw any conclusion on the matter this morning.

The next item is No. 200C, (i) to (iii). These items can be taken together. They are copies of correspondence regarding directorship at Limerick Greyhound Stadium for the purposes of keeping the committee informed. Is it agreed to note this correspondence? Agreed.

No. 203C is correspondence received from Ms Audrey Keane, Registrar of Aosdána in the Arts Council in reply to correspondence regarding the payment of the Aosdána Cnuas grant. I propose that we now consider this matter closed and we forward this to the individual who wrote to the committee on this matter. Is that agreed? Agreed.

No. 205C (i) and (ii) is correspondence from Mr. Paul Quinn, chief procurement officer, with an overall description of the tender process framework. I thank Mr. Quinn for this information, which we will note. We will also forward a copy of it to the company that raised the matter with us at an earlier meeting.

Deputy Catherine Connolly: I presume we will be coming back to the issue of tendering at some stage.

Chairman: Yes, public procurement is fundamental to our role and it will be included in our work programme for the new year.

No. 209C (i) and (ii) is correspondence from Ms Mary Higgins, CEO of Caranua. The committee received a number of items of correspondence from individuals regarding the spending of moneys by Caranua. We will forward this information to these individuals. The Comp-

BUSINESS OF COMMITTEE

troller and Auditor General has also indicated that his office will be carrying out a report on the wider issues of the residential redress scheme. As I mentioned earlier, correspondence has also been received on this matter from the Secretary General of the Department of Education and Skills. We will deal in detail with this matter in the new year. Is the report being carried out by the Comptroller and Auditor General a special report?

Mr. Seamus McCarthy: Yes. I expect it to be completed this week, following which it will be sent to the Department.

Chairman: In the interests of completeness, does Mr. McCarthy have available to him the correspondence that has come to the committee?

Mr. Seamus McCarthy: Yes.

Chairman: Has that been taken into consideration in the context of the report?

Mr. Seamus McCarthy: Yes.

Chairman: Which Minister will publish the report?

Mr. Seamus McCarthy: The Minister for Education and Skills.

Chairman: It will be published in the spring.

Mr. Seamus McCarthy: I must point out that it deals with the main scheme. The committee has the financial statements for Caranua for 2014. The 2015 audit is almost complete and I suspect it will be with the committee early in the new year.

Chairman: Perhaps Mr. McCarthy would elaborate on Caranua. I understand it received €100 million in funding.

Mr. Seamus McCarthy: I am open to correction but I think it received approximately €100 million. Those resources are to be applied for the benefit of individuals who were in institutions. Caranua commenced operation in 2014. Effectively, it issues grants to the benefit of individuals who were in institutions.

Chairman: Will the report deal with the Caranua part of the equation?

Mr. Seamus McCarthy: Not in detail.

Chairman: But Mr. McCarthy has received the correspondence to which I referred?

Mr. Seamus McCarthy: Yes. The financial statements allow the committee to bring Caranua in and discuss with it the issues that are raised in the correspondence.

Chairman: Would it be best to do that in conjunction with our consideration of the report?

Mr. Seamus McCarthy: Yes.

Chairman: One fund flows from the other.

Mr. Seamus McCarthy: Yes.

Chairman: Okay we will deal with both at the same time. A number of people have been in contact with the committee on this matter, including former residents of the residential institu-

tions. They are concerned that we deal with this matter soon and we will do so.

Nos. 210C and 222 C (i) and (ii) deal with a Mazars review of processes employed by the University of Limerick. There is correspondence from the CEO of the Higher Education Authority and from the President of the University of Limerick in respect of actions taken following the review. Is it agreed to note this correspondence? Agreed. I also propose that we make copies of it available to the individual who brought the matter to the committee's attention. Is that agreed? Agreed. It may be also worth adding the University of Limerick to the work programme when we engage with third level institutions in 2017.

No. 211C (i) and (ii) is correspondence from the CEO of the National Transport Authority providing a response to an issue identified in its 2015 financial statements with the lease of a building. I think this relates to the fact that the building was not occupied for some time. If people want to raise this matter again at a future date or to deal with it in any other format they are free to do so.

No. 213C is correspondence from Mr. Seán Ó Foghlú, Secretary General, Department of Education and Skills in reply to an issue raised by an individual alleging misappropriation of public money in Mayo, Sligo and Leitrim Education and Training Board. The Department is aware of the matter and regards the use of the funding as appropriate in this case. I suggest that we send a copy of this correspondence to the individual and that we now consider the matter closed. Is that agreed? Agreed.

No. 217C is correspondence, also from Mr. Seán Ó Foghlú, Secretary General, Department of Education and Skills. This is an update for the committee in regard to the transfer of property under the 2002 indemnity agreement. Is it agree to note this correspondence? Agreed.

No. 223C (i) and (ii) is correspondence from an individual on the deterioration of salmon stocks. A paper on the matter is attached. The individual claims that this is principally a co-ordination problem and while a group has been set up under the EPA, called LAWCO, he believes there is real need for an involvement in this area by the Department of Communications, Climate Action and Environment or the Sustainable Energy Authority of Ireland. I propose that we write to the EPA, forwarding a copy of this correspondence and requesting a response on whether the inclusion of the Department of Communications, Climate Action and Environment would add value to this group and, if so, to invite its participation. I also propose that we write to the Department directly asking for its response on the correspondence and whether it would consider being involved in the LAWCO group or other such group to deal with the matter. Is that agreed? Agreed. When a response has been received from the two organisations we will deal with the matter.

We now move on to reports, statements and accounts received since our meeting on 24 November 2016.

Deputy David Cullinane: Before we move on from correspondence, I would like to raise again today the issue of the section 38 and 39 organisations. I am a little uncomfortable that we have had only one hearing on the Console issue. An internal audit carried out by the HSE raised very serious process issues. Since then we have come across a number of other organisations where similar problems have arisen. There appears to be a problem in terms of accountability and the relationship between the HSE and these organisations. Is there merit in the Comptroller and Auditor General doing a special report on section 38 and 39 organisations' processes? It would appear that this is not an isolated issue. There are issues that arose at the Committee of

Public Accounts prior to this incarnation, which were in the public domain. We have had one engagement with the HSE and that was it. I accept that Project Eagle came to the fore at that point but we must put some thought into what is the best way to progress the issue because a significant amount of taxpayers' money is being spent and given to those organisations. Most deal with their funds appropriately and no issues arise but there are failures in the process. I again flag the issue as I am concerned that we have not decided one way or the other how we should proceed.

Chairman: Does Mr. McCarthy have a comment or thought on that issue?

Mr. Seamus McCarthy: Yes, I have. Oversight of sections 38 and 39 bodies is something that is examined every year. I drew the committee's attention previously to the statement on internal financial control in the HSE, which is quite extensive, and it deals every year now with the development of its processes for oversight. Every year there is a report on it that the committee is free to examine as it wishes. It is at a process level though, rather than at the level of individual entities. Where there are significant failures those should be noted in the statement on internal financial control and one would expect to see in the 2016 financial statements an explanation from the HSE as to what control changes it is making, given the lapses that have occurred in individual charities or voluntary bodies.

The committee has a framework at any stage to bring the HSE in to give it an update. Undoubtedly, it is a very significant line of expenditure of the order of €2.5 billion to €3 billion a year in transfers to sections 38 and 39 organisations.

Chairman: We will certainly come back to that. I expect other members would agree with him in that regard.

Deputy Catherine Connolly: Will we come back to it through the framework of the internal financial controls in the HSE? Will that be the heading?

Mr. Seamus McCarthy: The committee could do that. The subject for the meeting would probably be oversight of sections 38 and 39 bodies.

Chairman: We will probably do so in February.

Deputy Catherine Connolly: I was going to ask when we would meet for that purpose. It will be in February. That is fine.

Chairman: I will deal with the work programme in a moment but that is a big item. It is the next item on the agenda.

Financial statements received since 24 November include the Athlone Institute of Technology. It got a clear report. We also received the 2012 and 2013 accounts from the National College of Art and Design. It got a qualified opinion. The college kept inadequate records for the period of account. That is very serious. Serious issues were raised by the Comptroller and Auditor General on the system of internal control. The deferred pension funding issue is standard for all universities. Perhaps the Comptroller and Auditor General could say why we are only getting the 2012 accounts now from the National College of Art and Design.

Mr. Seamus McCarthy: As a result of the inadequate accounting records kept by the college it struggled to produce financial statements for 2012 and 2013, and to provide explanations to us. We had to do a substantial amount of working around to try to get complete explanations.

COMMITTEE OF PUBLIC ACCOUNTS

It is a matter which I have reported on in 2014. I signalled then that the problem existed. The qualified audit opinion has been given for the past three years in relation to NCAD.

Chairman: What is the qualified opinion?

Mr. Seamus McCarthy: Effectively, it means the college is not in a situation to produce a financial report in a reasonable time. It is very difficult to carry out the audit. While we feel that the college has reached a situation where it is giving a reasonable representation of the transactions in the year, there is an element of doubt over it because of the quality of the accounting records.

Chairman: How have the records been since? Are they up to date?

Mr. Seamus McCarthy: In 2014 there will still be an element of working around to be done. After the report was presented by me, there was a change in the board – almost a complete change of the board membership – in the middle of 2015. When we get to the 2014 to 2015 financial statements, which I expect we will begin auditing in the new year, I think the systems will be significantly better. The statement on internal financial control is quite comprehensive about the problems that there have been for the college and the steps it is taking. There is an update on my report of 2014 in relation to that.

Chairman: Where is that update?

Mr. Seamus McCarthy: It is in the financial statements that have been presented here.

Chairman: I propose that we move on but I will not let this go.

Deputy Catherine Connolly: The board is appointed to do a job. Who appointed the board?

Chairman: The Minister. I propose that we write to the Minister for Education and Skills, enclosing the details and highlighting the issues, and asking him to take immediate action. It is just not good enough that a public body with a turnover of €17.3 million can say it has difficulty producing accounts. We will write to the new chairman saying that he should do whatever is required to protect taxpayers' money and to make sure that proper accounts are kept. The college must do that.

Deputy David Cullinane: I agree. It is serious. The Comptroller and Auditor General said he is of the opinion that there may be improvements in terms of the 2014 and 2015 accounts. If that is the case, it would be good, but perhaps if it is not then it would merit us bringing the college before the committee.

Chairman: Bringing them in.

Deputy David Cullinane: We will give them a chance. We hope there will be improvements but if the improvements do not materialise, at that point we would then need to bring them in.

Chairman: Okay.

Deputy Josepha Madigan: It is a bit premature at this stage because we have not got the up-to-date figures.

Chairman: We have not decided to bring them in but it is an option if things do not work

out.

Deputy Alan Farrell: We will have to wait and see. Do we have an idea of the routine rotation of the board of NCAD or was there a clear-out as a result of the previous report?

Mr. Seamus McCarthy: From memory, it is a three-year appointment.

Deputy Alan Farrell: I see.

Mr. Seamus McCarthy: The board will be in place from 2015 to 2018. I think it was a complete replacement of the pre-existing board. Obviously, the current board members have a difficulty in rectifying situations that prevailed prior to their appointment but I am satisfied that they are taking strong steps to improve the situation. I anticipate that matters will be better for the 2013 to 2014 period but I cannot give an opinion until the audit is completed. I will certainly be reporting and drawing attention to matters if I am dissatisfied.

I would also expect the capacity of the college to speed up the delivery of financial statements to improve. We are further along with the 2013 to 2014 statements. I would expect to have those early in the new year and then the 2014 to 2015 statements by about the middle of next year.

Chairman: When is the year end?

Mr. Seamus McCarthy: It is September.

Chairman: So when will Mr. McCarthy be dealing with September 2015?

Mr. Seamus McCarthy: By the middle of next year, which is still two years.

Chairman: Even at that there will still be a long wait.

Mr. Seamus McCarthy: It will take the college a long time to catch up.

Chairman: For now, we will write to the Minister who is responsible and the new chairman of the board and we will ask both of them for a response and we will see what happens with the audit in due course. We have the option of going further depending on how things evolve.

The National Haemophilia Council got a clear audit report. The next item is Transport Infrastructure Ireland, which also got a clear audit report. Next is the Crawford Art Gallery Cork Limited. It got a clear audit report but there is a comment that it did not carry out the review of the effectiveness of the system of internal control during the course of the year. The Kilkenny-Carlow Education and Training Board got a clear report. The National Paediatric Hospital Development Board is next. Its remit is to build and equip the national paediatric hospital. It got a clear audit report. It might be a matter for the Joint Committee on Health but if anyone wants to have a look at that set of accounts they are in the Oireachtas Library and they will be published subsequent to the meeting. It is a big investment by the Irish taxpayer. People can raise the issue at a later date if they wish.

The Office of the Data Protection Commissioner got a clear report. Coláiste Mhuire gan Smál, Ollscoil Luimnigh, got a clear audit report. Again, the issue of deferred pensions arises, which is common to many public sector bodies. The Irish Film Board got a clear audit report. The Ombudsman for the Defence Forces got a clear audit report and Horse Racing Ireland got a clear audit report for its 2015 accounts. The agriculture committee has had the group in before

it recently.

I have nothing formally drafted for the work programme. I suggest that on 12 January we have a detailed meeting to consider progress on the Project Eagle report. I hope we will be able to finalise that within the week. I would like to be able to publish it on approximately Thursday, 19 January. We will have a meeting on 12 January and perhaps another meeting on the following Tuesday or Wednesday to tidy up the report before we issue it on 19 January. The normal process for issuing a report is for the committee to do so in the AV room. It might be for an hour in the afternoon. It is important that the committee holds some normal public meetings dealing with issues other than Project Eagle. With that in mind, for our meetings on Thursday, 19 January 2017, Thursday, 26 January 2017 and Thursday, 2 February 2017, I have come up with three specific items which we could try to deal with. The first is the issue in the Comptroller and Auditor General's report on the guardian *ad litem* service. The second is the sale or disposal of the Government jet, which is a discrete chapter in the Comptroller and Auditor General's report. The third item is the special report on the cost of the changes to the Prison Service. We will try to get some normal business meetings going and in early January we will lay out our work programme for the following months. We will be bringing in the HSE, third level institutions and so forth. The issues I have suggested for our initial meetings next year are short and very specific and that would be preferable to opening up, for example, broader issues with regard to the HSE.

Deputy David Cullinane: An issue was highlighted recently about the holding of money belonging to patients in nursing homes.

Chairman: Yes. We will add that. We will contact the relevant organisations to see which of them we can fit into the aforementioned dates. I think we should start with a few normal business meetings next year. Then we will agree a work plan for the following few months. If members want something in particular included in that work programme, they should say so now and we will note it or else they can contact the committee secretariat.

Deputy Alan Farrell: Is it envisaged that the committee will be meeting on 12 January?

Chairman: You tell me. The Dáil is not sitting so-----

Deputy Alan Farrell: The Joint Committee on the Future Funding of Domestic Water Services is sitting that afternoon and I am a member of that committee so-----

Chairman: Maybe we could hold a morning meeting, or will that pose difficulties for the Deputy? At 11 a.m. perhaps?

Deputy Alan Farrell: Sure.

Chairman: Okay, we will schedule it for 11 a.m. We will only be discussing a draft report and people will have received it in advance. Sorry, my apologies, it is not a draft report but a working paper prepared by the officials. If members could look at that before the meeting and prepare their observations on it, we can move quite quickly. If members only open it up when we arrive, however, we will not get very far. I think a meeting from 11 a.m. to 1 p.m. should be adequate.

That is the approximate work programme for the first few meetings of next year. As there is no other business, I want to go into private session briefly to discuss the status of our work on Project Eagle before we call in our witnesses.

The committee went into private session at 10.33 a.m. and resumed in public session at 10.45 a.m.

Policy on the Retention of Contemporaneous Notes in the Preparation of Board Minutes: National Asset Management Agency

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

Chairman: We are now in public session to deal with No. 7 on our agenda, NAMA's policy regarding the retention of contemporaneous notes in relation to the preparation of board minutes. In the course of the committee's examination of the Comptroller and Auditor General's report on NAMA's sale of Project Eagle, the committee had sought a considerable amount of information from NAMA. We are very grateful to NAMA for the material supplied to the committee to date. One particular item requested was a copy of the contemporaneous notes in the format taken during the meeting that were used in the subsequent preparation of the minutes of NAMA board meetings held on 12 December 2013 and 8 January 2014. NAMA responded to the committee that once NAMA board minutes are adopted by the board members, they are the official record of that particular meeting. As a result, the board secretary's contemporaneous notes of the meeting are transitory records and are not retained. As I mentioned at our last private meeting, I was surprised by this considering the importance of the meetings and the fact that the board was considering the sale of assets worth £1.3 billion. For that reason, we have asked for NAMA to put on the record at this meeting its policy regarding the retention of contemporaneous notes in respect of the preparation of board minutes. I will allow for some short questions at the end but I ask that members do not drift into other topics today and that they be very brief. This session will be over within one hour at the very latest. It may not go that far but I will be closing the meeting at 11.45 a.m. if it is not concluded by then. There is one specific item and we should be well able to do our business in the time allowed.

I welcome the following representatives from NAMA: Mr Frank Daly, chairman, and Mr. Brendan McDonagh, chief executive.

I remind members, witnesses and those in the Public Gallery to turn off all mobile phones. I advise the witnesses that by virtue of section 17(2)(f) 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 the evidence in relation to 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. 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. Members of the committee are reminded of the provisions of Standing Order 186 to the effect that the committee shall refrain from inquiring into the merits of a policy or policies of the Government or a Minister of the Government or the merits of the objectives of such a policy. 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 in such a way as to make him or her identifiable.

I invite Mr. Daly to make his statement.

COMMITTEE OF PUBLIC ACCOUNTS

Mr. Frank Daly: The Chairman will be glad to know we have only one opening statement today.

This is the eighth occasion on which NAMA representatives have appeared before the Committee of Public Accounts to answer questions in relation to Project Eagle. It is the fifth occasion on which the chief executive and I have appeared before the committee to deal with this issue. We estimate that NAMA representatives have already responded to about 2,000 oral questions during our appearances and to about 100 written questions, which have been submitted to us by the committee. We received yesterday some additional questions to which we will respond very shortly. We trust that this extensive evidence, in both oral and written form and which has been provided to the committee by NAMA, will be of much assistance to it in the preparation of its report.

The committee has invited us today to discuss a specific issue and it has indicated to us that the morning session will be confined to a maximum of one hour. The specific issue relates to the contemporaneous notes taken during board meetings in late 2013 and early 2014. These notes were used to prepare the minutes of the meetings. According to a press release issued by the committee after its meeting on Thursday of last week, it appears surprise was expressed that the written notes used to prepare the board minutes were not retained by NAMA. The committee will be aware that the signed board minutes are the official record of each meeting. I propose to help the committee to explain the position on the preparation of board minutes, which would typically record the following: board members in attendance and apologies in the case of absences, the date and time of the meeting, disclosure of interests, each agenda item considered by the board, the decision or decisions in respect of each agenda item, whether a decision was required, with concise coverage of the substance of the deliberations on that agenda item, any action item arising from a decision and any concern or objection which a board member wishes to record.

The secretary attends the board meeting and takes written notes. From these notes, draft typed minutes are prepared which record the decisions and the actions decided at the meeting. As soon as practicable following the meeting, typically two to three working days, the draft minutes are sent to me, as chairman, for review. Following the chairman's review, the draft minutes are circulated to the board members for comment, typically within five working days of the meeting. Board members are expected to revert to the secretary with any comments they may have within three working days of receipt of the draft minutes. The final agreed minutes, as reviewed by all board members, are then presented and approved by the board at a subsequent board meeting and they are then signed by the chairman. The minutes approved by the board and signed by the chairman are regarded in law as evidence of the proceedings and of the decisions taken by the board. There can be only one set of official minutes of meetings. The secretary then disposes of the written notes taken during the meeting as they are no longer required. The secretary's notes serve no purpose other than to assist the secretary in preparing the typed draft minutes for circulation to the chairman and board members. Once the minutes are agreed and approved, there is no reason the secretary's handwritten notes should be retained.

This is the practice which NAMA operates and which I understand applies throughout the public service and elsewhere in line with best practice in corporate governance. For instance, the Institute of Chartered Secretaries and Administrators, ICSA, has produced a guidance note on minute taking, and I refer to the 2016 version, which recommends the following procedure for written notes: "On balance we recommend that the notes should be retained until the minutes are approved but then promptly destroyed."

In conclusion, NAMA's procedures in relation to board minutes are therefore very much in line with recommended best practice. Once a set of minutes has been agreed and approved by the board in relation to a particular meeting then that becomes the record of the proceedings and of the decisions taken at that meeting. Accordingly, I cannot see what merit there would be in retaining written notes after they have fulfilled their basic purpose of assisting the board's secretary to type up the draft minutes.

Chairman: I thank the chairman. The following speakers have indicated a wish to speak: Deputies Madigan, Cullinane and Connolly. I ask them to be brief as they only have a few minutes each.

Deputy Josepha Madigan: I thank Mr. Daly for his opening statement and welcome Mr. McDonagh. The first time Mr. Daly appeared before the committee in this regard, I asked him to provide the minutes and I thank him for doing so. The minutes are retrospective but it is good to have them. I wish to refer Mr. Daly to the first page of his opening statement. He said, "The signed board minutes are the official record of each meeting." I would like him to state here on record whether there was an off-piste discussion. I have been privy to meetings where during the discussions, a request was made for the tape to be stopped and a conversation ensued. It would have been said, "We won't record this for the minutes but let us have a conversation." I ask Mr. Daly to confirm today that no such discussion took place at the board meeting. When one reads the minutes one can see a clear decision was made but no rationale has been given. I am not satisfied with how or where the conversation took place. I ask Mr. Daly to confirm that no conversations around that took place that were not recorded, as in an unofficial conversation. He has said that the minutes are the official record.

Mr. Frank Daly: Yes.

Deputy Josepha Madigan: I want Mr. Daly to confirm there was no unofficial record.

Mr. Frank Daly: No, I think there were no discussions of substance. There are always discussions at board meetings. I think we went through this the last time we were here. Certainly, one will have a lot of discussions during a board meeting or any meeting. The essence of the record of the minutes is to record the substance of those discussions. It is my view that there is nothing of consequence that was discussed during the board meeting that was not reflected in the minutes. To go back to the Deputy's point, I presume she said "stop the tape" as an example because, for the record, NAMA board meetings are not recorded.

Deputy Josepha Madigan: It is a turn of phrase, Mr. Daly.

Mr. Frank Daly: I wish to also make the point that I do not recall occasions during these meetings when I would say, or anybody would say, "now this not for the record but".

Deputy Josepha Madigan: Mr. Daly has said that there were no discussions of substance. What does he mean? Was there a discussion of the matter-----

Mr. Frank Daly: No. I mean at those meetings-----

Deputy Josepha Madigan: -----that was not recorded?

Mr. Frank Daly: -----at one of them in particular, we would have gone through a fairly detailed, or at some of the meetings on Project Eagle, we would have gone through fairly detailed papers presented by the executive. It is inevitable that as one does that members will ask about

this paragraph and that paragraph, and can one explain this and clarify that. One will have a lot of discussion like that.

Deputy Josepha Madigan: Yes.

Mr. Frank Daly: There is nothing that is not recorded in the minutes that in my view is a matter of substance that needed or deserved to be recorded in the minutes.

Deputy Josepha Madigan: I thank Mr. Daly for clarifying the matter. I note that the name of the secretary has been redacted from the minutes.

Mr. Frank Daly: Yes.

Deputy Josepha Madigan: Does Mr. Daly think that the secretary would agree with what he has said today?

Mr. Frank Daly: I think she would. Yes.

Deputy Josepha Madigan: Does Mr. Daly think the secretary would give evidence to say there were no other discussions other than what is recorded in the minutes at those board meetings?

Mr. Frank Daly: I think if she were asked to do that. Putting a junior official in that position is really not something that-----

Deputy Josepha Madigan: That was not my question. Does Mr. Daly think she would agree with what he has said?

Mr. Frank Daly: I do think that she would absolutely agree, yes.

Deputy Josepha Madigan: Mr. Daly said in his opening statement on 24 November 2016 that nowadays board decisions and the rationale for them are recorded in much greater detail than was the case three years ago. Can Mr. Daly explain his comment? It does not tally with what he has said in respect of keeping a notes on a temporary basis.

Mr. Frank Daly: The Deputy would have to look at the general discussions we have had in here in relation to Project Eagle. I suppose our view, and we acknowledged this the last time - I acknowledged it in my opening statement the last time around - that we have learned through this process that we should maybe put in a little more detail. Again, it does not contradict-----

Deputy Josepha Madigan: I am sorry to cut across Mr. Daly. I think that is helpful.

Mr. Frank Daly: Yes.

Deputy Josepha Madigan: To my mind, regardless of what the normal process was, there were extenuating circumstances in relation to this matter. I note that Mr. Daly quoted the ICSA guidelines but they are only guidelines. There was a huge amount at stake in respect of the sale of Project Eagle. I would have thought that with those extenuating circumstances, as exceptional circumstances, the rationale should have been recorded. It is helpful that Mr. Daly has said that the minutes are now recorded in greater detail. I ask him to explain how NAMA is now doing that as opposed to what it did in the past.

Mr. Frank Daly: I think, if I can take a particular example going back to Project Eagle, it would be maybe indicating more clearly in the minutes that, for example, alternatives were

considered. For example, that a particular aspect of the loan sale was considered or that a particular aspect of the paper presented to the board was considered in more detail. I think it is something that we have acknowledged that we can improve on as result of the engagement with this committee.

Deputy Josepha Madigan: Does Mr. Daly understand the difficulty the Committee of Public Accounts has in accepting NAMA's valuation when there is no documentary evidence to back it up?

Mr. Frank Daly: I accept the point that it is not specifically recorded in the minutes. Again, I make the point that there is all sorts of evidence. Surely, the evidence that we have given orally here over how many sessions and questions is also evidence.

Deputy Josepha Madigan: Mr. Daly, with respect, using the words "official record" twice or more in your opening statement for the minutes is interesting.

Mr. Frank Daly: Yes.

Deputy Josepha Madigan: It raised the question in my mind when I read it that, although it is not explicit but implicit, there may be an unofficial record.

Mr. Frank Daly: No, there is none. Official is used, Deputy-----

Deputy Josepha Madigan: By prefacing the word "record" with the word "official" seems strange.

Mr. Frank Daly: I say "official" in the sense that is, in law, the record of the board meeting of the decision.

Deputy Josepha Madigan: What law has Mr. Daly based that on, as a matter of interest?

Mr. Frank Daly: It would be the Companies Act 2014.

Chairman: I ask the Deputy to move on as we have only one hour.

Deputy Josepha Madigan: All right.

Mr. Frank Daly: I do, by the way, accept the point that this is only guidance. Let us remember that that guidance is drawn up on the basis of consultation with the top 100 FTSE companies and public sector companies so it has a considerable air of authority.

Deputy Josepha Madigan: The fact that NAMA has changed its procedure and is now recording the rationale is of benefit.

Chairman: I call Deputy Cullinane and I remind members that these are five minute slots.

Deputy David Cullinane: I welcome Mr. Daly and Mr. McDonagh again. I find the opening statement to be reasonable. I have no difficulty with the process of minute taking. It is reasonable that notes are taken and then transcribed into a draft set of minutes that is sent to Mr. Daly and board members. I also do not have a difficulty with the notes being discarded at some point as I think it is reasonable. I have no difficulty with the process.

I have one question that has already been raised. I am not sure whether it was Mr. Daly or Mr. McDonagh who mentioned in some of the previous hearings, although I think it was

COMMITTEE OF PUBLIC ACCOUNTS

Mr. McDonagh, that maybe improvements could be made in how NAMA records minutes, or maybe that is something NAMA could learn from. I refer to when Mr. Daly talked about what the minutes actually record and number 5 is an area which did not jump out in some of the minutes. It is an area where improvements could be made. We have had lengthy discussions about the interpretations of some minutes. I refer to better recording of what is said here and concise coverage of the substance of the discussions on that agenda. I do not think that is exactly what is in the minutes I have seen. If there was an improvement to be made, I would focus on that. It is up to NAMA, given that it offered that up. Perhaps there could be improvements in minute taking. Where does NAMA see those improvements? Aside from that, I do not have a difficulty with the process itself.

Mr. Frank Daly: It may come as a shock that Deputy Cullinane and I agree with each other. The improvements to which I referred in my opening statement the last day would certainly be in the area of item No. 5, as the Deputy mentioned. It has already happened. If you looked at current minutes, you would see a greater coverage of the substance of the deliberations. That is the essence of it.

Deputy Catherine Connolly: I welcome Mr. Daly's statement and its brevity. It is certainly clear. I have only one or two questions about it. I do not know whether the Chairman will allow me to do this. In respect of the minutes of board meetings and other meetings, Mr. Daly has clarified the policy regarding board meetings. There are so many days allowed - periods of time - where they refer to Mr. Daly first. Presumably, he makes changes to them as he sees it.

Mr. Frank Daly: Sometimes but not too often. We have an excellent-----

Deputy Catherine Connolly: Are Mr. Daly's changes highlighted when they go to the other members for their-----

Mr. Frank Daly: No, they are not. My changes are incorporated into a clean document and then sent out to the other members.

Deputy Catherine Connolly: So the process is that they go to Mr. Daly, he makes changes, that document goes out and Mr. Daly's changes are not highlighted. Are changes made by other members highlighted?

Mr. Frank Daly: They are highlighted and go back to the secretary. At the meeting at which the minutes are tabled for approval, there will be two documents - a clean copy and a marked-up copy showing all the changes - so the board members can see what the changes suggested were and what is being-----

Deputy Catherine Connolly: So the board members see the changes suggested by other board members?

Mr. Frank Daly: Yes.

Deputy Catherine Connolly: But they do not see the changes suggested by Mr. Daly?

Mr. Frank Daly: No, they do not.

Deputy Catherine Connolly: This time period is an indicative one. Presumably, the number of days for each stage-----

Mr. Frank Daly: It is an indicative time period but generally we would try to-----

Deputy Catherine Connolly: That is okay. I have no issue with it. NAMA was under awful pressure at the time of some of the meetings. Some meetings were held on the same day while others were held within two days of each other so what procedure was applied then?

Mr. Frank Daly: We would still try to do it as quickly as possible because the thinking behind that is that the earlier you get draft minutes to somebody who was at a meeting, the clearer their recollection of the meeting will be. Even though we might have had meetings sequentially over a number of days, we would still try to adhere to a timetable where you would generally get the minutes out before the next meeting.

Deputy Catherine Connolly: I understand that but there is a period of time where NAMA was under pressure in respect of meetings, there were a number of phone calls and NAMA had meetings on 14 March. Were meetings held in April as well that related to Cerberus?

Mr. Frank Daly: I am sure there were. We would have had the normal board meeting.

Deputy Catherine Connolly: There were meetings on 3 and 10 April.

Mr. Frank Daly: Mr. McDonagh has reminded me that they were on the 11th, 13th and 16th.

Deputy Catherine Connolly: What are we talking about?

Mr. Brendan McDonagh: We are talking about March. The Deputy is correct-----

Deputy Catherine Connolly: NAMA was under more pressure in March. There were meetings on 3 and 10 April. Let us go to March. What was the procedure then? NAMA did not have time to do all this.

Mr. Brendan McDonagh: The procedure is that, as the chairman outlined-----

Deputy Catherine Connolly: I have no problem with the procedure as outlined but what was applied at that time?

Mr. Brendan McDonagh: It is easy to follow this process if there is a normal monthly board meeting but if there are unscheduled board meetings, we have a very dedicated secretary who would stay there in the evening to do the board minutes after each board meeting to try to get the draft out as quickly as possible. If a subsequent board meeting was coming up, she would do-----

Deputy Catherine Connolly: That is what I am specifically asking Mr. McDonagh about the meetings in March and April. What actually happened?

Mr. Brendan McDonagh: I could come back to the Deputy but my recollection is that the board secretary got minutes for those meetings out - probably within a day.

Deputy Catherine Connolly: On one day, NAMA had meetings during the morning and afternoon.

Mr. Brendan McDonagh: Yes but as the chairman said, our policy is to try to get the minutes out to members as quickly as possible.

Deputy Catherine Connolly: The policy has been laid out. I am simply asking Mr. McDonagh how it was applied when NAMA was under extraordinary pressure. When meetings

were sent out on the same day or within a very short space of time, how did NAMA apply this procedure?

Mr. Frank Daly: It was applied.

Deputy Catherine Connolly: Can I get a response from Mr. McDonagh?

Mr. Brendan McDonagh: I can go back and answer that question. I will check because there are electronic records so there is no issue about that. My recollection is that the board secretary stayed back late in the evening to do the minutes even if there were two meetings in one day and that given the sensitivities of the issue, the minutes would be distributed even quicker than the general deadlines.

Deputy Catherine Connolly: So there would have been that opportunity for each person to change what they wanted to change?

Mr. Brendan McDonagh: Absolutely. No board meeting minutes are ever agreed without all board members agreeing to them and seeing all the changes.

Deputy Catherine Connolly: Mr. Daly and Mr. McDonagh set out the policy regarding board meetings. There is a note of a meeting between Brown Rudnick, PIMCO and NAMA on 17 October. In contrast with this one, which is exemplary and tells us the meeting was in the NTMA building and so on, it does not say who wrote the minutes or where the meeting was held. This one does not show location. Is there a procedure relating to those minutes?

Mr. Brendan McDonagh: Board meeting minutes have to follow a particular format and committee meetings have to follow a particular format. Regarding business meeting minutes, which include those two sets of minutes referred to by the Deputy, the policy is to have minutes of them but, effectively, there is no set format because they are just business meetings and everybody has their own style of doing minutes depending on who is taking the minutes at the meeting. They are business meetings, not official board meetings.

Deputy Catherine Connolly: I understand. That was a very important meeting and there were lots of other important meetings. What is the procedure? Location would be important.

Mr. Brendan McDonagh: We know those meetings happen in Treasury Building.

Deputy Catherine Connolly: We do not.

Mr. Brendan McDonagh: I can easily confirm to the Deputy, because I am aware of it, that those meetings happen in Treasury Building.

Deputy Catherine Connolly: I am not arguing with Mr. McDonagh about that but it is not set out here. We should be able to see the location and time.

Mr. Brendan McDonagh: That is a fair comment.

Deputy Catherine Connolly: This is the case particularly if we go back to Tughans, where two meetings of the Northern Ireland advisory committee were held, so it is in that context that location is extremely-----

Mr. Frank Daly: Those were Northern Ireland advisory committee meetings so they would follow the same standard as a board meeting.

Deputy Catherine Connolly: That is what I am coming to. The location of this one is not here.

Mr. Brendan McDonagh: That is a Brown Rudnick meeting.

Deputy Catherine Connolly: Absolutely and very important but no location is given and it does not say who took the minutes. Were those minutes checked? It is a note of minutes. Were they checked with participants, as is the case with NAMA board meetings? Does NAMA have the same procedure or does it have a different one?

Mr. Brendan McDonagh: If you have business meetings with external businesspeople, you do not exchange minutes of them.

Deputy Catherine Connolly: I am only clarifying with Mr. McDonagh-----

Mr. Brendan McDonagh: The people who are at the meetings see the minutes. The NAMA people who were at the meeting would have seen the minutes because they were there to make sure everything was recorded but we would not have sent our minutes of the meeting to Brown Rudnick or-----

Deputy Catherine Connolly: That is exactly what I am trying to check. So NAMA wrote up these minutes?

Mr. Brendan McDonagh: Yes.

Deputy Catherine Connolly: NAMA wrote up these minutes afterwards. It was what it saw as having happened in that meeting.

Mr. Brendan McDonagh: If a businessperson came into NAMA and told me that they wanted to invest money or buy property, we would make a general-----

Deputy Catherine Connolly: I am just asking very specific questions. I do not need that kind of comment on-----

Mr. Frank Daly: If I can make a general point, there is a difference between minutes and a note of a meeting.

Deputy Catherine Connolly: That is what I am trying to establish because these are very important meetings. Was the same procedure used in Northern Ireland advisory committee meetings?

Mr. Frank Daly: It was the same procedure generally as the board meetings.

Deputy Catherine Connolly: If a meeting of the Northern Ireland advisory committee took place in Tughans, did the secretary take the minutes? Who took the minutes?

Mr. Brendan McDonagh: The secretary of the Northern Ireland advisory committee took the minutes.

Deputy Catherine Connolly: Was this the same secretary as the NAMA secretary?

Mr. Brendan McDonagh: No, the board secretary is not the same secretary as the secretary of the Northern Ireland Advisory Committee.

Deputy Catherine Connolly: Was that a specific role for that secretary? Was he or she just

COMMITTEE OF PUBLIC ACCOUNTS

a secretary or was he or she a member of-----

Mr. Frank Daly: There are a load of other roles. How many statutory committees do we have?

Mr. Brendan McDonagh: We had six.

Mr. Frank Daly: We have five committees in NAMA, four of which are statutory.

Mr. Brendan McDonagh: It was six when Northern Ireland was involved.

Mr. Frank Daly: A secretary is appointed to each of those committees.

Deputy Catherine Connolly: When the Northern Ireland Advisory Committee had a meeting, and I will use Tughans as an example, did the minutes circulate to Mr. Daly first-----

Mr. Frank Daly: Yes.

Deputy Catherine Connolly: -----for him to correct them?

Mr. Frank Daly: As chair of the NIAC.

Deputy Catherine Connolly: That is what I mean. Any change that he made was not highlighted.

Mr. Frank Daly: No.

Deputy Catherine Connolly: The minutes would then go back to the other members - Mr. Cushnahan, Mr. Rowntree and whoever else was on it from the Dublin side.

Mr. Frank Daly: Yes.

Deputy Catherine Connolly: They would make their changes.

Mr. Brendan McDonagh: Yes.

Deputy Catherine Connolly: Then it would go back.

Mr. Frank Daly: They were approved. The approval process would be longer because the Northern Ireland committee only met four times per year.

Deputy Catherine Connolly: I understand that. After Mr. Cushnahan resigned for personal reasons, did he come back to check the minutes? Was he gone when they were noted?

Mr. Frank Daly: He was. He would have been gone by 7 November.

Deputy Catherine Connolly: He did not check the minutes to note that they were-----

Mr. Frank Daly: I would have to double check that. I do not believe that he did, but allow me to double check.

Deputy Catherine Connolly: That is fine. If he was gone, I presume that he did not, but maybe NAMA allowed it out of courtesy.

Deputy Catherine Murphy: The witnesses cited best practice, but it is not unfair to say that "best practice" did not prove to be best practice. Mr. Daly stated that, were he to change

something, NAMA would have kept a better record of the rationale for decisions.

Mr. Frank Daly: What it says here is-----

Deputy Catherine Murphy: It did not prove-----

Mr. Frank Daly: “Best practice” is concise coverage of the substance of the deliberations. Maybe we were too concise.

Deputy Catherine Murphy: Maybe the difference between NAMA and the top 100 companies was that NAMA had a different role and there was a public aspect to it, in that it was disposing of loans, assets or whatever.

Did the same person take the minutes throughout 2013 and 2014?

Mr. Brendan McDonagh: No.

Mr. Frank Daly: We had a change in board secretary.

Mr. Brendan McDonagh: We had one board secretary until November 2013 and a new board secretary joined us from December 2013 onwards.

Deputy Catherine Murphy: Was there any variation in how the minutes functioned?

Mr. Brendan McDonagh: No. There are always stylistic differences because different people do different things, but the minutes are the minutes of the board. They are not the minutes of the board secretary. The board is responsible for the board minutes.

Deputy Catherine Murphy: Did Mr. Daly say that there was an electronic record or did I pick him up wrong? What was the format?

Mr. Frank Daly: No. Draft minutes are circulated to board members in a Word document so that they can make or suggest changes. It is all done electronically.

Deputy Catherine Murphy: “Electronic” can have a few meanings, for example, a recording. Essentially, this was done by e-mail.

Mr. Frank Daly: To explain, there is e-mail, which is used for the distribution of the draft minutes for comment, whereas the final board papers and the permanent record of official minutes are on BoardPad. I am unsure as to how to describe it.

Mr. Brendan McDonagh: A standardised meeting management system.

Mr. Frank Daly: Board members have access to it.

Deputy Catherine Murphy: Are the e-mail exchanges held or are they disposed of?

Mr. Frank Daly: They are transitory records, which are not held.

Deputy Catherine Murphy: If meetings were held when everyone was not in the same place, how were they minuted and who minuted them?

Mr. Frank Daly: The secretary, some other members and I are always in the board room and people who are dialling in do so on a secure system that is locked when they are all there. The secretary does the recording. I cannot record an instance when she or her predecessor was

not present in the board room.

Deputy Catherine Murphy: We are probably trying to get a flavour of what happened at the meeting as opposed to what decision was made. Would the notes have had the level of detail necessary to show whether someone had taken a contrarian view to, for example, the change in approach to Project Eagle from the pattern of asset or loan disposals in other transactions to date?

Mr. Frank Daly: Generally, the notes would record what A, B and C said without commenting on whether they were contrarian or otherwise. Regarding the specific matter that the Deputy mentioned, namely, the change in strategy to opt for a loan sale rather than the approach that had been agreed previously, it would have been discussed. There was a challenging of why we were going that way, but there were no contrarian views to the effect that we should not have gone down that road when the opportunity arose. There would have been a questioning of the figures, pros and cons outlined in the paper, with people perhaps zoning in on particular aspects, but there was no contrarian view that needed to be reflected in the minutes because it was a unanimous decision of the board.

Although it rarely occurs, a specific provision allows for a board member to have a contrary view or particular point recorded in the minutes against his or her name. We encourage that.

Deputy Catherine Murphy: In retrospect, would it have been helpful to have kept the notes that were disposed of?

Mr. Frank Daly: I am not sure that the notes would have added anything. I probably never even saw them and it has been nearly four years since they existed. It would probably have been helpful to us had there been greater detail in the minutes. That might have helped this committee. The committee has the minutes and all of the other documentation that we have sent it, and it must make a judgment on those. Unless this process has been wasting everyone's time, I hope that members will also take account of the consistent evidence that has been given by all NAMA witnesses during this engagement.

Chairman: I have two questions. It was a surprise to most of us to discover that these notes had not been kept. We had seen other detailed contemporaneous notes of lower level or business meetings. I would understand this in a private company, which does not need to keep as many official records and can do what it likes, but I presumed that State bodies had to keep notes of significant board discussions. Most people have been surprised that these ones have not been retained. If Mr. Daly is saying that this is the general practice, this committee will take up the matter.

Each time that the witnesses appeared before us in the past month or so, they referred specifically to their board discussions about the famous 10%. It was that continual reference that led us to ask them to help us by giving us a copy of the notes, seeing as how the information was not contained in the documents given to the board or in the board's own minutes. That the notes are not available has put NAMA at a disadvantage. We are not doubting the witnesses' word, but it would have made life easier for them earlier than this had the notes been retained. Mr. Daly gets my point.

Mr. Frank Daly: I do.

Chairman: NAMA constantly raised the issue of the board's discussions, prompting us to follow the witnesses' line of response.

Mr. Frank Daly: I understand that, if there had been a specific reference in the board minutes to the 10%, we might not have had some of the lengthy discussions that we have had with this committee. Ten NAMA witnesses have attended these meetings and told the committee about the 10%.

Chairman: We made a point of inviting all current and former board members and senior staff. The committee will consider whether this is a good policy for State organisations. Maybe it is, but there is a down side. Sometimes, the organisations can be put at a disadvantage.

We have asked about two sets of board minutes, including those from December. It would be important that Mr. Daly said that everything of substance was recorded and that if it was not of substance it was not in there. From our point of view it is fundamental that we are satisfied that the official record would be a complete and accurate record of all the decisions of substance. We are entitled to proceed on that basis. On the two meetings we asked about, there are two references. It is on page 111 of the Comptroller and Auditor General's report. It refers to a NAMA board meeting of 8 January 2014. The last sentence in paragraph three states: "As agreed at its 12th December 2013 meeting the Board noted it would not consider the sale of Project Eagle portfolio of loans for a consideration of less than STG£1.3 billion". That was agreed at the NAMA board's December meeting. Page 108 of the same report is entitled "Extract from signed minutes of Board's 12th December 2013 meeting (Private Session)". There is no reference in that document in respect of the consideration of £1.3 billion. The January minutes state it was agreed at the December meeting, but it is not mentioned in the December minutes. If Mr. Daly is now trying to tell me an agreement about £1.3 billion, which the January minutes state was agreed at December, was not a substantial issue, I am at a loss. Why was that not recorded in the December minutes?

Mr. Frank Daly: I think regarding the reference to "As agreed at its 12th December 2013 meeting", that was not a decision of the December 2013 meeting - that there would be a £1.3 billion. It was a general discussion. I would refer the Chairman to page 109 of the Comptroller and Auditor General's report, which states: "The Board agreed to consider the matter of price in conjunction with consideration of the above sales process paper." I agree with the Chairman that a bald reading of it, one would say: "Where's the decision on the 12th?" However, there was not a decision on the 12th.

Chairman: So we are now into the subtle distinction that the board can agree something, but it is not a decision of the board. So there are many issues agreed at the board meeting that are not decisions of the board meeting.

Mr. Frank Daly: They are not, really, but-----

Chairman: Mr. Daly can see-----

Mr. Frank Daly: I can see where the Chairman is coming from, but the important point is that we were leaving the decision on the minimum price to the meeting of 8 January.

Chairman: Mr. Daly quoted the line: "The Board agreed to consider the matter of price in conjunction with consideration of the above sales process paper". So it was still up for consideration. However, the minutes of the next meeting indicate it had actually been agreed. Mr. Daly understands the completeness and the accuracy.

Mr. Frank Daly: I do and I think we were finalising it in January, but we had made no decision at the December meeting. Again, that is probably one of the things we would be more

specific about in the minutes.

Chairman: That threw us all along, which is why we asked about those two meetings. They do not fully tally with each other. I get the distinction Mr. Daly is now putting on completeness and accuracy.

Finally on the board minutes-----

Deputy Catherine Connolly: I did not understand the answer as to how Mr. Daly justified it.

Chairman: I ask Mr. Daly to say it slowly - between something being agreed and something being decided.

Mr. Frank Daly: I am saying that what was agreed at the December meeting, which is the last line of that meeting, which is "The Board agreed to consider the matter of price in conjunction with consideration of the above sales process paper". So there was no agreement on a specific figure at the meeting of 12 December. The point the Chairman is making in regard to the minutes of 8 January-----

Deputy Catherine Connolly: I understand the point he is making, I just did not hear Mr. Daly's answer.

Mr. Frank Daly: Okay.

Deputy Catherine Connolly: What was Mr. Daly's answer if no decision was made and it refers to "as agreed"?

Mr. Frank Daly: I think what was agreed was that there would be generally a further discussion. The essence of what was said at the meeting on the 12th was as follows. Because the figure of £1.3 billion was being bandied about - it was in the paper - we did not make a decision on it at the time, but there would have been the comment, "Well look, that's the least we're going to take for this". Then we went back to this in substance at the meeting on 8 January and that was the formal decision, which is recorded in those minutes.

Chairman: Even though they are the official records and we cannot undo those, is Mr. Daly saying that where the board meeting of 8 January 2014 refers to the fact that the £1.3 billion sale price was agreed at the 12 December meeting, that is not an exact, accurate position?

Mr. Frank Daly: No. I think if one goes back to the 12 December meeting, this was the early stages of this. We were talking about the whole process. We were talking about the price. We agreed to consider the matter of price in conjunction with the consideration of the board paper. Then in the subsequent ones where there is a reference - I accept the Chairman's point - to "As agreed at its 12th December 2013 meeting" that we would not consider it for less than £1.3 billion, but there was no decision at the earlier meeting in regard to that.

Chairman: So it is an agreement, but Mr. Daly has added another layer of confusion.

Mr. Frank Daly: Maybe we would change the word.

Chairman: Mr. Daly is insistent that the minutes are the accurate record. However, taking the minutes precisely as written and when they are tested, there is a bit of an issue there. We will need to consider that.

We are now talking about the accuracy and completeness of the board minutes. Have NAMA's minutes ever been tested in court or been part of any litigation between NAMA and anybody else?

Mr. Frank Daly: Yes, indeed.

Chairman: What was the decision in regard to the outcome of the completeness and accuracy of the NAMA board minutes when they were tested in court?

Mr. Frank Daly: First, in general it would be one of the considerations for us that there is only one official set of minutes of the meeting.

Chairman: I ask Mr. Daly to spell out what he is saying.

Mr. Frank Daly: We are, as the Chairman knows, an organisation that is subject to some litigation from time to time. We take litigation, ourselves, from time to time. Obviously, in litigation there is always discovery of documentation. Discovery allows either side - but let us say somebody is taking an action against us - to discover the records of meetings and decisions. In that context it is very important that there is no ambiguity about what is the record of the decision - that there are not two sets, that there are not draft sets, that there are not notes. This would be well realised. If the Chairman reads through the ICSA document in full, that would be part of the rationale there. One needs to have one set of minutes, which actually records the decisions as agreed by all the board members.

Yes, they are discoverable. Yes, they have been tested in court. I do not think, as I recall, that there has ever been a case in which the minutes have been an issue or found deficient. I am conscious of the fact that we have a couple of cases that are live, so I do not want to go into any great detail in regard to that.

Chairman: They have been referred to in earlier court cases.

Mr. Frank Daly: They have.

Chairman: The accuracy and completeness was an issue in earlier court cases.

Mr. Frank Daly: Sorry, no. They have been referred to. They have been adduced in evidence and they have been discovered. I am not aware that there has been any case in which they have been challenged or found to be deficient, but that is something I would like to check with our legal people.

Chairman: There might not have been a specific finding, but it might have been said in the course of evidence. It might have been agreed without a finding that it did not fully reflect how a decision was arrived at. Am I right in interpreting Mr. Daly as saying that one of the reasons these notes are not retained is because they might be discoverable? They are destroyed so that they cannot be discovered.

Mr. Frank Daly: No, they are destroyed because of what I referred to earlier, namely, because the guidance is that it is best practice. However, there is an issue for any organisation, not just for NAMA. If there are different records of decisions, it makes the organisation vulnerable.

Chairman: Or different records of discussions.

Mr. Frank Daly: Or discussions, yes.

COMMITTEE OF PUBLIC ACCOUNTS

Chairman: Mr. Daly is saying the retention of these records could put any public body or any other body at risk.

Mr. Frank Daly: At the very best, it would cause confusion. I am not sure that it would, in the end, put the body at risk because at the end of the day, the official record in law is the signed minutes of the board.

Chairman: Nobody disputes the signed minute but the other records could possibly be used by another side to explain or justify why something was considered or not considered sufficiently when a decision was being arrived at.

Mr. Frank Daly: At a minimum, it could cause confusion. The courts will generally come back to the view that the official minutes are the record.

Chairman: Nobody disputes the official minutes.

NAMA came within the scope of the Freedom of Information Act some time ago. What obligations does this place on it to retain records? To put it simply, Deputies would be alarmed if, when dealing with a Department, for example, the Department of Health or the Department of Social Protection, they were told that the notes on how the Department arrived at a decision in a case were not retained or if the chief appeals officer in the Department of Social Protection stated that notes were not kept on how a decision was arrived at. One would expect public bodies to be able to demonstrate how they arrived at a decision, even though the final decision is the final legal decision. Does Mr. Daly understand that we, in our daily work, can often get behind the final decision because when we challenge how a decision was arrived at, the Department is able to produce the record? That is the reason we were surprised that a body as large as NAMA was operating differently from the other public bodies with which we deal.

Deputy Josepha Madigan: The reason this is important is that we need to eradicate any hint of untoward happenings. If NAMA were to show the rationale, it would demonstrate that. That is really what this is about because it begs a question that is left unanswered. That is why I spoke earlier about extenuating circumstances when there is so much money at stake. Mr. Daly stated NAMA would address the matter in future, which would be helpful because it would eradicate that possibility.

Mr. Frank Daly: I accept that and I know the Deputy is not suggesting there was anything untoward because there certainly was not.

Deputy Josepha Madigan: No.

Mr. Frank Daly: We accept, however, that a more concise record of the detail of the deliberations would be helpful and, in fact, we have already moved towards that.

On freedom of information-----

Deputy Josepha Madigan: I apologise for interrupting. I know it happens at board meetings that it is said a conversation will not be recorded in the minutes. From that perspective, it would be in NAMA's interests to ring-fence that.

Mr. Frank Daly: We do not have a practice of saying, "This will not be recorded for the minutes". I would just like to assure the Deputy on that. Mr. McDonagh will respond on freedom of information.

Mr. Brendan McDonagh: NAMA became subject to freedom of information in April 2014. The issue there is that the Department of Public Expenditure and Reform, which controls the freedom of information legislation, issued guidance that organisations should have records management policies. There are certain types of record which should be kept forever, certain types of records that should be kept for a certain period of time in terms of the Statute of Limitations and then there are other records, which are transitory records, which should not be kept. That is the guidance from the Minister for Public Expenditure and Reform and NAMA is following that guidance.

Chairman: The final point takes us back to the reason we started with this query. Mr. Daly is saying that everything of substance was recorded but he made a big issue of the 10% being a major part of the board's discussions and how the board arrived at that figure. If he is saying that everything of substance was recorded and there is no reference to the 10% in the recorded minutes, it leads me to conclude that the board's discussion on using the 10% figure Mr. Daly says was discussed at its meetings was not a very substantial issue. If it had been a substantial issue, reference would have been made to the 10% figure.

Mr. Frank Daly: It was a very substantial issue.

Chairman: It was not recorded.

Mr. Frank Daly: It was not recorded but at the time - this goes back to the discussion we had - we had a particular approach to board minutes. There would have been a lot of other substantive issues discussed during those meetings and we did not record them. I suppose one might say we took a kind of a purist view of the guidance that one records the general issue and the decision. We would see the benefit of recording much more in the future.

Chairman: I do not want to put words in Mr. Daly's mouth but no evidence has been produced as to how the €1.3 billion figure was arrived at as the reserve price. We do not have any documentation on that. Does Mr. Daly agree that, in hindsight, it would have been better if that the 10% figure in reference to the €1.3 billion had been included in the board minutes because it would have made life very simple?

Mr. Frank Daly: The Chairman is not putting words in my mouth but, yes, I would, of course, agree. Where I have a slight concern - it is only a very slight concern - is that the Chairman referred to no evidence-----

Chairman: I am being very clear that I am referring to documentary evidence.

Mr. Frank Daly: I presume the evidence-----

Chairman: Mr. Daly has given oral evidence, which we accept in good faith. However, our lives would have been much easier if we had documentary evidence. Mr. Daly referred to 2,000 questions and I have the same number of answers. I do not, however, have documentary evidence of the board considering the 10% figure.

Mr. Frank Daly: If the Chairman's life would have been easier, I think our lives would have been easier as well.

Chairman: On that note, we will conclude. The issues of contemporaneous notes at board meetings and policies on retaining records are broader than just Project Eagle issues and broader also than NAMA issues. The issue is a public service issue and a public bodies issue but it

COMMITTEE OF PUBLIC ACCOUNTS

came to light as part of our discussions. From that point of view, this discussion has been useful. I thank Mr. Daly and Mr. McDonagh and hope they will not have to appear again before we complete our report.

Mr. Frank Daly: I think the Chairman said that the last day.

Chairman: I did not expect them to have to come back on this issue but that is what happened. I thank them for being available at such short notice on this occasion. We plan to hold a meeting on 12 January, although the date has not been finalised. Members should note that in pencil in their transient diaries or whatever transient notes they keep on those matters.

Mr. Frank Daly: I wish the Chairman, committee members and the secretariat a happy Christmas in the understanding that we will not be back before Christmas. *The witnesses withdrew.*

The committee adjourned at 11.37 a.m. until 9 a.m. on Thursday, 19 January 2017.