

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ, AGUS AN TAOISEACH

### JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND TAOISEACH

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*Déardaoin, 13 Iúil 2017*

*Thursday, 13 July 2017*

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Tháinig an Comhchoiste le chéile ag 9.30 a.m.

The Joint Committee met at 9.30 a.m.

Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála /Deputies	Seanadóirí /Senators
Pearse Doherty,	Rose Conway-Walsh.
Michael McGrath,	
Paul Murphy,	
Sean Sherlock.	

Teachta /Deputy John McGuinness sa Chathaoir /in the Chair.

**Chairman:** I propose to go into private session to deal with some matters. Is that agreed? Agreed.

*The joint committee went into private session at 9.40 a.m. and resumed in public session at 10.05 a.m.*

### **Scrutiny of EU Legislative Proposals**

**Chairman:** Before we proceed to our main item, I wish to record the following decisions taken by the joint committee on EU proposals. The committee agreed that the EU proposal listed in Schedule B - COM (2017) 318 - did not warrant further scrutiny. It further agreed that the EU proposals listed in Schedule A - COM (2017) 297 and COM (2017) 329 - did not warrant further scrutiny. Details of the decisions of the committee on these proposals will be published on its website.

### **Overview of Operations and Functioning of NAMA: Discussion**

**Chairman:** Item No. 9 is an overview of the operations and functioning of the National Asset Management Agency, NAMA, and its annual report for 2016. I welcome Mr. Frank Daly and Mr. Brendan McDonagh with their officials.

By virtue of section 17(2)(l) of the Defamation Act 2009 witnesses are protected by absolute privilege in respect of their evidence to the joint committee. If, however, they are directed by it to cease giving evidence on a particular matter and 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 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, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable. I now invite Mr. Daly to make his opening statement.

**Mr. Frank Daly:** Good morning Chairman, Deputies and Senators. NAMA was created as one of a number of policy responses to the financial and banking crisis. It was never intended that it would be a permanent feature of the landscape. NAMA was mandated by the Oireachtas in late 2009 to deal expeditiously with its acquired loan portfolio and to extract best value from that portfolio. It was widely accepted that its mandate was to be fulfilled over approximately one decade rather than decades. This was the understanding of the EU Commission when it approved the NAMA scheme in February 2010. As market conditions reverted to normality, it was assumed that NAMA would no longer be required. NAMA has now entered the final phase of its work - its wind-down - which involves completing our remaining deleveraging activity and implementing our residential delivery programme and Dublin Docklands SDZ programme.

Under the NAMA Act, it is a matter for the Minister for Finance to determine when NAMA

has completed its work. Current expectation is that our work will be largely completed by 2020. Based on this assumption, our focus for the next three years will be threefold. First, to maximise the return to the State from our remaining loans; second, subject to commercial viability, to facilitate the development of residential sites that secure our loans and, third, subject to commercial viability, to facilitate the development of sites in the Dublin Docklands SDZ that secure our loans. I will give a brief overview of each of the three objectives.

On maximising the State's return, we last appeared before this committee in December 2015. The intervening period has seen very good progress made on our key debt redemption objective. We redeemed €5.5 billion of senior debt in 2016 and another €2.1 billion in the first half of this year. Our senior debt is now down to €500 million, less than 2% of the €30.2 billion originally issued. We expect to redeem that residual €500 million senior debt later in the year. In my view, elimination of this State-guaranteed contingent liability for Irish taxpayers is a significant achievement, particularly bearing in mind the widely aired commentary in 2009, and in some years since, that NAMA would lose billions over its lifetime. We take pride in the fact that our senior debt has been, to all intents and purposes, redeemed and that this has been achieved three years ahead of the 2020 target date originally envisaged. This is a major burden which an already heavily indebted State could not have carried. Furthermore, the progress that was made in reducing the senior debt by two thirds, €20 billion, between 2014 and 2016 was a factor in enabling Ireland to re-access the debt markets and in stabilising and reducing the funding cost of Ireland's debt. We expect to redeem our subordinated debt of €1.6 billion by its first call date of March 2020 and, assuming that the cash proceeds realised from our remaining loans are in line with our current projections, we would hope to be in a position to transfer a surplus of about €3 billion to the Exchequer when we complete our work. I should point out that there is much work left to be done if we are to realise this €3 billion. The carrying value of the overall loan portfolio at the end of 2016 was €4 billion and approximately 60% of this related to the residential delivery and Dublin Docklands SDZ programmes. The other 40% of the loan portfolio was secured for the most part by a large volume of low-value assets, many of which will require close and rigorous workout if their value is to be optimised. To date, the resolution of some of these assets has been delayed by litigation or by other complications.

On residential delivery, the second major focus for us over the coming years will be to facilitate residential delivery. In late 2013, we were asked by the then Minister for Finance if we could facilitate and fund the delivery of 4,500 homes by end-2016. This target was exceeded. We remain committed to facilitating and funding much-needed housing delivery in the period to 2020. Estimates of housing supply requirements now indicate that Ireland will need 30,000 to 35,000 new units annually in the coming years. Taking the period 2017-2020, we estimate that NAMA debtors and receivers, even operating at full capacity, can deliver only about one-seventh of the 120,000 to 140,000 units that will be required over that period. It is clear that the market is responding to this need. New residential funding and delivery platforms are being established on a regular basis but no one expects supply and demand to be in balance for quite some time. From our perspective, much progress has been made in terms of preparing a pipeline of sites for development. In addition to the 5,300 units delivered to date, another 9,200 units are either under construction or have obtained planning permission. Sites with a delivery capacity of another 9,500 units are either in the planning system or will be within a year. Pre-planning and feasibility work is under way on sites which have a delivery capacity for another 17,000 units. We continue to work towards maximising the delivery of social housing from properties controlled by our debtors and receivers. We offered almost 7,000 vacant houses and apartments owned by our debtors and receivers to the Housing Agency. Demand was confirmed for 2,768 of these properties and, to date, almost 2,400 units have been deliv-

ered. In total NAMA's expenditure on social housing - through drawn and committed payments - amounts to approximately €330 million. This includes costs incurred by our NARPS vehicle in purchasing units for onward lease to housing bodies and local authorities. It also includes capital expenditure incurred on the completion of housing units including fit-out costs and, where necessary, remediation costs.

On the Dublin Docklands SDZ, a third major focus for NAMA over the next three years will be to facilitate the development of our interests in the Dublin Docklands Strategic Development Zone, SDZ. This area has the capacity to deliver 4 million square feet of commercial space and over 2,000 residential units. Again, much progress has been made over recent years. Construction has started on sites which are expected to deliver 1.92 million square feet of commercial space. Planning permission has been obtained for another 620,000 square feet. Pre-planning work is under way on another 760,000 square feet. As regards the other 700,000 square feet of commercial space, one project has been completed and we have sold our interest in the other projects. A positive aspect of this activity is that most of the development work being carried out in the Docklands SDZ is being funded through private capital. We have achieved our objective of acting as a catalyst for development without putting taxpayers' money at risk on any major scale. Development of the Dublin Docklands SDZ will not only enhance the commercial return on our acquired loans but will also make a significant economic contribution by increasing the supply of prime office accommodation, thereby helping to attract foreign direct investment, FDI, to Ireland.

With NAMA phasing down its activities over the next three years as we realise the last €4 billion of our portfolio and with alternative employment opportunities readily available for many of our staff, we face a major challenge in retaining the expertise necessary to complete our work. As members may know, the majority of NAMA staff are employed on specified purpose contracts and, accordingly, have limited job security. The voluntary redundancy programme approved by the former Minister for Finance, Deputy Michael Noonan, in 2014 has been effective to date in stemming what could otherwise have been a major exodus of staff but, with a very strong economy and construction and associated skills in strong demand, it is a challenge every day to ensure that we continue to deliver on our objectives.

Over the coming year, we look forward to co-operating fully with the commission of investigation into the disposal of the Project Eagle loan portfolio. We note that the commission's terms of reference provide that it will avail of appropriate and independent commercial and financial expertise to inform its investigation. From our perspective, the fact that analysis of a major loan sale is to be informed by relevant expertise is indeed welcome. I do not accept the view that NAMA moved too quickly in terms of asset and loan sales and in terms of redeeming its senior debt. This is not the view of everybody, I know, but it is the view of some people. We had to take advantage of favourable market opportunities when they presented themselves. In the case of the Irish market, market recovery began tentatively in 2012 before gathering pace in the subsequent years from 2014 onwards. Given the vast scale of our exposure, we had no alternative but to reduce our exposure on a phased and orderly basis. Failure to take advantage of the recovery would have been highly irresponsible, particularly in a small market such as Ireland that is very exposed to adverse financial and market developments elsewhere. There was no certainty at any point in 2014 and 2015 that market conditions would remain positive in Ireland or in the United Kingdom. The folly of assuming prolonged favourable market conditions is clearly illustrated by the outcome of the UK Brexit referendum and its impact on the UK commercial property market. Those who say that we moved too quickly would have a different tune now if we had missed the boat.

**Mr. Brendan McDonagh:** The committee invited us today to discuss the operations and functioning of NAMA, including the recently-published 2016 annual report and financial statements. I am pleased to report we generated a profit of €1.5 billion in the 2016 financial year. Taking into account the profit of €1.8 billion reported for 2015, this brings to €3.3 billion the cumulative profit reported since we last appeared before this committee in late 2015. This strong performance reflects the impact of market recovery but also the detailed, professional asset management and corporate finance work that had been put in place by NAMA in earlier years towards enhancing asset values through focused planning work, remediation and capital expenditure.

Since we last appeared before the committee, we have redeemed €7.6 billion in senior debt. That leaves only €500 million to be redeemed later this year from the original €30.2 billion that we issued in senior debt. The €30.2 billion has been redeemed from cash generated by debtor asset sales and by NAMA loan sales. The reason we no longer have a contingent liability of €30 billion potentially falling on Irish taxpayers is that international and domestic investors have invested heavily in Irish property assets since Ireland exited the troika programme at the end of 2013. That has enabled NAMA to generate almost €40 billion in cash from inception to date, including €5.4 billion generated in 2016. The carrying value of our loans at the end of 2016 was €3.9 billion and over 80% of our residual exposure is to assets located in Ireland. Our exposure to UK assets is now relatively low. When we acquired loans from banks, the associated UK asset portfolio was valued at over €12 billion; that portfolio has now fallen to less than €600 million.

With regard to our residential delivery programme, part of NAMA's residual loan portfolio is secured by sites that have capacity to deliver houses and apartments in the years ahead. There has been much talk of the shortage of housing in urban areas and the reasons supply has been slow in responding. In my view, the principal explanation for the supply shortage was that residential prices fell by over 50% between 2007 and 2013 and only in recent years has it become commercially viable to build houses again. No funder, be it NAMA, banks or otherwise, could have funded the building of housing unless it was profitable to do so. Apartment schemes are still very challenging to fund given the planning requirements and restrictions. Our role in residential delivery must be understood in that context. To the extent that we fund any residential development by our debtors, it is to ensure that we maximise the return from the sites and thereby maximise the debtors' debt repayment. We will only fund residential development that is commercially viable; which is under the control of co-operative debtors and receivers; and, importantly, which is under the control of debtors who have a proven capability to deliver quality houses and apartments. Sites which do not meet these criteria and the loans secured by them are subject to sale. We can only fund residential development projects that generate a better commercial return through funding than they would generate from alternative options such as the sale of the sites concerned. A debtor or receiver will want to maximise the debt repayment and therefore it is important that the management and disposal of the asset yields the highest return.

There has been some commentary to the effect that NAMA should not sell its interest in residential sites to international funds and that instead any sales should have been restricted to domestic developers. The reality is that under our legislation, we could not have limited the field of potential buyers if the effect of doing so was to reduce the sales proceeds generated by sales. In any event, these funds bought less than 40% of interests in sites sold and they did so mainly through loan sales. Crucially, under our section 10 objective, we cannot refuse to sell to funds or any other financial institutions that submit the best bid for the asset concerned. We are



obliged to get the best price. This is normally achieved through open marketing of loans and assets. We depart from the open marketing policy only if a better price can be achieved through a more restricted sales process.

It has also been suggested that as part of its asset and loan sales, NAMA should have imposed covenants requiring purchasers to develop sites within certain predetermined periods. There are two difficulties with such an approach. The first is that it would have led to discounts on the prices achieved on the assets and sales concerned. The second relates to the doubts as to the enforceability of such covenants; I am not convinced one can force a purchaser to develop a site if he or she considers it unprofitable to do so. We have a number of licensing arrangements in place and are actively reviewing the feasibility of other potential licences. Generally speaking, licensing arrangements are suitable for sites controlled by receivers. They usually involve smaller builders who acquire the development rights by paying a small amount upfront and who then build out the sites and pay us as houses are sold.

For reasons I outlined, we fund sites that are commercially viable to develop and which are under the control of co-operative and capable debtors. We have and will continue to dispose of our interest in other sites. Since inception, we have disposed, either through loan sales or through asset sales by our debtors and receivers, of sites with a capacity to deliver 50,000 units. Approximately 38% of these interests have been sold to financial institutions or funds; the remaining 62% have been sold to developers and other private purchasers. The committee may have noted from recent media coverage that some of the funds and financial institutions have established, or are preparing to establish, residential development operations with a view to actively funding the delivery of new supply.

We estimate that, at this stage, more than 50% of the 50,000 unit delivery capacity disposed of by NAMA is commercially viable to develop, although it is difficult to be certain about this in the absence of detailed project-by-project information. Approximately 10,000 of these units had planning permission or were in the planning system prior to sale. To our knowledge, only approximately 3,700 have been built or are under construction to date. Why are so few being delivered? In the short time available here, I will outline some of the many factors that are at play. There is no doubt that land hoarding is an issue, although it is not the full story. For any given site, there is little disincentive to hoarding as long as the owner expects house prices to rise. Costs remain relatively fixed, as illustrated by the table in my submission, and any rise in house prices translates into profit on land.

The fact that planning permission has been obtained does not make development viable in itself. Construction costs remained relatively stable during the financial and property crisis as prices collapsed. Therefore, the key factor in determining viability now is the sales prices that can be achieved on newly-built houses and apartments. In some cases, prices have risen sufficiently to make development viable but this is not necessarily the case throughout the country. For many residential sites it is not possible to proceed until such time as critical infrastructure is in place, including roads, sewerage and water services, schools and recreational amenities. The introduction of the local infrastructure housing activation fund programme is a welcome move in this respect. There are particular difficulties with the viability of developing apartment blocks which are, at best, commercially marginal at present. We need to build many more apartment blocks if we are to make a serious impact on new supply. Height restrictions that apply under current planning policy have an impact on the viability of commercial apartment development. In some cases, statutory development plans set a height restriction that is less than the most cost-effective scale. A city centre apartment development project that is not

commercially viable at six to seven storeys is more likely to be commercially viable at 12 to 15 storeys, for example. The height restrictions currently applied, particularly in city centre locations, are no longer appropriate given current and prospective housing needs. Amending height restrictions to 15 storeys in city centre locations and perhaps to ten storeys in suburban areas merits serious consideration.

The provision of basement car parks can add considerably to the development cost of an apartment project. Most urban apartment schemes require basement parking as a condition of planning, usually on the basis of a car space for every two apartments. Basement parking costs are estimated, on average, to add about €30,000 per car space to development costs, and that must be added to the recovered price. Greater flexibility in the exclusion of expensive car parking requirements would improve the commercial viability of certain apartment schemes, particularly in city centre locations or locations already well served in terms of access to good quality public transport.

Finally, it is worth mentioning there are practical reasons the market can be slow to respond to supply shortages. In practice, the development process from initial site assessment to the start of construction takes at least two years. It involves assessing a site, resolving issues relating to services or legal title, employing a design team, completing pre-planning consultations, lodging a planning application, dealing with additional information requests from a local authority, awaiting planning permission, raising construction finance, tendering to construction firms, appointing a construction team and then starting to build. That two-year timeframe assumes all goes well but in many cases there are delays that may be caused by planning refusals, objections, legal problems or funding shortages. After the preparatory period of two years or more, building commenced with the start-up phase and initial site works for roads and other infrastructure, and thereafter the completion of even a 100-unit housing scheme can take 18 to 24 months. For these very practical reasons, the house-building deficit is unfortunately not going to be resolved quickly.

**Deputy Paul Murphy:** I thank the witnesses for the presentations. I have a different assessment of the role of NAMA over the past period, close to a decade at this stage. I want to inquire along two different lines which I think probably relate to both Mr. Frank Daly and Mr. Brendan McDonagh. One is on the role of NAMA as an enabler of vulture funds, facilitating their control of large swathes of land and their lack of building on large swathes of land, thereby contributing to the housing crisis that we have, as well as their treatment of tenants. The second question is on the massive write-down of debt, which was not envisaged when NAMA was originally set up or at least was not publicly stated, to some of the richest people, mostly men, in Ireland.

On the first line of inquiry, which relates to Mr. Brendan McDonagh, I appreciate that he is responding to criticism. His response is to say that there is nothing NAMA can do and that it could not have put conditions into its sale of portfolios of loans or land to vulture funds insisting that houses would be built within a certain period of time, because that would be in contravention of its section 10 obligations under the National Asset Management Agency Act. Is that accurate?

**Mr. Brendan McDonagh:** Yes.

**Deputy Paul Murphy:** I have read section 10 of the Act and I note that it includes that NAMA's "purposes shall be to contribute to the achievement of the purposes specified in section 2 by". Section 2 is referred to as an overall guiding principle, and included in the overall

guiding principle is the point about contributing to the social and economic development of the State. That is one of the principles of NAMA. It is not simply about getting the largest amount of money in the shortest amount of time. It is meant to have an aim of contributing to the social and economic development of the State. Does Mr. McDonagh not accept that there are at least grounds to make an argument there that NAMA could have imposed some conditions as opposed to just selling off all this land and loans to vulture funds?

**Mr. Brendan McDonagh:** On our sales to vulture funds, while I understand the Deputy's position, we wanted to take advantage of the capital coming into Ireland. The funds were coming here to buy portfolios. They were buying portfolios all across the world, including in the UK and in Europe. They came to Ireland. They were not here up until 2014. They arrived here in 2014 and their first real foray into deploying much capital in Ireland was in the liquidation of the Irish Bank Resolution Corporation, IBRC. Once a fund bought a large amount of the IBRC, other international funds came in on the back of people who bought funds from IBRC and bought funds from NAMA.

In any portfolio that one sells, one sells different types of assets, and some of that is land. As I said in my presentation, a potential 20,000 units of the 50,000 sold were bought by these funds. These funds are not long-term holders of these assets. That is not their business model. Their objective is to get their money back quickly so that they can negotiate to sell down the portfolio on a piecemeal basis. A thing which these funds do which NAMA cannot do is to sell the assets back to the original debtor. That allows the original purchaser to refinance it at times. The fund having it is only a staging post, because it is never going to be a long-term holder. It is going to be sold on to somebody else, so it is going to come back into the system at some stage, because these funds, with international capital raised from US colleges, endowment funds or international pension funds, do not want to hold land in Ireland long-term. They have bought the asset at a price and are trying to make a profit on selling that asset again.

The Deputy raised an issue about tenants. We have seen much commentary on this, and we have never sought to empty properties of tenants when they are being sold. Some of the properties, which have been emptied of tenants claimed on the back of these funds, have been of loan portfolios which were never in NAMA, but were sold by other banks.

**Deputy Paul Murphy:** Will Mr. McDonagh repeat that? I missed it.

**Mr. Brendan McDonagh:** Some of the public commentary about some of these funds where people have been asked about the removal of tenants were not portfolios which originated from NAMA. We have never said to people that they need to get out of a property. That is not policy and many times, in fairness to the debtors, if somebody is renting the property and debtors have been getting income from that, they would always have the view that they would not evict somebody. Receivers have a different view on that, are independent of NAMA and operate independently, but we have never asked anybody to remove tenants from a property prior to sale.

On the Deputy's second point, the write-down of debt, from our point of view, we bought €74 billion worth of loans and paid €32 billion because the assets were only worth that. We try to get back as much of the €74 billion as possible but the reality is that we have gone after debtors. We took €800 million of additional assets from debtors as part of working with NAMA. Some had transferred loans to third parties, and we went after them legally and forced them to hand them back. Others gave up the unencumbered assets voluntarily. It is only when the debtor has sold all the assets and has no other residual assets left that we get a sworn statement



of affairs and we do asset searches on people, and think about the possibility of writing-down debt. Much of our debt write-down has happened because of another legal process. When somebody goes bankrupt, that person's debt is effectively written off, because that is what happens in a bankruptcy process, and if all the assets have been sold, one cannot go after a debtor that has gone through a bankruptcy process. We have written-down very little debt to date. Of the €32 billion that we paid, to date, we have only written off about €230 million where there was no prospect of recovery.

**Deputy Paul Murphy:** Let us go through it bit by bit. Unfortunately, the debate on the Summer Economic Statement has taken many of our members away, so we have a bit of time. On the issue of the vulture funds, putting the legal matter aside for a minute, does Mr. McDonagh accept that there is a problem when a large portion of NAMA's sales of large portfolios has gone to international funds? Mr. McDonagh does not really think that it is a problem because they will only hold on to it for a short period of time and it will come back to someone in any event. Does Mr. McDonagh not accept that it is a contributing factor to the hoarding of land and absence of development that is taking place?

**Mr. Brendan McDonagh:** No. Some 60%, 30,000 of the 50,000 sites, have actually gone to other types of buyers, and they are equally culpable of hoarding land, as much as anybody else. I said this is the long-term report and I put this graphic in today, but if I could take the Deputy back to that graphic, I was trying to illustrate it in a hopefully very straightforward and simple way for people. If the Deputy looks at the graphic on page 4 of my presentation, and the middle bar there, that is the base case house price. If one has a house for sale on the market for €275,000, then the site value in that instance, which is the red box, depends on where the location is, but could be €40,000 to €50,000. It depends on the location of the overall component. If house prices go up by 20%, then everything else stays the same. The cost of building does not change that much. The developer profit generally stays the same. The guy who has the land, who is hoarding it without doing anything to it, will see the value of the land going from approximately €40,000 or €50,000 to approximately €125,000. My point is that with the system, a guy can buy land and effectively hold it back on the expectation of rising house prices. He does not even have to build a house and he can just sell the land. It is super profit. That is something I feel strongly about and it needs to be examined. Sometimes people who buy land have no interest in building houses.

Of the potential 20,000 or 50,000 sites bought by these funds, in the two to three-year time horizon, they will end up back in the system. There must be some incentive if a party has land that is viable for development and a normal profit in building houses can be made. Given the demand for housing in the system, there must be an incentive to make that party sell the land instead of hoarding it and squeezing it as house prices rise quickly.

**Deputy Paul Murphy:** I agree with that. We must incentivise it in some way or force the building on homes on land or whatever. On behalf of NAMA, the witness is effectively saying it is none of his business, which is to make money for NAMA as quickly as possible. There are two points in that regard. Does the witness not accept that in selling multi-billion euro portfolios, it tilts towards what the witness describes as international or vulture funds as builders who may have gone through a difficult time or who are getting back on their feet would find it difficult to engage in a bidding process for a multi-billion euro portfolio? NAMA could have included conditions when selling land that it had to be built on within a certain period but it chose not to do so. NAMA is contributing to this as well.

**Mr. Brendan McDonagh:** Many NAMA sites were put on the market as single sites so

small builders could bid for them. We have effectively introduced into the Irish market the licensing system. Effectively, with some pretty good sites that are ready for building, we have put them on the market and said the value might be €10 million but we do not want it upfront. The builders could pay €2 million upfront and give us the other €8 million as they build houses, sell them and give us X amount from each house. We have done that.

We are engaged in a very substantial programme in supporting debtors and trying to deliver 20,000 houses by the end of 2020. It was not put into legislation in 2009 that NAMA had to be the national housing agency. We were not such an agency. Effectively, we were given a distressed portfolio. That was the focus in 2009. I was there for all the Oireachtas debates, with 400 amendments going through between September and November that year. It was all about how to sell these assets, who was going to buy them and if we were ever going to get the money back that we paid for those assets. We were charged with getting that money back.

We are also trying to get houses built. If we can get 20,000 units delivered by the end of 2020, we will have contributed to that solution. I agree it is not enough but we have a capacity issue too in terms of what we can do. We must sell. The criticism comes that land is being hoarded and it should be sold into the market to allow people to build. We have done that. Some 30,000 of the 50,000 sites are gone into the market. They are gone not to funds but to others. The full expectation was that many of those buyers would build but they have not. I do not know why that is. Perhaps they are waiting for prices to increase or maybe they could not get development finance. These are different matters and NAMA is not responsible for them. We must also raise money to get rid of the contingent liability hanging over the State. The national debt is at €200 billion according to the National Treasury Management Agency report. If we have a loss, the Government guarantee would mean it would add to the national debt. Our objective is to ensure we do not add to the State's already heavily indebted condition. We are trying to do other things as well. I understand and respect the Deputy's position but we also try to balance what we are doing with our commercial mandate.

**Deputy Paul Murphy:** I have another question and if I get the chance I will come back in afterwards. There is the matter of the write-off. The witness has stated NAMA got all the money back because it is measuring it not against the par value of €74 billion but rather the €30 billion-odd. At the time NAMA was set up, the then Minister for Finance, former Deputy Brian Lenihan, stated the loans would be pursued for the full original value and interest rather than the price NAMA paid for them. He stated developers would not be allowed to buy their own loans at a discount and NAMA repeatedly insisted this to be the case. The write-off is something in the order of €40 billion relative to that par value. It is huge. On 25 June, *The Sunday Business Post* reported that 34 debtors have been permitted to share the upside profits of projects where NAMA owns the debt, with agency negotiations with at least 20 other builders regarding potential deals or debt write-offs. There are profit-share arrangements taking place between NAMA and developers. I presume these are developers who have not repaid the money they owe. They have been bailed out. It is evident that NAMA has operated as a life support machine for developers to get them back on their feet and even provide profit-share arrangements. They are being given six-figure salaries, or allowances, effectively. How is any of that justified?

**Mr. Brendan McDonagh:** First, it must be realised that we acquired loans that were secured on underlying properties, and these properties needed to be managed over time. If it made sense to finish a half-completed development, there would be additional loans to a developer in order to build out and sell properties. That costs money. We look at what is the least costly path. We could appoint a receiver to everything but that will have a cost and the receiver would

have no more expertise in building houses than I would. He would just employ a construction professional, add a layer and charge me a fee for that employment. If the builder has expertise to build an office block or complete or construct houses, we would pay him or her a reasonable fee to do it. It would be cheaper than the alternatives.

The Deputy spoke about recovering the par debt. I have been living with this for a long time and every day the objective of my team and board has been to recover every penny we can. We have been quite litigious and gone after people, trying to pursue them in multiple jurisdictions. Some of these people claim they have no money but have employed very expensive lawyers and accountants. They have offshore trusts. We have had to deal with multiple jurisdictions and complications to trace the money trail. It is expensive but we do it.

In fairness to many debtors, they did not see the crash coming and they do not have the money stashed away that people think they have. We have been monitoring these people for years. We do asset searches and check if they have any more assets. If we hear they have assets they have not told us about, the process usually moves towards enforcement very quickly. The Deputy spoke about profit-share arrangements. There were 800 debtors who came to NAMA, with 5,000 parties borrowing into these with the likes of special purpose vehicles hanging out of that. We have concluded deals with 34 of them, with 20 under negotiation. We are trying to maximise the return by seeing if a debtor can bring something to the table to add value over and above what is there. These things are not entered into lightly but on the basis of adding incremental value to the amount we can return. Some debtors will not pay off their full, par debt but some have done so and by working with us they have been able to come out the other side.

There is no one-size-fits-all approach. It is easy to be popular and close down the whole development community meaning there would be no one around at all but who would get Ireland up and running again now that we need houses, with all the builders kicked out of the game? There has to be a balance and the board and I are not interested in personalities, but maximising the return from the portfolio. The developers are not friends of mine and they do not regard me and my team as friends. It is an arm's length relationship and the more I hear somebody giving out about NAMA, the better I feel about it, because it means we did our job properly. If people were saying we were great fellows I would be worried that they had pulled the wool over our eyes.

**Senator Rose Conway-Walsh:** I liked the end of Mr. McDonagh's contribution, to the effect that "We're great fellas in NAMA". Mr. Daly said he welcomed the expert-led investigation into the sale of Project Eagle. One of the central questions hanging over Project Eagle was the rush to bundle a large portfolio and sell it off as quickly as possible. He went on to say he did not accept the view that NAMA moved too quickly in its assets and loan sales and in redeeming its senior debt. Does that mean he does not accept the basic premise behind the Project Eagle inquiry, namely, that the sale was rushed for political expediency?

**Mr. Frank Daly:** That is not the premise behind the inquiry. The inquiry has terms of reference which are quite broad but which will look at that issue. During our extensive discussions at the Committee of Public Accounts and with the Comptroller and Auditor General it seemed to us the premise was that we should have held onto the portfolio and sold it piecemeal. I still wonder who would want to sell such a portfolio piecemeal in Northern Ireland right now, after Brexit.

I do not want to get into the commission of investigation today as it would be inappropriate. We made our points quite forcefully and at length at the Committee of Public Accounts, over

the course of several hearings. We will co-operate with the commission of investigation and we welcome the fact that one of its terms of reference is to avail of appropriate commercial and financial expertise. We welcome the transaction being looked at. There were several things in the report of the Comptroller and Auditor General and other things came to prominence later about who had held meetings and so on, but the key finding of the report that there was a probable significant loss by NAMA has never been accepted by us. We did not accept it then and, without intruding on the commission of investigation, we do not accept it now. We will argue that position before the commission and will provide it with every piece of material we have and for which it asks.

**Senator Rose Conway-Walsh:** I appreciate that this is ongoing so I will not expand on the issue any further. NAMA will obviously state that it got the best deals for citizens, whether the assets were sold to vulture funds or somebody else. Has any analysis been done into the follow-on profits that have been made by either the vulture funds or whoever bought the assets? We would then have empirical evidence of the amounts in question, the amounts we could have made had we held onto these assets for another 12 or 24 months, notwithstanding all the variables in the markets.

**Mr. Frank Daly:** We might also have a figure for the amount that would have been lost had we held onto them. We do not seek such empirical evidence. Once we have sold the loans or the assets they are no longer under our control. There would be no obligation on anyone who buys an asset from us to tell us what they do with it. One can follow some of this in the media and in the property pages and I believe there would be a very mixed outcome. Some people will have made a profit, while other people have certainly not made any profit as of yet and are struggling. It would be something of a fruitless exercise. Once one sells something, one decides that the price is the best one can get for a loan or an asset and that one would not get more in the foreseeable future.

The overarching point was raised by Deputy Murphy. We cannot sit around on these loans and assets for ten or 20 years. The senior debt had to be repaid, a contingent liability on the State, so we had to generate cash and funds and we had to make the investment in the 5,300 houses we have delivered, with a target of 20,000 by 2020. We have delivered 2,500 social housing units to date and we are going to make a surplus of €3 billion. We have invested substantially in the docklands, where over 80% of the development area we control is constructed, under construction, has planning or is in start mode. We could not have done all that if we had sat back and sold nothing. We had to put stuff on the market. In doing that, one gets buyers and takes the best price possible, provided one is satisfied that it is value for what one is selling. There is no point excluding international funds, or saying to someone, “We won’t take it from you because you come from the US or the UK and we don’t like you”. We were set up as a commercial body and section 10 drives us. It is not a suggestion but it directs us - it is a mandate to get the best financial outcome we can for the State. There are all sorts of interactions with social or economic development but the best social and economic dividend we can deliver out of NAMA would be for no debt to be hanging over the Irish people when we have done our business. We are nearly there - within €500 million of the target - and on top of that we will have delivered some 20,000 houses as well as the docklands, social housing and other bits and pieces.

**Senator Rose Conway-Walsh:** It comes down to whether one looks at the original €74 billion or the €30 billion to answer the question of whether a profit or loss was made. That is how Irish citizens look at it. There is an obligation on NAMA to work within the overall State.



**Mr. Frank Daly:** I wish to comment on the €74 billion. The €74 billion is what the developers got from the banks by way of bad lending and bad borrowing. It was never realistic to expect all of it to come back. One cannot start with NAMA at €74 billion because that was before we were even a gleam in anybody's eye. We started with what we paid for the loans, which was €31.6 billion. We overpaid because €5.6 billion was state aid and when we deliver a €3 billion surplus, the €5.6 billion should be added on from a technical point of view.

**Senator Rose Conway-Walsh:** I appreciate what Mr. Daly is saying but what we are examining is the fact that there were opportunities to bring us closer to the €74 billion overall. I really need to ask-----

**Mr. Frank Daly:** There are no opportunities to bring us closer to the €74 billion that we have not pursued to the nth degree, as outlined by Mr. McDonagh. It would be totally wrong to leave something like that on the record, as far as NAMA is concerned. We have not let a cent go in respect of which we have not done, and continue to do our utmost to recover it.

**Senator Rose Conway-Walsh:** I appreciate what Mr. Daly is saying. It is difficult for people when they see the likes of Cerberus making a profit of €77 million and paying €1,900 in tax on that. That is what people are trying to decipher in all this. Obviously, NAMA will say it got the best deal for the State but we have an obligation to question that, analyse it and examine at the figures behind it, including in respect of the selling-on prices and profits made based on the decisions made by NAMA on behalf of the State.

**Mr. Frank Daly:** If one says one will not sell an asset in the belief that it will make more in three, five or ten years, one will be in a state of stasis and not do anything. Every time somebody says that if NAMA had held on to an asset for another year, it might have made more, I say we might have but that we might have made less. Consider the UK situation. At one stage, NAMA's loans in the UK amounted to €12 billion. Right now, we are down to approximately €600 million. That was a really strategically wise approach by NAMA. Imagine we were still stuck with assets worth €12 billion in the UK, bearing in mind its current circumstances, the Brexit vote, its current property market and the associated financial uncertainty. I do not know whether there would be anybody, even on this committee, saying we would be right to hold on to them. We have done very well out of the UK. The proceeds helped to finance an awful lot of the good we have done. Staying there now, with certain-----

**Senator Rose Conway-Walsh:** I need to move on because I am conscious of time. How much pressure did the Minister for Finance put on NAMA to expedite the sale of assets to reduce the debt-GDP ratio?

**Mr. Frank Daly:** The Minister did not put any pressure on us. We are an independent board. If one looks back over the year at NAMA and the evolution of the strategy in NAMA, one notes it has always been our strategy to avail of every opportunity to reduce the debt. Reducing the debt means putting assets on the market. The Minister quite correctly used to come to our strategy day every year and he gave us an overall view on Ireland's debt, the markets and the troika. It seemed to us, as members of a board, that NAMA's contribution to Ireland getting out of the mess it was in would be to get rid of the debt of €30 billion, but it was our decision. We did not need anyone to direct us, and nobody did. That is a conclusion we came to as professionals on the board and in the organisation.

**Senator Rose Conway-Walsh:** When the Minister went to the away-day on 5 February 2014 and there was a private session held without the executive or the secretary present, which



I find quite unusual, were these matters not discussed? Why would a private session be held without the executive or the secretary present?

**Mr. Frank Daly:** It is because the board is the board. That would not be unusual. The board holds a private session every time it has a board meeting. The board itself holds a private session before the executives join us. That would be normal in most organisations. There is nothing sinister about it, or anything like that. The Minister is present. We have a free-flowing discussion and engagement about Ireland, NAMA and finances. We listen to that in terms of our overall strategy. There is no direction from the Minister because it is ultimately the Act that is important from our point of view. It goes back to section 10. One can have all sorts of other things one would love to do but section 10 states we must get the best financial return we can for the State.

**Senator Rose Conway-Walsh:** When reference is made to the Government's key priorities in terms of reducing the debt-GDP ratio, that would have no influence on NAMA's decisions. Is that what Mr. Daly is saying?

**Mr. Frank Daly:** It would absolutely be in our minds. It is also something that the board absolutely agrees with.

**Senator Rose Conway-Walsh:** Would Mr. Daly say NAMA was mandated by the then Minister for Finance in 2013 to facilitate the funding and delivery of the 4,500 homes by the end of 2016? Mr. Daly congratulates himself on achieving that. Did NAMA have the capacity to deliver more? Was the request too modest? How was the figure arrived at? Was there a preliminary discussion with the Minister on the 4,500 houses or was it a figure plucked out of the air?

**Mr. Frank Daly:** We would have been doing an analysis of our capacity regarding the sites we had in terms of the position on planning and in terms of the debtors and the receivers controlling the sites and their capacity to deliver. We delivered somewhat more than the 4,500 but it was very much a stretched target. We could not have done any more than that. In the same way, we will deliver what we can in the period 2017 to 2020. We are somewhat constrained because we have to do a viability test before we engage in any funding of housing or anything. Again, it comes back to section 10. We cannot fund something that is not going to result in the best financial return for the State. We cannot fund houses if we do not believe they will sell at a margin that at least returns the cost of funds.

**Senator Rose Conway-Walsh:** Would Mr. Daly say NAMA was constrained under the original Act in contributing in the way it might have been able to?

**Mr. Frank Daly:** Section 10 is a constraint but it seems that, in 2009 and 2010, it was a sensible one. We were set up to take unviable property assets from the banks. To do that we issued almost €32 billion in debt. That last thing one wants is for an organisation that has issued that debt, backed up by the State, to take decisions subsequently that are simply going to increase it rather than reduce it. If one ends up committing to funding projects that are not viable or losing money, one is adding to one's debt rather than reducing it. The decision was sensible.

**Senator Rose Conway-Walsh:** We made proposals at the time and Deputy Pearse Doherty had a Bill, which was not accepted, proposing that NAMA freeze its sales, carry out an audit and be given a new mandate to maximise its input into the housing output. Would that have been welcomed?

**Mr. Frank Daly:** I do not want to get into politics. That is a policy matter that I am not really mandated or permitted to discuss here at the committee. We, as with anybody else, recognise the housing crisis in this country. Under the Act, we are doing our best to contribute to addressing that. We are contributing a very significant amount of the housing that is currently being built in this country, and we will continue to do so, but while section 10 of the Act is in place we have to have regard to the commercial viability test.

**Senator Rose Conway-Walsh:** That is the crux of it. If the constraints had not existed and if the Act could have been changed along to the way to adapt to the changing market conditions and housing demands, could we have got more? That is the big question.

**Mr. Frank Daly:** That is a political question but it should not be considered in isolation. As my colleague said, we are not the Housing Agency. We are not the body that was set up to deliver housing in this country. We are still not the body that should be delivering housing, but we are doing what we can.

**Senator Rose Conway-Walsh:** I am looking at the map relating to social housing that the witness has supplied. It shows some 2,378 properties. There are four properties in Sligo and none in Mayo or Leitrim. Why is that?

**Mr. Frank Daly:** It is a question of supply and demand. We are looking at social housing.

**Senator Rose Conway-Walsh:** I want to hear about NAMA's actions and the assets it holds in the regions rather than in the main urban centres. What are its plans?

**Mr. Brendan McDonagh:** The portfolio we acquired was what I call "urban-centric". Much of the property was in Dublin and the commuter belt. Debtors in NAMA had borrowed very little money for building in the regions. In 2010, just after NAMA was set up, there was talk that debtors' loans with banks with a value of less than €20 million would come into NAMA. At the time, the Government was preparing legislation to bring it in, and it would have incorporated many of the smaller debtors who had built in the west of Ireland. When the new Government came to office in 2011, it decided that those sub-€20 million loans would not come into NAMA. If the sub-€20 million debtor loans had come into NAMA, I suspect that we would see smaller debtors building now. However, those loans stayed with the banks. We had very little exposure in the Border, midlands and western region. Anything we did have, we offered up to the local authorities and the outcome is per the map provided.

**Senator Rose Conway-Walsh:** Is it the case that the local authority in Mayo did not take up the offer from NAMA?

**Mr. Brendan McDonagh:** Yes.

**Senator Rose Conway-Walsh:** Does the witness believe that two very distinct economies have emerged, between urban and regional areas?

**Mr. Brendan McDonagh:** Yes. Some 2 million people live in Dublin and the commuter belt. There is good economic activity in Dublin and the surrounding counties. The position is the same in Cork, Limerick and Galway. However, the economic activity is not there in other parts of Ireland in which we hold assets. I come from Kerry. I met a friend of mine a few months ago who is a carpenter. He told me that he only had three jobs last year. The impression is that Dublin is booming but my friend only had three jobs and is now considering moving to Cork. He said that he would prefer to go to Dublin than Cork, being from Kerry, of course. His

position is that he has to leave to get work because there is no house-building or house extensions happening in Kerry. Any of the jobs he is getting are small, mostly involving necessary repairs, and there is not enough work for him to support himself and his family. That is tough.

**Mr. Frank Daly:** I am from Waterford and the only bright spot there is that we beat Kilkenny last Saturday. I do not want to upset the Chairman too much.

**Chairman:** Waterford were training for a long time for that win.

**Mr. Frank Daly:** It was 1959. I was there.

Unfinished housing estates are a good example to the contrary. A year ago, there were 45 unfinished housing estates in which NAMA had an involvement and 37 of those were in the regions. It is not as if we are not paying attention to the regions. It is the reality of the type of portfolio we inherited. It is also the reality that there was a predominance of unfinished housing estates in the regions. In February 2016 we had 37 unfinished housing estates outside Dublin. As of April 2017, we have ten and these are well on their way to resolution.

**Senator Rose Conway-Walsh:** NAMA has 302 staff at present. The salary costs in 2016 were €37.3 million. How do the witnesses see that panning out in the next 12 months? Will there be voluntary redundancies?

**Mr. Brendan McDonagh:** At the end of this year, we will be down to 256 staff. We are about to announce our voluntary redundancy programme, which will apply to 14 staff by the end of 2017 and 50 a year after that. The issue we are having is that with a €4 billion portfolio there is a higher volume of lower-value assets and these involve as much work as the bigger assets. A big asset can be sold for €100 million, but it might take selling 20 smaller assets in order to reach that figure. It takes time and effort. We are working on the special development zones, SDZs, and the raising of the 20,000 units, so by the end of 2018 we will have declined by 40 to 50 staff and a similar number in 2019. What happens in 2020 depends on whether we can sell down the assets. We review staff numbers twice a year. The issue from our point of view is that with unemployment heading towards 6% and the economy heading towards full employment, our staff are getting very good opportunities in the private sector and we are trying to hold on to them. We are doing our best, and we have managed it so far, but it is not easy.

**Senator Rose Conway-Walsh:** I doubt that the unemployment rate in Kerry, no more than Mayo, is at 6%. It is more like 36%.

**Mr. Brendan McDonagh:** I agree, but the problem is that the people with skills are based in Dublin and the amount of money that is available to invest in property, banking, accountancy and legal firms means that our staff are being recruited. That is the market and if people can move on and get a pay rise by moving to the private sector, they will take it. One cannot blame them.

**Senator Rose Conway-Walsh:** Having looked at the remuneration packages and the other benefits of NAMA, I do not believe that will be an issue for a while. The packages are quite generous.

**Mr. Brendan McDonagh:** It is, but the reality is that we monitor staff who are leaving and they are getting 25% to 40% pay rises when they go to the private sector. It is great for them personally. I wish that the private sector was not doing that, but it is.

**Senator Rose Conway-Walsh:** I am obviously in the wrong business.

**Chairman:** I want to return to the opening statement and ask about the offer of public housing. Some 7,000 were offered and 2,768 have been taken up. What happens to the balance of those? Are they sold on to private developers or are they still vacant?

**Mr. Brendan McDonagh:** We offer those houses for a certain period. Sometimes we hold them for up to a year for the housing agencies and local authorities but eventually, if they are not taken up, they will be sold, either as individual units or as whole apartment blocks as the case may be. We had 16,000 units in our portfolio at the beginning. We now have approximately 4,000 units left. I saw the most recent figures yesterday evening and of those 4,000, there are only 72 vacant units. They are rented into the private sector and are fractional because tenants move out and new tenants move in. Usually, in that case the landlord is the debtor or the receiver.

**Chairman:** It is the case that most of the properties to which the figure of 7,000 relates have now been rented?

**Mr. Brendan McDonagh:** Some have been rented and some have been sold in the meantime.

**Chairman:** But they are rented or sold. They are not vacant.

**Mr. Brendan McDonagh:** No.

**Chairman:** How many are vacant?

**Mr. Brendan McDonagh:** It is 72 out of 4,000.

**Chairman:** That is 72 out of all of the units NAMA has left.

**Mr. Brendan McDonagh:** Those are the figures as of yesterday evening. They are vacant because a tenant is moving out and a new one might be moving in.

**Chairman:** So the owners have been successful in letting or selling those houses, yet the local authority refused them.

**Mr. Brendan McDonagh:** Yes.

**Chairman:** Did they give NAMA reasons as to why they refused them?

**Mr. Brendan McDonagh:** We give them to the Housing Agency and it deals with the local authorities. They gave all sorts of reasons, saying that they were in the wrong locations, sometimes they say they have too great a concentration of social housing in an area already and sometimes they say that an apartment was offered and what is needed is a family home.

**Chairman:** So even though they refused and offered all those explanations, the owners of the properties were still able to find buyers or tenants.

**Mr. Brendan McDonagh:** Absolutely.

**Chairman:** The witnesses mentioned that NAMA is to wind up in 2020 or thereabouts. How many legal challenges is the agency currently involved in?

**Mr. Brendan McDonagh:** We have almost 100 cases on our litigation register. As well as

Ireland, some of that litigation relates to the UK, Europe and the US.

**Chairman:** What has been the cost of those 100 cases to date?

**Mr. Brendan McDonagh:** At one point, our litigation register would have been closer to 200 cases. It has fallen to approximately 100. I do not have that figure with me but I will find out what it is and revert to the Chairman.

**Chairman:** Will those cases be resolved before NAMA concludes its business?

**Mr. Brendan McDonagh:** We hope so. The reality is that there are not that many new cases now. Many of the cases have been ongoing for years and have been held up or drawn out in various court systems. To be fair to the Irish court system, we generally move through it reasonably quickly, if not quickly enough - that is certainly the case in the commercial court - but in foreign jurisdictions, cases are subject to their vagaries.

**Chairman:** What is NAMA's success rate to date?

**Mr. Brendan McDonagh:** Our success rate to date is that there were adverse findings in only three cases of over 100 which have been concluded.

**Chairman:** So there were three cases lost.

**Mr. Brendan McDonagh:** And the remainder were found in our favour, yes.

**Mr. Frank Daly:** Some of those were not wholly lost.

**Mr. Brendan McDonagh:** Part of it.

**Chairman:** I do not like losing, Mr. Daly.

**Mr. Frank Daly:** We are used to it. If some of those cases are still extant when NAMA finishes its commercial business, there will have to be some sort of legal continuum to deal with that.

**Mr. Brendan McDonagh:** For example, the first asset management companies in Europe were set up in the mid-1990s in the Scandinavian countries. From dealing with someone in Finland, I am aware that a company was set up there called Arsenal, like the football club, which was its NAMA. It had sold almost all its assets by the mid-2000s but there are still four or five people working there, dealing with litigation which remains ongoing. It can go on for ever and there are constantly new challenges. We hope that will not happen in NAMA's case. We are working towards resolution and we favour mediation. Due to the fact that the costs are huge on both sides, we always ask if we can do mediation. Sometimes the other side will not do it but, thankfully, there has been a move towards it.

**Chairman:** Does mediation work?

**Mr. Brendan McDonagh:** Yes. We generally find it very useful. Sometimes it is about explaining the respective sides' positions. Going into court drives up costs for everyone. The best outcome with mediation is that both sides do not feel as if it has been a victory, that each feels some pain but at least there is a conclusion to the matter. We have used it quite a lot this year. Thankfully, many of the debtors who have sometimes been in long-term litigation with us have come to us after a long period and asked to go to mediation. We did mediation and it has worked out very well.



**Chairman:** Are these Irish mediation companies?

**Mr. Brendan McDonagh:** Sometimes we have used Irish mediators, they can be barristers who have qualified in mediation. Sometimes the debtors will not agree to an Irish mediator because they will argue that they are conflicted in some way, perhaps they might have dealt with them in the past.

**Chairman:** What about from other jurisdictions?

**Mr. Brendan McDonagh:** Yes, we have had use of someone from the international field who was acceptable. Mediation only works if the mediator is acceptable to both sides.

**Chairman:** There was correspondence between the Committee of Public Accounts and NAMA regarding Flow East. That correspondence was sent on to this committee. That correspondence started with a letter from Flow East. Presumably, that first letter was sent to NAMA for response so NAMA will be aware of the correspondence to the committees from the beginning. Is that correct?

**Mr. Brendan McDonagh:** Yes.

**Chairman:** Is that in a legal process or is it a matter that has been raised?

**Mr. Brendan McDonagh:** It is. Ongoing litigation is being pursued by Flow East in the Czech courts. Flow East also made a complaint to the European Commission. We had to provide it with substantial information and the Commission has now written to Flow East. I must be careful about what I say but we got full recovery of all the moneys owing to us. That satisfied the European Commission, which advised Flow East of the position. Anyone who wishes to litigate can continue to do so but we did not leave any money behind.

**Chairman:** Without going into detail, was that an instance where NAMA had an agent acting for it, as is usually the case?

**Mr. Brendan McDonagh:** The agent was acting for a debtor. The agent had put the assets onto the market and invited bids. He made a recommendation to the debtor who contacted us to inform us of the best unconditional bid for the asset which could be closed and delivered and that was the deal we went with. Flow East was a disappointed bidder. It was unhappy and it has continued to make complaints.

**Chairman:** In its submission, it maintains it made a much higher bid.

**Mr. Brendan McDonagh:** All I can say is that the bid was conditional. It made the higher bid after the event. In terms of the highest bid we can secure for the debtor, if the debtor owes 100 and the asset sells for 90, we still get 100 back from the debtor. In this instance, the debtor paid us back the full amount he owed us. We did not leave any money behind.

**Chairman:** In that instance, instead of court proceedings, is there any room for mediation?

**Mr. Brendan McDonagh:** The issue here is that he is also suing the debtor and that debtor has exited NAMA. How can someone mediate on an asset that was sold when we got our full amount of money?

**Chairman:** The issue is live.

**Mr. Brendan McDonagh:** Yes.

**Chairman:** There is the possibility of an outcome through mediation but this case has gone past the post.

**Mr. Brendan McDonagh:** Yes, absolutely. There is always an aggrieved party. From NAMA's perspective, however, we were owed 100 and we got 100 back. If we only got 90 back and we were owed 100, ten would still be outstanding. That would be an issue for us if there was money left behind, but that did not happen. We got our full 100 back.

**Chairman:** Does Mr. McDonagh believe he could not have got more than 100 back from the fresh phase?

**Mr. Brendan McDonagh:** No. It is like a mortgage on a house. If one owes Bank of Ireland €100,000, one will pay back only €100,000 and not €101,000.

**Chairman:** Flow East has suggested to us that it would come before the committee to thrash out the details. It is something the committee may consider. Mr. McDonagh has given us the information required.

**Mr. Brendan McDonagh:** That is fine, but there is litigation and there is very little more we can say except that we got all our money back.

**Chairman:** Okay. I have a single question in regard to Project Eagle. The inquiry continues into Project Eagle but is it not the case that the inquiry is only into the activities, actions or transactions on this side of the Border? Does the inquiry have a jurisdiction in the North?

**Mr. Frank Daly:** I read the commentary about the inquiry. It is a matter for Mr. Justice John Cooke as to what way he proposes to deal with it. We do not have control or inside information on that.

**Chairman:** In terms of the full value of the loans, €74 billion, versus the NAMA figure to date of €32 billion, do the figures include the loans that were left with the banks to manage?

**Mr. Brendan McDonagh:** Yes, the whole portfolio. At the start we left the smaller loans for the banks to manage. Since 2015, all the smaller loans have been sold and all the loans that remain in NAMA as of today are managed by NAMA.

**Chairman:** Are there any small loans left in the banks?

**Mr. Brendan McDonagh:** No.

**Chairman:** Okay. Having perused the breakdown of salaries, I note that the salaries of 45 of the 302 staff for 2016 are in excess of €125,000. Generally by comparison, what are staff with the skill sets required by NAMA paid in the private sector? How much over the odds are such staff paid in the private sector? What is the challenge facing Mr. McDonagh in terms of salaries?

**Mr. Brendan McDonagh:** The challenge is as follows. Someone with 15 to 20 years' experience in property working in NAMA is being paid €100,000 and we need that skill set because if we are dealing in property, we need to be able to talk to the debtor and understand what is going on with the property. We have seen the private sector pay the people who left NAMA a salary of €130,000 to €140,000.

**Chairman:** That is a significant challenge for the next two years.

**Mr. Frank Daly:** It applies right across NAMA, because there is expertise in property, finance, legal and planning. All these sectors are thriving.

**Mr. Brendan McDonagh:** There is high demand for these skills. If one looks at the website of the Society of Chartered Surveyors Ireland, the number of jobs on offer is incredible. For a number of years, people were not entering these professions. During the boom, in the year 2000, there would be 30 to 40 people studying to become planning professionals each year, and that number dropped to five.

**Mr. Frank Daly:** We are asking people to work themselves out of a job as quickly as possible. At the same time we are trying to hold on to them at below the rate.

**Chairman:** Is Mr. Daly worried about Mr. McDonagh going to the private sector? Would he get an increase in his salary?

**Mr. Frank Daly:** I am sure he would.

**Chairman:** Would he be in demand?

**Mr. Frank Daly:** He would. Everyone at the table, except myself, would be in demand at this stage.

**Chairman:** Mr. Daly is after hanging in for a long time. The board and committee members' fees and expenses are listed in the document. Is there a set fee for board members?

**Mr. Frank Daly:** There is a set fee for board members, apart from myself and the chairman of the credit committee, because of the extensive additional work he does. The standard board fee is €60,000. The credit committee fee is €75,000.

**Chairman:** Is that the reason for Mr. William Soffe's fee?

**Mr. Frank Daly:** Yes. The credit committee meets practically every week, so there is a lot of extra work and extra attendance.

**Chairman:** In terms of the travel expenses?

**Mr. Frank Daly:** The figures for travel expenses are on the next page. The main travel expenses are in respect of Mr. Oliver Ellingham, who lives in the United Kingdom, and his travel expenses for 2016 are €4,305. Mr. Brian McEnery lives in Limerick. The Chairman will see a footnote in respect of the fees for Mr. Brian McEnery and Mr. Ellingham, and that represents NAMA's tax liability on benefit-in-kind in respect of board expenses paid in 2016.

**Mr. Brendan McDonagh:** There was a change in tax law.

**Chairman:** What kind of travel is involved?

**Mr. Frank Daly:** Both Mr. Ellingham and Mr. McEnery would have to travel to board meetings and committee meetings. They do not do other travelling. In my case, I sometimes speak at conferences which could be outside Dublin, but there are no travelling expenses for me to get to work.

**Chairman:** Do Mr. Ellingham and Mr. McEnery have a particular qualification? Does NAMA seek people with certain skill sets to serve on the board?

**Mr. Frank Daly:** The actual skill set is mentioned in the NAMA Act. The type of skills, qualifications and background are included in the Act. I cannot quote it offhand now but there was everything from property to finance to public administration experience and so on.

**Chairman:** Does Mr. Daly select the membership of the board?

**Mr. Frank Daly:** The original board was appointed at the end of 2009 by the then Minister for Finance. As I understand it, the membership of the board was broadly agreed across all the political parties in the context of the setting up of NAMA. There are two *ex officio* members of the board, which would be the CEO of NAMA and the CEO of the NTMA. There are seven other members. Mr. Brian McEnery, Mr. William Soffe and I are on the board since the beginning. There were subsequent appointments of Mr. Oliver Ellingham and Ms Mari Hurley. The names of the subsequent appointees would have been discussed by the Minister for Finance with me, but the Minister for Finance makes the appointments. We are two members down on the board at present.

**Chairman:** When all is said and done about all the costs involved in running NAMA, the figure comes in at €32 billion.

**Mr. Frank Daly:** At €32 billion? No. The overall administration cost is-----

**Chairman:** I understand that part. After one strips out everything, NAMA will raise-----

**Mr. Frank Daly:** The debt will be repaid and the €3 billion will be after everything is paid off: senior debt, subordinated debt, expenses, everything. That will be the cheque going.

**Chairman:** Are are any former staff still out on garden leave? What happens when they leave?

**Mr. Brendan McDonagh:** It depends on their seniority in the organisation. A senior manager of the executive team, somebody who knows about what is going on with the board and so forth, obviously holds sensitive information about strategy and the like so he or she would generally take six months of garden leave before leaving. Somebody in middle management would generally take three months. This is so that the individuals in question do not turn up the following day sitting across the table from us in the private sector. We do not want that.

**Chairman:** How many are out on six months garden leave?

**Mr. Brendan McDonagh:** Two people are currently out on six month garden leave periods. They had both been senior executives.

**Chairman:** What is the highest number of people to ever be out on this six month leave?

**Mr. Brendan McDonagh:** Two. This is the highest number ever.

**Chairman:** And on three months?

**Mr. Brendan McDonagh:** When our first redundancy programme was implemented last year we had approximately 50 people out on three month garden leave.

**Chairman:** Okay. My final question concerns the knowledge that Mr. Daly and Mr. McDonagh have built up over the years. As Mr. Daly said, he and one other colleague have been in the organisation since the very beginning. This concerns a policy matter so the witnesses can answer me in that way if they wish, though I hope that they do not do so. There are major dis-

cussions around vulture funds and how NAMA handled the current debt of mortgages left with the banks. Depending on the timeframe applied and how stretched the mortgages are, that total figure for that debt now amounts to €16.5 billion. What do the witnesses think of that figure? Is there any possibility of the State managing it in the manner of benevolent fund or as a co-op agency? We currently have a Bill on this in the Houses. This would mean that no profit would be made on it but that the State would just help work out that debt. Given the witnesses' experience with the banks and with that particular kind of debt, would they consider this a long-term prospect?

**Mr. Frank Daly:** I am reluctant to get into this because I know that there are political discussions around this at the moment.

**Chairman:** Sure there are only the two of us here.

**Mr. Frank Daly:** Ah yes, and nobody is recording this and there are no cameras here or anything.

**Chairman:** I do not mean to be clever.

**Mr. Frank Daly:** Any debt like that can be worked out but it needs focus. That is the real beauty of NAMA. We still get people who think that we should have left those loans with the banks and that the banks would have worked them out over time. I do not believe that they would have, in fact, I believe that the €30 billion or €74 billion figure would still be there. Other than the expertise of the team, one of the beauties of NAMA was the focus. All we had to do was focus. We were not worried about other things, about ongoing customer relations, for example. The approach that commends itself to me is the focused approach.

**Chairman:** An agency dealing with it then-----

**Mr. Frank Daly:** An agency with a focus certainly works wonders.

**Mr. Brendan McDonagh:** As does a clear legislative mandate around that agency, along with clear objectives as to what is to be achieved. The issue here is whether something is capable of resolution within a certain period of time. What sort of solutions do we want? Do we leave people in their homes for a certain period, for example? Do they then agree to sell after that period, when the kids grow up or when they are ready to downsize or whatever the case may be?

A further difficult aspect to this is the scenario where somebody may have been doing very well in the mid-2000s and took out a mortgage of €2 million to buy a house. Today that house might only be worth €1 million and the person in question cannot pay off the €2 million mortgage because their earnings have dropped. Should that person be treated the same as the person earning €40,000 a year who borrowed €200,000 and then could not repay it because he or she lost their job for a period? Do I personally think that somebody should stay in a house that cost €2 million? No, I do not. Do I think that that person should have a home? Yes, I do. Solutions have to be found requiring people to downsize in these kinds of situations.

Things are different when it comes to what we might call ordinary people with mortgage debt due to unfortunate circumstances. Somebody might have lost his or her job and been left unable to pay, for example, so they get into arrears. They may unfortunately have paid €400,000 for a house now only worth €250,000, and they are left unable to pay the €400,000 mortgage. In these circumstances the resolution has to provide for some kind of resizing of that



debt, if the person could pay a €250,000 mortgage, for example. In our experience, this is very simple. We look at the person's tax returns, earnings and P60s and we can see from that how much he or she can put up. If a person cannot support a €400,000 mortgage we are never going to get €400,000 back for it anyway.

There might be a view in the banking system that the house will, in time, go back up to €400,000, and while the bank might be forced by the regulator to take a provision for €150,000, if the economy improves in five years time and prices rise they might be able to write back that €150,000 and the profits will look great. This does not deal with the problem, however.

In response to the Deputy's comment, I have engaged a good deal with the European Central Bank with regard to both NAMA and other matters. All the ECB wants is that the foreign loans come off the banks' balance sheets and that the banks focus on what they should be doing. A huge amount of energy, however, is being devoted to dealing with a problem that has been around for a long time now. It is not getting any better. Generally speaking, in fact, it is probably getting worse.

**Chairman:** NAMA got €74 billion and then got back €32 billion. The agency could relate that to what the vulture funds do, building in the criteria the it wants observed through the process of taking in that €16.5 billion of mortgage debt from the banks. The likelihood is that a vulture fund might pay €5 billion for the €16.5 billion. It is not beyond the realms of possibility that the agency could be told to work on that basis.

**Mr. Brendan McDonagh:** I do not think that the so-called vulture funds would be the people to buy that portfolio because they would see it as capping their returns. There could be a solution in finding a different kind of investor to buy that portfolio from the banks. An insurance company, for example, might come in to buy a portfolio of €16 billion loans for the price of €5 billion. It might decide to take a longer-term view and work it out over time, settling for an income of 4% to 5% per annum. There is nothing that cannot be done, Chairman.

**Chairman:** What is the write-down for vulture funds? What do they expect?

**Mr. Brendan McDonagh:** Vulture funds look at this in another way. They will only pay what the underlying assets are worth. If the underlying assets of €16 billion of loans only amount to €5 billion, then the vulture fund will only pay the bank that €5 billion. The vulture fund will then try to earn a return on that €5 billion, generally looking for at least 15% per annum. That is a very high return. A longer-term investor, however, might be satisfied with a 5% return per annum.

**Mr. Frank Daly:** The vulture funds will not go in and pay what the assets are worth. They will also apply a significant discount.

**Chairman:** What I am asking about then is this discount. Regardless of whether the situation is commercial or residential, what kind of discount does the vulture fund ask for when it goes in to negotiate with a bank?

**Mr. Brendan McDonagh:** Usually up to 10% of the asset value. If the underlying properties were worth €5 billion, as in this example, the most that the vulture fund would probably pay would be €4.5 billion.

**Senator Rose Conway-Walsh:** Is there an explicit legal impediment to stop ex-employees of NAMA working for any of the cases on the litigation register?

**Mr. Brendan McDonagh:** No, there is not. I am not aware of anyone going to work for anyone who might litigate against us.

**Senator Rose Conway-Walsh:** In regard to cases remaining that it will take some time to work through, what measures are being put in place to protect against future ex-employees previously involved in those cases becoming gamekeeper turned poacher?

**Mr. Frank Daly:** There is no legal mechanism in place to prevent that but ex-employees have a lifelong obligation in regard to confidentiality and so on. If the Senator is asking if there is something in law which prevents a person who worked for NAMA taking up a position in five years time with, say, Arthur Cox or McCann Fitzgerald, I do not believe there is any such provision in law.

**Mr. Brendan McDonagh:** I did not recruit all of the people who worked for NAMA but I do not think that people would have taken up a position with NAMA unless they were committed to the cause. I think that morally all NAMA employees are very good people. I have not, to date, seen any of them turn up on the other side and I do not expect any of our current employees to turn up on the other side either. They are strong individuals who have taken a view and they work for NAMA because they want to work for it and to contribute towards resolving the problem. In fairness to them, I do not expect that to happen.

**Senator Rose Conway-Walsh:** Obviously, they would be an attractive human asset in situations where there is a lot of money at stake.

**Mr. Frank Daly:** The attractiveness would be any knowledge or information they had. An ex-employee would be in breach of his or her confidentiality obligations if they disclosed that knowledge or information.

**Mr. Brendan McDonagh:** It would be a statutory offence to breach that confidentiality, such that the person could end up with a criminal conviction and I do not think any of them would want that.

**Senator Rose Conway-Walsh:** Would they be in breach in perpetuity?

**Mr. Brendan McDonagh:** Yes.

**Senator Rose Conway-Walsh:** So there is no need for incorporation in contracts of any explicit legal clause?

**Mr. Brendan McDonagh:** No. If anybody remaining in NAMA became aware that somebody was doing something of that nature he or she would report that person to the Garda Síochána. The matter would then be investigated by the Garda and the matter would go before the DPP, and a case could be taken if the DPP thought it was provable. That is how such a matter would be dealt with.

**Senator Rose Conway-Walsh:** What percentage of NAMA staff are women?

**Mr. Brendan McDonagh:** I would say it is between 30% to 40%.

**Senator Rose Conway-Walsh:** It would be interesting to know the exact percentage and the remuneration levels and so on.

**Mr. Frank Daly:** From my perception, having worked in other organisations, a significant

proportion of the staff working in NAMA are women.

**Mr. Brendan McDonagh:** We believe in the best person for the job concept. There are women who are very smart and clever and they have been on the executive team and in senior management positions. I believe that whoever is best for the job should get it. If a woman is the best person for a job, she will definitely get the job.

**Senator Rose Conway-Walsh:** I will discuss the issue further with the witnesses after the meeting.

**Chairman:** Does the Senator intend to apply for a position? If so, she would need to do so now because it is to be wound down by 2020.

**Senator Rose Conway-Walsh:** I am interested in knowing the remuneration levels.

**Chairman:** I thank the witnesses for their engagement with the committee.

The joint committee adjourned at 11.55 a.m. until 9.30 a.m. on Thursday, 21 September 2019.