

## **Executive Summary**

In early August 2012, NAMA was made aware of a transaction which took place in 2011 between a former employee and a NAMA debtor. It was alleged in the media that a NAMA Officer may have purchased a house from a NAMA debtor at undervalue (the “Transaction”).

NAMA immediately commissioned its internal auditors, Deloitte to carry out an independent investigation into the facts surrounding the Transaction. Deloitte conducted interviews with NAMA officers, Enda Farrell, the former employee alleged to have bought the house and with parties involved in the Transaction. Deloitte also reviewed internal documentation relating to the transaction as well as reviewing and making recommendations on NAMA’s internal procedures as they relate to the transaction.

The Deloitte review found that an independent opinion on the offer was received which appears to have been accepted by the NAMA debtor who requested consent to the sale and the NAMA Delegated Authority who approved the sale. No evidence was found that the sale had taken place at undervalue.

The review also noted that at the time of the Transaction, there was no policy requirement to openly market the property and there was no breach of policy in that regard.

The Deloitte review found that while appropriate systems were in place to deal with actual or potential conflicts of interest, those policies had not been adhered to by Mr. Farrell. Mr. Farrell disputes this.

Deloitte made a number of recommendations as to how NAMA’s systems could be improved.

NAMA acknowledges that its systems could have operated more effectively in detecting the actual or potential conflict of interest in the Transaction and that there are improvements that can be made to those systems.

NAMA has accepted all of the Deloitte recommendations which are set out in Section 3 together with details of the action taken by NAMA in response.

As at the date of publication of this report all NAMA officers have attended refresher compliance training as a consequence of the matters raised by Deloitte in their review.

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## **Section 1.**

## **Key Transaction Events**

### **June / July 2011**

The NAMA debtor engaged two local estate agents (in Maynooth and Lucan) to source a potential purchaser for Sundays Well, Lucan, County Dublin (the “Property”).

### **July 2011**

The NAMA debtor was telephoned by Alice Kramer (spouse of Mr. Farrell) enquiring about the Property.

### **2 August 2011**

The NAMA debtor advised the NAMA Portfolio Manager by email and copying AIB (who were managing the loan on behalf of NAMA at the time) that he had a potential purchaser for the Property but did not provide specific details.

### **7 August 2011**

Formal letter of offer was sent from Ms. Kramer & Mr. Farrell to the NAMA debtor. The offer was for €410,000.

### **10 – 19 August 2011**

A Borrower Credit Proposal (Form A) was submitted by the NAMA debtor to the NAMA unit in AIB. The Form A provided details of the sales process to date and an opinion as to the current market value of the Property from a local estate agent which recommended that the NAMA debtor accept the offer of €410,000.

AIB requested specific details of the purchaser. Those further details were provided to AIB on 11 August 2011.

The Form A application was approved by AIB on 19 August 2011.

AIB then completed a Participating Institution Credit Proposal (Form B). The Form B recommended the sale of the Property for €410,000 and noted the names of the purchasers (Ms. Kramer and Mr. Farrell) and their address and that it was AIB’s understanding that the purchasers had recently returned from Amsterdam.

AIB then submitted the Form A with supporting documentation and its own Form B recommendation to NAMA for approval.

**2 September 2011**

A Portfolio Management Credit Proposal (Form C) was prepared by NAMA Portfolio Management and Credit and Risk staff which recommended the sale. The sale of the Property for €410,000 was approved under the NAMA Delegated Authority Policy. In the instant case, the credit decision was approved by a Senior Portfolio Manager and a Senior Credit Manager.

**November 2011**

The sale of the Property closed for €410,000.

## **Section 2. Requirements under National Asset Management Agency Act 2009 (the “Act”) and Applicable Codes**

The following relevant requirements were examined as part of the Deloitte review.

### **1. Section 42 of the Act – Disclosure Statement**

#### **Requirement**

Under section 42 of the Act all potential NAMA officers are required to complete a disclosure of interests referred to as a *Section 42 Declaration* prior to appointment:

***“Before the NTMA assigns a member of its staff to NAMA under subsection (1), the NTMA shall ensure that he or she provides a statement of his or her interests, assets and liabilities to the Chief Executive Officer of NAMA and the Chief Executive of the NTMA in a form that the NTMA specifies”***

#### **Observation**

An initial Section 42 Declaration was submitted by Mr. Farrell on 18 January 2010 which listed one shareholding under “assets”.

A subsequent Declaration was submitted by Mr. Farrell on 31 March 2011 listing no assets, interests or liabilities.

### **2. Section 202 of the Act – Confidential Information**

#### **Requirement**

Due to the sensitive and confidential nature of the information held by NAMA, section 202 of the Act details strict requirements in relation to such confidential information:

***“Except as otherwise provided or authorised by this section or another enactment, a person shall not, unless authorised by NAMA, a NAMA group entity or the NTMA or authorised or obliged by law to do so, disclose information that he or she knows is confidential information, or use, to the direct or indirect advantage of himself or herself or of another person (other than NAMA, a NAMA group entity or the NTMA), confidential information that he or she obtained”.***

#### **Observation**

As an Officer of NAMA and a member of the NAMA Portfolio Management team Mr Farrell had access to information in relation to the NAMA debtor who owned the Property; no finding was made as to whether Mr Farrell did in fact access confidential information for the purposes of purchasing the Property.

### 3. Section 42 Declaration – Requirement to advise CEO of changes

#### Requirement

The Section 42 Declaration as signed by Mr. Farrell on 18 January 2010 and 31 March 2011 includes an obligation to immediately inform the NAMA CEO of any matter that could result in an actual or potential conflict of interest.

Section 5 of the pro forma section 42 Declaration provides:

***“I undertake to promptly inform the Chief Executive Officer of the National Asset Management Agency of any modification that are required to maintain the accuracy of this declaration, and the above statements, arising or resulting from changes in my personal situation and/or financial arrangements”***

#### Observation

No updated section 42 Declaration was provided by Mr. Farrell following his purchase of the Property in November 2011.

### 4. Section 42 Declaration – Requirement to advise CEO of conflict of interest

#### Requirement

The Section 42 Declaration as signed by Mr. Farrell on the 18 January 2010 and 31 March 2011 includes an obligation to immediately inform the NAMA CEO of any matter that could result in an actual or potential conflict of interest.

Section 6 of the pro forma section 42 Declaration provides:

***“I further undertake to immediately inform the Chief Executive Officer of the National Asset Management Agency of any matter that could raise a question about my suitability to act (or continue to act) as an officer of the National Asset Management Agency or that could result in an actual or potential conflict of interests with respect to my duties or obligations as an officer of the National Asset Management Agency.”***

#### Observation

No such disclosure was made by Mr. Farrell to the NAMA CEO in relation to his purchase of the Property.

## 5. Section 35 of the Act - Code of Practice - Conduct of Officers of NAMA

### Requirement

Section 2 of the Code of Practice - Conduct of Officers of NAMA (the "Code") deals with conflicts of interest and provides that:

***"In order to maintain public confidence, Officers of NAMA must be seen at all times to be beyond reproach in the area of actual, potential or perceived conflict of interest situations".***

There are recurring obligations within the Code which are relevant, including:

Section 2.1 of the Code sets the following obligation:

***"Each Officer of NAMA has a fiduciary obligation not to put himself or herself in a position in which his or her personal interest would conflict with, or appear to conflict with, his or her duty to the Agency."***

Section 2.1.1 of the Code refers to the obligations under the Ethics in Public Office Act, 1995 and the Standards in Public Office Act, 2001 which in summary requires holders of designated positions of employment (which Mr. Farrell held), to disclose conflicts of interest as and when they arise in the course of carrying out their functions on behalf of NAMA.

Section 2.2 of the Code sets out following general obligations:

***"In addition to the particular legislative provisions that apply to Officers, should an Officer find themselves in a position of actual or potential conflict of interest, where there may be a perception of bias or where their impartiality in carrying out their duties may be potentially affected, they should immediately disclose the existence of the conflict of interest in writing to their business unit head and to the Compliance Officer of NTMA. Persons to whom the Ethics Acts apply must in all situations comply with the provisions contained therein which deal with conflicts of material interests (see 2.1.1. above) and should note that compliance with the provisions of the NAMA Act which deal with conflicts of interests does not remove from the person his or her statutory duties under the Ethics Acts.***

***Appropriate action where an actual or potential conflict of interest arises may include a requirement that Officers cease wholly or in part to be involved in the matter giving rise to such conflict. Examples of matters that should be disclosed include:***

***(a)Any conflict, or potential conflict of interest arising by virtue of any interest, shareholding, business or professional or other business relationship or other possible conflict of interest an Officer has with any individual, firm, company or other entity with which NAMA engages in transactions of any nature or description or with which NAMA has any negotiations and/or dealings of whatsoever nature or description".***

## Observation

No disclosure of an actual or potential conflict of interest was made by Mr. Farrell to his business unit head in NAMA or to the NTMA Compliance Officer during the period of his negotiations with the owner of the Property or subsequently.

## 6. Section 35 of the Act - Code of Practice - Conduct of Officers of NAMA

### Requirement

Section 4.2 of the Code relates to misconduct by Officers of NAMA.

Section 4.2.3 (n) includes in the definition of misconduct:

***“Any other activities or deliberate acts or omissions that are or could reasonably be considered by the Board of NAMA to be detrimental to NAMA’s functions, interests or reputation”***

### Observation

The acts and omissions of Mr. Farrell identified in the Deloitte review could be said to have come within this definition of misconduct. Mr. Farrell disputes this.

## **Section 3. Key Recommendations**

### **1. Personal Account Transaction Policy**

#### **Recommendation**

The Board and the NTMA should consider revising the existing Personal Account Transaction policy to prohibit purchases of any asset from a NAMA debtor/receiver other than a principal private residence which has been openly marketed and which will require pre-approval.

If the Personal Account Transaction policy is revised as suggested, training should be provided by the Compliance Officer on the revised policy and in particular the requirement for NAMA officers to seek pre-approval from a member of the NAMA Executive for the intended purchase by that officer or a close relative of a residential property for use as a principal private residence from a NAMA debtor.

The Board should consider an amendment to the Section 131 Direction that would require participating institutions to ensure that their staff, who have access to NAMA information, should adhere to equivalent staff policies to those of NAMA.

#### **Action taken by NAMA**

The NAMA Board has accepted the recommendation and has introduced a revised Personal Account Transaction Policy for all NAMA officers which prohibits the purchase of any property in which NAMA has an interest with the sole exception of a residential property for use as a principal private residence – such purchase must be pre-approved and open marketing clearly demonstrated.

The Board also agreed to direct the participating institutions to introduce the same restrictions for their staff in respect of assets managed by that participating institution where the staff in question have access to NAMA information.

### **2. Open Marketing of Property**

#### **Recommendation**

As of October 2011, it has been NAMA Board policy that all properties be openly marketed where possible, recognising that in certain circumstances this will not be practicable.

Where this is the case i.e. no open marketing, this should be notified to NAMA senior management as an exception to policy with stated reasons. Prior to any decisions regarding a disposal, confirmation should be sought as to the extent of the marketing activities undertaken by the appointed agent(s).

### **Action taken by NAMA**

At the time this transaction was approved, there was no policy requirement for all NAMA properties to be openly marketed wherever practicable. This policy was amended in October 2011 and any property which is not openly marketed must be notified to the NAMA Executive prior to any decision on disposal.

### **3. Determining the Identity of the Purchaser**

#### **Recommendation**

NAMA should consider introducing a process to establish the identity of all prospective purchasers to confirm that the sale of an asset would not create an actual, potential or perceived conflict of interest for NAMA. This could be effected using the current section 172 declaration form by purchasers but as a separate obligation, i.e. included as a separate requirement but on the same form as the section 172 declaration.

Consideration should also be given to imposing an obligation on NAMA officers to declare their status to the vendor or selling agent of a NAMA asset.

#### **Action taken by NAMA**

The NAMA Board has accepted the recommendation and is introducing a requirement that every purchaser of NAMA property confirm whether they or any person with a beneficial interest in the transaction is a NAMA officer.

### **4. Review and approval of Credit Papers**

#### **Recommendation**

Those individuals to whom delegated authority has been assigned should be satisfied that the information contained within the Form C (Credit Proposal) is complete and adequate to allow them sign-off and accept full responsibility for that approval on behalf of NAMA. All holders of delegated authority should be reminded that in signing Form C they are so confirming and Form C should be amended to include this confirmation.

#### **Action Taken by NAMA**

The Board has accepted this recommendation and has directed that wording to this effect is included in the Form C approval.

## **5. Compliance Training**

### **Recommendations**

As part of NAMA's programme of compliance training, the Compliance Officer should regularly remind all staff of the importance of reading, considering and confirming compliance with all requirements.

An online training and compliance tool should be rolled out which would include the obligations of the individuals as they relate to compliance matters. Compliance training should include practical examples. The compliance training tool should include a testing requirement which would apply to each individual prior to them being able to sign off their obligations on a periodic basis (at a minimum annually).

Policy and training should require that all interactions with the Compliance Officer which involve a transaction or which require interpretation, and upon which a NAMA officer intends to place reliance, should be sent in email form by the individual to the Compliance Officer and responded to in writing in order to prevent any potential for misinterpretation.

Any enquiries from staff about the possible purchase of a property in which NAMA has an interest, should be recorded by the Compliance Officer as to adherence with Board approved policies. The Compliance Officer should exercise professional judgement as to whether any particular enquiry should be referred for information or interpretation to the NAMA CEO or Head of Legal in NAMA

### **Action taken by NAMA**

Mandatory refresher compliance training was scheduled for all NAMA officers in October and November 2012 and as at the date of publication of this report all NAMA officers have completed this training.

An online compliance training and testing system has been procured and is being tested prior to roll out.

New procedures have been adopted by the Compliance Officer for recording of enquiries from NAMA officers and referring of certain queries to the NAMA CEO or Head of Legal.