



PUBLIC ACCOUNTS COMMITTEE

Opening Statement by

Brendan McDonagh

CEO of NAMA

20th December 2013

Chairman and Deputies,

We are grateful to you for giving us an opportunity to address you today and to respond to a number of allegations which have been circulated to certain outlets in the media and to certain members of the Oireachtas over the course of the past week. We consider that this Committee is the appropriate forum for us to address these issues and to be subjected to public scrutiny, as is appropriate.

Before I proceed, I wish to state clearly that the Chairman and I intend to be as open as possible this morning. However, I would also ask you to note that we have been strongly advised not to say anything that could prejudice the outcome of investigations currently underway by An Garda Síochána. The comments that we make to you today are made in the context of that advice.

Allegations

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

NAMA was informed last weekend by a journalist that allegations of purported wrongdoing involving NAMA were in circulation. The journalist did not provide NAMA with any specific information which would enable us to investigate the claims further. Since then, we have read in certain media outlets of a number of apparently serious but unsubstantiated allegations about NAMA which are in circulation.

We have also learned that a number of TDs and Senators have been provided with documents which apparently have been circulated on a phased, drip-feed basis and which apparently purport to show evidence of wrongdoing in NAMA. It is clear at this stage that there has been a carefully orchestrated operation targeted at a small number of media outlets and Oireachtas members and its intended purpose is equally clear – to damage NAMA and thereby undermine the financial interests of the State.

As I mentioned, for all the extensive press coverage, NAMA itself was not given access to the detail of the allegations. For that reason, it was not possible for NAMA to comment on them. Only late on Wednesday evening (18th December) did NAMA become aware of certain allegations.

NAMA understands that these new allegations have been made by an ex-employee, Mr. Enda Farrell, who is currently the subject of investigation by the Garda Bureau of Fraud Investigation (GBFI) following a referral to them by NAMA in September 2012.

NAMA understands that the allegations being made by Mr. Farrell have been circulated to certain members of the Oireachtas and to certain media outlets. NAMA also understands that among the documents circulated were documents which were provided by NAMA during the legal discovery process as part of English High Court litigation in 2012.

Chairman, in relation to the allegations of which it has become aware, NAMA is satisfied that they are unfounded. If they are submitted to us formally and in sufficient detail, I assure the Committee that we will deal with them individually and robustly. We have no tolerance for misdemeanour or any form of wrongdoing. Incidentally, it is not clear to

me who owns the various documents which are currently swirling about and therefore I am not sure whose responsibility it is to submit them to NAMA. I should remind people also that under Section 19 of the Criminal Justice Act 2011 there is a legal obligation on persons having evidence of any impropriety to bring it to the immediate attention of the Gardai. Some of the allegations that have been advised to us seem to revolve around personal grievances of Mr. Farrell. Others appear to be the personal views of Mr. Farrell on various organisational matters on which he would not have a complete perspective nor could he expected to have, given the position he held.

We understand that Mr. Farrell has now made a claim of unauthorised disclosure by him. He apparently alleges that he provided a so-called 'full file' of personal information relating to Mr. Patrick McKillen to a particular third party. This new disclosure by Mr. Farrell directly contradicts his previous sworn statements.

NAMA, over the last 36 hours, requested its own internal auditors to review all electronic communications between Mr. Farrell and this third party. There is no evidence from the search to date that any information relating to Mr. McKillen was transmitted electronically.

With regard to this so-called 'full file', I wish to advise that NAMA has very little information relating to Mr McKillen. Financial information would ordinarily be expected to include sworn statements of affairs, lists of unencumbered assets, borrowings with non-NAMA institutions and so on. NAMA has never possessed this information in relation to Mr. McKillen because, as the Committee will be aware, the NAMA Board took a decision in July 2011 not to acquire Mr McKillen's loans. Such information is usually provided as part of a debtor's business plan submission and in this case, as we did not acquire the loans, no business plan was submitted.

Before I move on from the allegations regarding disclosure of information, I confirm to the Committee that a second case was referred to the Gardai by NAMA in February of this year: it relates to a complaint made to NAMA of a possible unauthorised disclosure of a *single* document by another ex-employee. The matter was brought to NAMA's attention shortly after the employee left NAMA and it was immediately referred to the

Gardai. No electronic record exists of the transmission of this document. NAMA provided further information requested by GBFI in July of this year and we understand that the investigation is ongoing. There is no connection between this case and the earlier case of Mr. Farrell. We do not, as a matter of course, make public announcements about such referrals as the person who is the subject of investigation is entitled to due process and the Gardai must be allowed to conduct their investigation in line with their normal procedures.

Property valuations

Based on allegations which have appeared in certain media outlets, a second serious allegation made is that NAMA engaged in a deliberate process of manipulating the valuation of property which was collateral for its acquired loans. NAMA utterly refutes this allegation and I wish to set out the factual position clearly.

A key element in the valuation of the loans that NAMA acquired from the participating institutions in 2010/11 was the **current market value** of the property or other collateral securing the loans. Let me make it clear, first of all, that NAMA did not set the property valuations.

Let me describe in detail the process. For each property, a valuation was initially provided by a professional valuer commissioned by the relevant participating institution (AIB/BOI/Anglo/INBS/EBS). These valuations were conducted under the RICS Red Book international standard for property valuations.

Each valuation submitted by the financial institution to NAMA was reviewed by a second firm of independent valuers appointed by NAMA from its own property valuation panel (which consisted of professional valuers appointed after a public procurement process). In the event that there was a material difference between the bank's submitted valuation and NAMA's, a further, third, valuation was carried out by a different independent valuer and this valuation was accepted by NAMA.

During the valuation process, over 10,500 property valuations were submitted by the institutions and reviewed by the independent NAMA panel. In 88% of cases by number,

the NAMA panel valuers accepted the valuations initially submitted by the participating institutions. In 12% of cases, the reviewing valuer from NAMA's review panel disputed the banks' valuation. In these cases, NAMA referred the valuation to a third independent valuer and this third valuation was the one that NAMA accepted as final, regardless of the views of its own valuer.

At no stage in this process did NAMA itself determine property valuations. Mr Farrell, who is believed to be the source of the new allegations, had an administrative role in the property valuation process as a conduit between the banks and the loan valuers. Mr Farrell had **no** valuation role whatsoever.

The process was subject to extensive auditing, including audits by KPMG, in its role as the NAMA Audit Co-ordinator to the loan valuation and acquisition process. KPMG's brief included an analysis of all final valuations for consistency and robustness. The process was also audited thoroughly by Ernst & Young and PwC on behalf of the European Commission and by the Comptroller and Auditor General. The C&AG's first Special Report on NAMA which was published in October 2010 contains a detailed description of the loan valuation process. The then Comptroller, Mr. John Buckley, concluded that:

"In general, the audit work commissioned by my Office from valuation and legal consultants together with the audit testing conducted in the course of the audit of the 2010 financial statements gives a reasonable degree of assurance that the Agency's valuation processes were robust."

I also note the comment made yesterday at a meeting of this Committee by the current Comptroller, Mr. Seamus McCarthy, that it would be difficult to see on a broad scale how there would be any undervaluation of loans acquired by NAMA given the Agency's approach to getting independent valuations.

I would make one further point. Any suggestion that the NAMA valuation process resulted in a systematic undervaluation of acquired loans is thoroughly disproved by the fact that NAMA has, to date, had to take a cumulative impairment provision of €3.6

billion on these loans, including an impairment provision of €1.5 billion in our first year of operation. The NAMA accounts are audited and reflect these figures.

Irish High Court proceedings

Separately to the Mr. Farrell allegations referred to above, I wish to refer to reports in the media during the week that Mr. Patrick McKillen has made a complaint to the Gardai about NAMA. Clearly, NAMA has not seen this complaint so we cannot know what the actual complaint relates to. However, we believe it may assist the Committee to know the status of Irish High Court proceedings which Mr McKillen issued against NAMA earlier this year.

On 26 April 2013, Mr McKillen served a statement of claim on NAMA alleging that NAMA provided confidential information and assistance to the Barclay brothers during 2011 when Mr McKillen and the Barclays were in dispute about their respective shareholdings in the Coroin company that owns three London hotels. The Committee will be aware from press coverage that Mr McKillen has been involved in protracted litigation in the English courts with the Barclay brothers about control of these hotels. NAMA was a limited party to these proceedings.

Following the conclusion of the English proceedings, Mr McKillen began to submit written complaints in the second half of 2012 to NAMA that his confidential information might have been given to the Barclay brothers and he based these complaints on documentation which had been disclosed in the English High Court case. This documentation was available to his legal team when they cross examined the two NAMA witnesses in those English proceedings. The High Court Judge, in finding against Mr McKillen, noted as part of his judgment that he found NAMA's witnesses to be wholly reliable.

NAMA reviewed the complaints and found they had no basis in fact and indeed referred to matters which could have been put to NAMA's witnesses in the English High Court but were not. However, I expressly undertook to Mr McKillen that should he come to me with specific evidence of any breach of confidentiality, we would conduct a full investigation. No such evidence has been produced by Mr McKillen since my last letter

to him on the matter on 14 December 2012. We heard no more until Mr McKillen initiated Irish High Court proceedings in early 2013.

When NAMA's legal advisers reviewed the Statement of Claim served in April 2013, we found that it was based exclusively on those documents Mr McKillen had obtained under the discovery process in the English High Court proceedings. This, in NAMA's legal view, constituted an unlawful use of privileged information by Mr McKillen. We wrote to his solicitors pointing that out. Mr McKillen's solicitors then retracted the Statement of Claim. We understand from descriptions that excerpts from some of these documents may have been circulated to certain Oireachtas members and to certain media outlets.

On 29 July 2013, Mr McKillen served an amended Statement of Claim on NAMA. NAMA served a Notice for Particulars on Mr McKillen in October 2013 seeking further information and clarification on the ambiguous and indefinable claims and allegations made in his Statement of Claim. NAMA has not received a response to this Notice for Particulars. In October 2013, NAMA filed a full Defence to all claims made by Mr McKillen. The matter will now continue to trial in the Irish High Court.

Conclusion

Chairman, NAMA is involved in a very difficult business with a lot at stake, both for the taxpayer and for others. In seeking to do its job professionally, it inevitably finds itself in dispute with various parties. Some of those will inevitably seek to intimidate or discredit NAMA for their own purposes. Presumably the strategy is that if enough mud is thrown, some of it will stick.

We built this organisation starting with a Balance Sheet of €32 billion from scratch without staff or systems and, like all new organisations, not everything was perfect nor could anyone expect it to have been. We strive to continuously improve and the Board, Executive and I expend a large amount of time ensuring strong governance and controls. The staff assigned to NAMA are of a very high calibre and carry out their difficult duties with great commitment and diligence. We have every confidence in their integrity and professionalism. Unfortunately in every walk of life there are bad eggs but thankfully, in

our case, they have been few. The culture in NAMA is that there is no tolerance for anybody not performing their role honestly and professionally.

Chairman, we will not be deflected from the important work that we are doing on behalf of the Irish taxpayer.

The NAMA Chairman, Frank Daly, will now make some comments.

Thank you.

20 December 2013