



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Sale of National Asset Management Agency
Assets in Northern Ireland: Mr Gareth
Graham

3 September 2015

NORTHERN IRELAND ASSEMBLY

Committee for Finance and Personnel

Sale of National Asset Management Agency Assets in Northern Ireland: Mr Gareth Graham

3 September 2015

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Ms Michaela Boyle
Mr Leslie Cree
Mr Paul Girvan
Mr John McCallister
Mr Ian McCrea
Mr Máirtín Ó Muilleoir
Mr Jim Wells

Witnesses:

Mr Gareth Graham
Mr Niall Murphy KRW Law-LLP

The Chairperson (Mr McKay): Members, we have with us Mr Gareth Graham, accompanied by Mr Niall Murphy, who is a solicitor advocate and partner at KRW Law. You are both very welcome to the Committee. I will be robust in ensuring that this evidence session is not used as a platform for any legal case. Obviously, you will be well aware of the parameters within which you have to remain. I remind members that the discussion during this evidence session should remain within the Committee's terms of reference. Mr Graham, would you like to make an opening statement to the Committee?

Mr Gareth Graham: Yes please, Chairman. Thank you for accepting my offer to attend today. For the record, I am joined by my solicitor, Niall Murphy.

I am a significant shareholder in a number of property development and management companies in Belfast. Across all our family businesses, which include the Sean Graham betting business, we employ over 170 people. In the last number of months, we have had some limited experience of the workings of Cerberus following its purchase of the National Asset Management Agency (NAMA) Northern Ireland loan book, which is the subject of your ongoing inquiry. I have followed your inquiry closely and read the terms of reference, and I believe that I can usefully inform you.

It is a matter of record already in the public domain that I am involved in a legal dispute with Promontoria Eagle. That continues and it is not something that I intend to discuss here today. My Cerberus and NAMA experience is very detailed. It stretches back a number of years, and much of it lies outwith this inquiry's terms of reference. I will be guided by you, Chairman, on what issues can usefully be aired here. What I am sure of is that my companies have been directly impacted by the decision to appoint members to the NAMA Northern Ireland advisory committee; indeed, one member

in particular. We believe that the lack of accountability between the NAMA Northern Ireland advisory committee and the Department of Finance and Personnel has led directly to my current dispute with Cerberus.

With your permission, Mr Chairman, I will take you through a narrative of my experience with NAMA and Cerberus. There are four companies that are central to our issue with Cerberus. They are Lehill Properties Ltd — of which I own 95%, with Frank Cushnahan owning the remaining 5% — and its subsidiaries: AD Enterprises Ltd; Fernhill Properties Ltd; and STH 500 Ltd. We have always been regarded as good borrowers, and, before the crash, during the crash and, indeed, to this very day, none of our companies have ever missed a single interest payment, whether that be to Bank of Ireland, NAMA or Cerberus.

In 2014, Cerberus, using a company called Promontoria Eagle Ltd, bought NAMA's Northern Ireland loans for a reputed 27% of loan values. On 10 September 2014, we attended our first meeting with Cerberus and its administration people at Capita. They outlined their position and sought our proposals of how we intended to repay our loans.

Prior to the meeting, we had been quietly optimistic that we would enjoy a positive and mutually beneficial working relationship, given the fact that, in our previous dealings with Bank of Ireland and NAMA, we had repaid £19 million in capital and interest payments. We sat in the waiting room for 15 minutes, and our meeting with Cerberus lasted six minutes, from 11.13 am to 11.19 am. It was a disaster. There was no discussion; Cerberus simply asserted that all the loans that it had purchased had an average weighted lifetime of 18 months and that business plans were required from us within the next four weeks. There was absolutely no regard paid to or interest in the previous four-and-a-half-year period, during which we had been working to the NAMA business plan.

During the meeting, Cerberus claimed to have valuations on the assets trending towards par. That is to say in the sum of £33 million, which was, to my mind, wholly implausible. We had valuations of £18.5 million. The Cerberus valuations were not produced, and the schedule of assets was not clarified, despite our repeated requests.

On 8 October 2014, we submitted our proposals, which, in general terms, were to sell off the properties and pay Cerberus the sales proceeds and to do this either very quickly or over a longer period. The longer sales process would have realised more money as there would have been no fire sale disposals. We based our proposals on professional valuations.

During a follow-up meeting on 21 October 2014 with Cerberus and Capita, they stated that our proposals were not acceptable. They were now seeking £27.75 million and gave us a list of funders whom they wished us to talk to. In good faith, we met each of the funders that they had suggested and, by February of this year, we had put together a funding package and submitted an offer. However, an arranged meeting with Cerberus was cancelled by them, and we were told, without discussion, that our offer and our package were unacceptable.

Throughout the remainder of February and into March 2015, we wrote to Cerberus and finally met them on 19 March. We were informed that they intended to appoint administrators against our companies. In fact, when I returned to my office following the meeting, letters demanding full repayment of the loans, approximately £33 million, within 24 hours were awaiting us. These letters had actually been posted the night before the meeting.

On 24 March 2015, we received a telephone call at 1.08 pm from Ernst and Young informing us that they had been appointed as administrators over our companies. Our legal challenge to this appointment is ongoing.

Since our case has become public, a number of other borrowers have approached my family and me to ask how we are progressing in our challenge and, in some cases, to seek advice as to their own circumstances. In these cases, the borrowers are unwilling or afraid to speak out against Cerberus for fear of repercussions. In many instances, they have given personal guarantees — guarantees that we never ever give — and they need to keep Cerberus onside as far as possible. Indeed, my experience is that Cerberus's approach, in reality, is ruthless, unjust and unreasonable, which is at odds with the assertion that Cerberus's involvement in Northern Ireland would be good for the economy.

The Chairperson (Mr McKay): Gareth, can I just encourage you to try to come back to the terms of reference?

Mr Graham: OK. There is a direct link between how we have been aggressively treated by Cerberus and the appointments made to the NAMA Northern Ireland advisory committee. In 2005, an external business adviser was recommended to my family to provide corporate advice on how best to maximise the potential of our family businesses. Frank Cushnahan was appointed chairman of our business and received a 5% shareholding. He operated from an office in our building between 2005 and 2008.

It is a feature of our business practice, in accordance with Her Majesty's Customs guidelines that we retain the details of all bets. As such, we record all calls that come in or out of our office. That is known by all our staff and all our directors. There are certain assertions that I am 100% confident in making because I have listened to calls made by Frank Cushnahan during that period. Those calls — and there are literally thousands of them — include conversations with multiple businesspeople, public officials, bankers, solicitors, accountants and politicians. I am eager and will continue to assist the law enforcement agencies in several jurisdictions with their ongoing investigations, including making these tapes available. But, for the purposes of today's hearing, I am advised that I can refer only to issues that fall within your terms of reference.

At that time, from 2005 to 2008, two of Ireland's other leading bookmaking firms were sold, one for approximately £135 million and another for £25 million. Instead of developing our business in the manner that we had anticipated, Frank Cushnahan set about trying to sell our business, which would have involved his recouping a significant return for his 5%. There followed a breakdown in the relationship with Frank Cushnahan, which ultimately led to his departure from our companies.

I now know from his telephone calls that he was intent on destroying our businesses after he left. Indeed, while he was in his post as our company chairman, he had already started to impugn and ruin our reputation. For example, on 3 September 2008, Frank Cushnahan — and I will remove the use of the expletive — said:

"Thank God I am worth a good few quid elsewhere, but I am telling you my shareholdings will be worth sweet eff-all by the time I am finished."

Frank Cushnahan left in October 2008, just as the global financial crisis was occurring. Our attention very quickly became focused on running our existing businesses.

In May 2010, Frank Cushnahan was appointed to the NAMA Northern Ireland advisory committee by the Finance Minister. By October 2010 — five months later — our loans were transferred into NAMA in circumstances in which we believe — it is a matter on which the court is to determine — that our loans were not eligible under the NAMA scheme. I consider that the reason why the Bank of Ireland took such a harsh and unfair view of us is because of Frank Cushnahan's malevolent influence. I retain recordings of Frank Cushnahan's telephone calls that lead me to this conclusion. As an example and to illustrate my point, on 4 October 2008, Frank Cushnahan — again, I will remove the expletives — said:

"I am doing hundreds of deals. I have got multimillions anyway. If she thinks I'm going to get wound up over 5%, if I walked off the park, I would do so much damage behind the scenes. You know what the shares would be worth? Eff-all. By the way, if it becomes 5% of nothing, I don't give an eff. It doesn't matter to me."

The "she" to whom he refers in that call is my mother, who is sitting behind me today.

Frank Cushnahan's appointment to the NAMA Northern Ireland advisory committee and the subsequent lack of accountability or oversight of his work by the Department of Finance and Personnel led, in my view, to our being put into NAMA and thereafter Cerberus and our current legal battles. It is important to note that, in 2010, Frank Cushnahan relinquished his shares in our trading business, SP Graham Ltd, but retained his shareholdings in four of our property companies. That was of no interest or consequence to me at the time, but I now understand that it is an issue of great significance in the overall context.

When Frank Cushnahan was appointed to the NAMA Northern Ireland advisory committee in May 2010, he would have been obliged to have disclosed his interests under section 30 of the National Asset Management Agency Act 2009, which states that the disclosure of interests provides that each member of the board must disclose any pecuniary or other beneficial interest he or she has in, and which is material to, a matter that falls to be considered by the board. That section also sets out the

procedures to be followed in the event that any member of the board, including the chairperson, has such an interest and provides for related matters.

Furthermore, in accordance with the code of practice and conduct of officers of NAMA guidance:

"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."

By retaining a 5% interest in our property companies, Frank Cushnahan retained a financial interest in matters that would ultimately fall under the consideration of NAMA.

For the record, since this scandal became public, Frank Cushnahan has stated that his name being included in papers filed with Companies House that list him as a 5% shareholder in Lehill Properties Ltd was due to an administrative error. A statement issued on his behalf reads:

"Frank Cushnahan resigned from the SP Graham group approximately seven years ago, and at that time relinquished all equity interests in the group and associated companies."

That is not the case.

In answer to an Assembly question for written answer earlier this year, the then Finance Minister, Simon Hamilton, said:

"My officials are monitoring this situation and engage with representatives of Cerberus on a regular basis where they emphasise how important it is that borrowers are treated in a balanced, fair and transparent manner."

I respectfully submit that the experience of my company is contrary to that sentiment. Since acquiring the Northern Ireland loan book, Cerberus met us on four occasions prior to the appointment of administrators. Those meetings lasted six minutes, seven minutes, six minutes and 10 minutes. It is apparent that Cerberus did not enter into any detailed or considered dialogue to reach a resolution in relation to my companies' loans. If Department of Finance and Personnel officials are indeed monitoring this situation and engaging with Cerberus on a regular basis, we can find no evidence of it in our written correspondence with the Department or in answers to Assembly questions. Needless to say, we do not feel that we have been treated in a balanced, fair and transparent manner.

In conclusion, having listened to hundreds of hours of recordings, with still more to consider, it is quite clear to me now that there was an ingrained culture of inappropriate and quite possibly illegal business conduct that stretches across political, legal, banking and accountancy sectors. I encourage any professionals in those disciplines to come forward and assist the authorities with their investigations.

I have spoken with the National Crime Agency (NCA) and have contacted and await a confirmed date to make a complaint to the PSNI in relation to criminal offences that I consider to have been committed. I have also complained to the Securities and Exchange Commission (SEC) in Washington DC about the inappropriate political relationships and potentially unlawful banking relationships that are disclosed in those recordings, which I consider merit SEC investigation in respect of potential breaches of the Foreign Corrupt Practices Act 1977 in the purchase by Cerberus of my assets, which are retained in the portfolio of Project Eagle.

I am happy to assist the Committee with any questions that you may have.

The Chairperson (Mr McKay): Thank you, Mr Graham. I think that members will agree that that was extraordinary testimony. Thank you for coming forward and providing evidence to us. In part of your testimony, you said that your loans should not have been in NAMA. Why should they not have been in NAMA? Can you clarify that for us?

Mr Graham: Our loans should not have been in NAMA because they did not meet the criteria to go into NAMA.

The Chairperson (Mr McKay): What were the criteria?

Mr Graham: There were eligibility criteria that our loans did not meet.

The Chairperson (Mr McKay): Do you know who decided to put those loans into NAMA?

Mr Graham: That is a question that I would like answered. It is a question that I believe we will get to the bottom of in due course.

The Chairperson (Mr McKay): Who would have made that decision?

Mr Graham: The Bank of Ireland.

The Chairperson (Mr McKay): The Bank of Ireland, OK. That is certainly worth pursuing with the Bank of Ireland.

You also flagged up the lack of oversight and the concern in terms of the appointments to the advisory committee in the North. We have had extraordinary difficulty getting clear answers from the Department and former Ministers about what criteria they used to appoint Mr Cushnahan and Mr Rowntree or any process that led to shortlisting of their names. Do you have any idea if any criteria were used to appoint those members, and what concerns do you have about that?

Mr Graham: I do not know of any official criteria that would have been used to appoint those members.

The Chairperson (Mr McKay): Do you agree that it would be in the public interest for the Department of Finance and Personnel and the former Ministers to clarify what criteria were used for those appointments?

Mr Graham: I believe that it is essential. We have also asked people to ask the same question, and have received no adequate response.

The Chairperson (Mr McKay): Do you also believe that the Irish Government and the Department of Finance in the South should release all information and files that they have in regard to the appointment of both Brian Rowntree and Frank Cushnahan? Obviously, it is not just an issue for us. It is an issue for the Irish taxpayer with regard to the advisory committee in the North and, ultimately, the sale of the NAMA portfolio in the North.

Mr Graham: Yes, I would encourage that.

The Chairperson (Mr McKay): You referred to some extraordinary evidence that you have on tapes. Is it possible for transcripts of that evidence to be provided to the Committee?

Mr Niall Murphy (KRW Law - LLP): I think that it might be more appropriate for that engagement to be pursued with law enforcement agencies.

The Chairperson (Mr McKay): OK. You also stated that you were not successful in getting out of your loans, but that some people did in regard to the NAMA portfolio. Why was that?

Mr Graham: That is a very good question. Our record was impeccable. We can see no reason for the actions that have been taken. We had a funding package in place with people that we were told to talk to. We regard it as extraordinary that our offer and funding package were refused.

The Chairperson (Mr McKay): In regard to the actual sale of the Project Eagle portfolio, about which there has been obvious controversy in regard to the issues of the Isle of Man bank account, which we are not going to go into, do you think that the Project Eagle sale was corrupt?

Mr Graham: It is my view that the circumstances and the process around the sale of Project Eagle merit investigations by multiple law enforcement agencies across multiple jurisdictions.

The Chairperson (Mr McKay): To come back to the appointments to the NAMA advisory committee, what criteria should have been used to appoint people to that particular board, given the importance of it? How important were those positions?

Mr Graham: Extremely important. Some published criteria should certainly have been used. The general public should be able to refer back to published criteria. It should not be the case that it was done for unofficial reasons.

Ms Boyle: Chair, I will be guided by your expertise in my line of questioning.

You are both very welcome here this afternoon.

Mr Graham: Thank you.

Ms Boyle: What I am hearing from you, Mr Graham, is that you clearly feel that you have not been treated favourably, whilst it has been reported that others — namely, Lagan Homes, Adam Armstrong, Noel Murphy and Paddy Kearney — have been given a softer landing. Do you know if that was the case?

Mr Graham: We never sought to be treated favourably. We sought to be treated fairly. We have not been treated fairly. I do not know the circumstances of other people's loans and portfolios: I cannot give evidence on that. I only know the circumstances of my own. We never missed an interest payment. Throughout the crash, the bank meltdowns and to this day, we have never, ever, ever missed an interest payment. There was no reason to attack us.

Ms Boyle: Your relationship with the bank was a fairly good one.

Mr Graham: Yes, it was long-standing, exclusive banking relationship.

Ms Boyle: Earlier, you used words such as "ruthless", "unjust" and "unreasonable". How do you believe that Cerberus interacts with businesses here, given that the word "vultures" has been used? Do you believe that Cerberus deserves to be called vultures?

Mr Graham: I believe that it does what it says on the tin. Yes, they are vultures.

The Chairperson (Mr McKay): Michaela, can we just bring it back to the terms of reference?

Ms Boyle: Yes, OK.

Mr Graham, you obviously had a relationship with Mr Frank Cushnahan. What contact have you had with him since you parted company?

Mr Graham: I have not had any contact with him.

Mr Wells: First, for the sake of clarification, Mr Graham, as I may have missed it: you mentioned the term "she" when discussing a telephone conversation. Does that refer to your mother?

Mr Graham: Yes.

Mr Wells: My mother would kill me if I called her "she". What was Mrs Graham's relationship to the company? Was she a director?

Mr Graham: My mother is the majority shareholder, owner and director of the Sean Graham betting business.

Mr Wells: You told us that a 95% stake was yours.

Mr Graham: No, I said that the 95% stake in the property companies is mine.

Mr Wells: Does Mrs Graham have any interest in the property companies?

Mr Graham: No.

Mr Wells: Who owns the other 5% at the moment?

Mr Graham: Frank Cushnahan.

Mr Wells: He still owns 5%?

Mr Graham: As you and I sit here today, Mr Wells, yes; he still owns 5%.

Mr Wells: Of what we know as Sean P Graham, the —

Mr Graham: No; he still owns 5% of the property companies.

Mr Wells: But nothing of Sean P Graham the bookmakers, which is the very public face of your company.

You said that you had not missed any interest payments and that you had paid off £19 million. Over how long a period was the payment of £19 million made?

Mr Graham: That payment of £19 million was made, I think, over six years.

Mr Wells: Yet, you did not mention the capital payments.

Mr Graham: I did: I said that that included capital.

Mr Wells: So, it was capital and interest?

Mr Graham: Yes.

Mr Wells: So, in other words, you were up to date with the Bank of Ireland's requirements of you.

Mr Graham: Yes.

Mr Wells: I can see that you feel aggrieved, but do you accept that NAMA is controlled entirely by the Government of the Irish Republic? Apart from the advisory committee input, there is no direct link between DFP and NAMA.

Mr Graham: There is the Northern Ireland advisory committee, which is meant, as far as I understand it, to provide advisory capacity. The plan was to protect borrowers in the North.

Mr Wells: But, executive control of NAMA rests entirely in the Republic of Ireland, outside our jurisdiction.

Mr Graham: It rests in the Republic of Ireland. Members of the main board of NAMA are also members of the board of the Northern Ireland advisory committee. When it has its meetings, the Northern Ireland advisory committee is made up of members of the main board of NAMA also.

Mr Wells: Yes, but, the decision-making process and any loss to the Exchequer is a loss to the Exchequer of the Irish Republic, not to the block grant or the Northern Ireland Budget.

Mr Graham: Do you mean through the sale of the portfolio?

Mr Wells: Yes; the money that was accrued as a result of the sale to Cerberus did not come to Northern Ireland; it went to NAMA in the Irish Republic. It helped pay off the debt.

Mr Graham: Yes, it went to NAMA in the Irish Republic.

Mr Wells: So, therefore, it would be wrong to say that DFP has any direct control over that situation. For instance, DFP could not control the sale.

Mr Graham: DFP could not control the sale. I am sure that it was conducting due diligence on the parties that were bidding for the sale. There is a lot of publicly available correspondence going back and forward between Stormont and the Southern authorities in relation to the sale. Yet the company that acquired the sale is not registered in the UK and does not pay corporation tax in the UK. It is registered in the Republic of Ireland. I do not think that DFP did much of a job of carrying out due diligence in any regard, whether it be on the Northern Ireland advisory committee or through any input DFP has into the sales process. It clearly had input into the sales process. There are papers and correspondence that I and others have read — they have been published.

Mr Wells: Your story about six- and seven-minute meetings is not strange to me. I am aware of companies in south Down whose debts have been sold by banks to other companies, which have behaved in a very similar way. They have given a week either to pay off the debts or make a substantial offer or be closed down. I understand why you feel this behaviour is very distressing, given that you had paid back £19 million already, but it is not uncommon.

Mr Graham: It is. They gave your constituents a week; they gave me 24 hours.

Mr Wells: In effect, you were given longer, because you were given the chance to come back with various offers.

Mr Graham: No, I was not.

Mr Wells: Did you not make an offer of £27 million?

Mr Graham: That was prior to the appointment of administrators. I received a demand letter for the full amount, and it gave me 24 hours to come up with the money. If I had been given a week, I would have had a stab at it.

Mr Wells: That sounds brutal, but, unfortunately, banks, and not just NAMA, are behaving like that in the real world. I know of viable companies going to the wall because other banks, not connected with Bank of Ireland, Cerberus or NAMA, have come in with new management and said, "Where is your money?"

Mr Graham: And, "You have got a week, three weeks or a month". Have any of your constituents had 24 hours?

Mr Wells: Not that I am aware of.

Mr Graham: I am not aware of anyone else receiving a 24-hour demand. That is what I received. The letter was posted the night before. By the time I received it, I had 24 hours to come up with £33 million. There was no hint or indication of displeasure at my conduct leading up to that meeting. Not a word.

The Chairperson (Mr McKay): Jim, let us just bring it back to the terms of reference.

Mr Graham: Apologies.

Mr Wells: Right. I think I will stop there, Mr Chairman.

Mr Ó Muilleoir: Good to see you, Gareth. I have never met your mother. It is good to see her here. I know that she is the matriarch, so I suspected that she might come along.

I am not interested in rehashing a case that will go to the courts. You know where my sympathies lie, but I think that your evidence is of much more interest to the public than your case. I need you to clarify something. We are greatly concerned by the appointments process to the NI advisory committee for NAMA. Are you saying that, when those appointments were made, no one spent £3 on a Companies House search to check whether Mr Cushnahan or Mr Rowntree — Mr Cushnahan in this case — was a director or shareholder in the companies that were in the Project Eagle portfolio? Not only are you saying that that did not happen and, in the due diligence before the appointments were made by the Minister for Finance, Mr Wilson, no one had checked whether those going forward held shares in the companies in the portfolio, something that would, of course, have precluded them, but

that today, after we have been hearing evidence for several months, Mr Cushnahan is still a shareholder and, therefore, was a shareholder in a company in the NAMA portfolio during the entire period he was on the NI advisory committee.

Mr Graham: That is correct.

Mr Wells: Can that be proven? Is there a published register?

Mr Graham: The annual returns of shareholdings go to Companies House every year.

Mr Ó Muilleoir: I want to take this away from your case to make a broader point. I agree exactly with Mr Wells that Cerberus is not the Salvation Army. It prides itself on its ruthlessness. My meeting also lasted six minutes. It would sell more assets on the basis that, in its game, the word "ruthless" is a term of praise. My meeting with Cerberus, which lasted six minutes, was on constituency issues. By the way, Mr Coggle said at that meeting — at that time, he had received his invitation — that he would never appear at this Committee. I hope that Cerberus has changed its mind on that because it needs to rebut some of the evidence here.

My interest is not in Cerberus's approach but in whether the Project Eagle portfolio should have been sold. It seems to me that there was influence at the core of the Northern Ireland advisory committee on NAMA, which was influencing the sale, facilitated and eased the sale, and encouraged NAMA to make the sale. In my view, that influence was nefarious. I suspect now that it is leading towards embezzlement and fraud. The Project Eagle portfolio should never have been sold in the manner in which it was sold, but it was sold because there were kickbacks and sweetheart deals, and it was a dirty scheme.

The proof of that, it seems to me, in the case of the NI advisory committee is that PIMCO, which was at one point an underbidder or a bidder, withdrew because it was told that it would have to pay an additional payment to fixers here. It wrote to the Northern Ireland advisory committee, which Gareth has just spoken about. PIMCO's letter was read out at a meeting of the advisory committee in Tughans solicitors. It said that it would not be involved with the deal. Its due diligence people would not allow it because it involved payments to individuals, which is against the laws of our country. Mr Cushnahan was at that meeting, which took place in Tughans, and NAMA was present. NAMA, Tughans and the Northern Ireland advisory committee representatives were there. PIMCO said that it was such a grave issue that it could not proceed.

Mr Wells: This is all very interesting, but I fail to see where the question is coming from.

Mr Ó Muilleoir: The question is very obvious. Why was Project Eagle sold to Cerberus? Why was that the strategy that we allowed to be adopted? Of course, it affects us in two ways: first, valuable, good, long-standing entrepreneurial companies such as Graham's have been attacked and destroyed by Cerberus — it would have been destroyed by another company as well — and, secondly, because we do not want the reputation as an area in which corrupt practices or embezzlement take place.

'The Wall Street Journal' wrote about this case in this benighted part of the world in July because there are huge ramifications for how people perceive their ability to do business here. Regardless, beyond the fact that we hold everyone to rigorous lines of behaviour in business, it is fundamental to us to find out what influence was brought to bear to encourage our Government to support this sale. It seems to me that this sale happened over such a short period, when PIMCO withdrew and Cerberus stepped up, that it was very damaging to us.

My question is very relevant and is the reason why we are here. If anyone in politics was involved in encouraging this deal for personal benefit, it was an egregious conflict of interest, and it may or may not be a criminal matter. My question to Mr Graham is this: were you aware at the time that, when Mr Cushnahan was on the NI advisory committee to NAMA, he was considering your properties as well?

Mr Graham: No.

Mr Ó Muilleoir: So it was not, at that time, a matter of discussion or interest to you?

Mr Graham: No.

Mr Ó Muilleoir: When he resigned from the NI advisory committee and was working from Tughans again at that time, was he offering people advice on their dealings with NAMA?

Mr Graham: I believe that he was, yes.

Mr Ó Muilleoir: Had he left your office at that time?

Mr Graham: He had left our office at that time, and we had not had any dealings with him. We were regarded by NAMA — it told us — as the number one Bank of Ireland NAMA borrower in terms of repayment delivery. We had no concerns, other than making sure that, if somebody who was in an advisory capacity was able to whisper in somebody's ear, it would have no ill effect, because our track record and our school report were absolutely unblemished. That was the position we were in when our loans were transferred.

Mr Ó Muilleoir: I do not want to make a comment about your legal case, but I think that it is beyond doubt that this sale stinks to high heaven. We need NAMA, which has promised cooperation but will not appear, to appear here and tell us why, when PIMCO withdrew and voiced real concerns about kickbacks, sweetheart deals and fixers, it went ahead with this sale. It needs to come forward and tell us. It says that there were two parties — Cerberus and Fortress — still left in the bidding. I think we need some clarification on what the Fortress bid was, what the nature of it was and whether there were really two bids still standing when this portfolio was sold by NAMA. It has been a bad sale. It is clear that it was a bad idea at the time; it was a bad sale that should never have happened. The consequences are being felt by good businesses that are being put to the wall by Cerberus. There could have been another way to resolve it and to unwind this portfolio of 800 properties.

The Chairperson (Mr McKay): Jim and yourself, Máirtín, have referred to the number of businesses that have suffered. I think that the sale — just the sale in itself — to Cerberus has resulted in a lot of suffering. Gareth, your testimony is the only one we have on record of the suffering that businesses here in the North have gone through as a result of that sale. As you say, there is a particular reason for that in the personal guarantees. There are a lot of other businesses out there in the same position as you — suffering today because of the sale of the NAMA loan portfolio.

Mr Graham: With respect, I do not know of any business out there that is in the same position as me, where a member of the NAMA Northern Ireland advisory committee is a shareholder in their companies. We now know, but did not know at the time, that there is a stated intention to damage my companies by the member of the NAMA Northern Ireland advisory committee. He has a role in the sales process of Project Eagle, and my companies are subsequently attacked. I do not know of any other borrower anywhere who is in a similar position to me.

The Chairperson (Mr McKay): I absolutely accept that. I am saying that there are a number of businesses that are suffering in general terms. If we could bring them before us, we would, but I think that members can understand the situation that they are in. It is quite clear that NAMA changed its approach to the sale of the portfolio. Will Cerberus's management of your loans yield more return than would be the case if NAMA was still managing your loans?

Mr Graham: No.

The Chairperson (Mr McKay): Can you elaborate on that?

Mr Graham: We operated to a NAMA business plan, which was a long-term view to develop, improve and enhance the assets. The approach that is in place at this stage is simply to sell assets. It is effectively a fire sale.

The Chairperson (Mr McKay): Which is what many Ministers in the Executive stated they were totally opposed to from the outset.

Mr Graham: Yes.

Mr McCallister: Following on from that point, that was the very reason that we were given for the setting up of the Northern Ireland advisory body — to avoid a fire sale. You know better than any of us that we experienced not only one of the largest property booms but one of the largest property

crashes in Europe, probably, or, indeed, the world. Jim made a point, and colleagues will know that I have raised it about constituents and businesses in my constituency feeling very much that they were being asset-stripped when fundamentals of their business were maybe sound, but they had negative equity. You stated, Mr Graham, that you did not think that you should ever have been in NAMA. At what point did Bank of Ireland move your assets into NAMA?

Mr Graham: It was in October 2010, five months after Mr Cushman was appointed.

Mr McCallister: Right. With reference to your answer to Máirtín, for the entire time that Mr Cushman was on the Northern Ireland advisory board, he was a 5% shareholder of the four companies involved and on an annual return to Companies House.

Mr Graham: Yes.

Mr McCallister: No one, at any point, had ever checked that or raised that.

Mr Graham: People may have checked it, Mr McCallister, I am not sure, but nobody approached us.

Mr McCallister: Even from a property basis — property effectively slumped at some point in mid-2008 when we were in a real downward spiral. There is a perfectly legitimate argument about a fire sale at that period. However, your sales and your real pressure was not until late 2014.

Mr Graham: What; sorry?

Mr McCallister: Your assets and your properties were really sold off when? In late 2014?

Mr Graham: Yes, in June 2014.

Mr McCallister: Would it not be fair to say that we were pretty well through the —

Mr Graham: Yes. The bad times were over. We had survived and weathered the bad times and we had met all our obligations.

Mr McCallister: At that point, your property values are sitting at what — somewhere the same as in 2005? Am I correct in that?

Mr Graham: Yes.

Mr McCallister: During that entire time, you had honoured all the commitments to Bank of Ireland. When you entered NAMA — I take your point earlier that you did not feel that you had met the criteria to be going into NAMA but, nevertheless, you ended up in NAMA — you worked out business plans with it and were meeting all those targets.

Mr Graham: We were ahead of all targets within our NAMA plan.

Mr McCallister: Had you still been in that, at what point could you have perhaps come out of NAMA?

Mr Graham: Our NAMA plan was that, by 2017, we would be able to refinance and pay NAMA back completely. There would have been some sort of likely rump that would have been left behind, but we would have developed the assets that could be developed and maximised them; we would have sold assets that were best just to be simply sold and retained any assets that were best to be retained slightly longer. We had a plan. It was agreed. We worked to it for four and a half years and we were ahead of plan at the point when our loans were transferred.

Mr McCallister: So you were on target when you were with Bank of Ireland and had never missed anything. When you went into NAMA, you were on plan and should have been — effectively for any bank or NAMA structure, if you were on plan and not causing any difficulties — pretty well left alone to get on with it.

Mr Graham: Yes. We had a very good working relationship with the NAMA people in Bank of Ireland. They have gone on record for something else to give evidence in that regard. We had a very strong working relationship; we were acknowledged to be honourable people and hard working. During the boom, there was no champagne lifestyle in my house. We were grafters. We have a day job. This was a shock for us.

Mr McCallister: Then, because you could not come up with the £33 million in 24 hours, which I think is quite an ambitious target, what is the overall loss to the company? Do you walk away with —

Mr Graham: We are fighting, as you are aware, and we are trying to prevent our assets — I am not sure what I can say here —

Mr N Murphy: I think that we might be straying into issues that have been addressed in correspondence with the Clerk.

Mr McCallister: That is right. Chair, the only other point that I want to address is that Mr Graham mentioned briefly in his opening statement the extensive hours of telephone calls.

Mr Graham: Yes.

Mr McCallister: You went over quite quickly whether politicians from Northern Ireland were involved in discussions with Mr Cushnahan on those recordings.

Mr Graham: It is likely — I do not want you to think that I am copping out —

Mr McCallister: I am not asking you to name names or anything.

Mr Graham: It is likely that we are awaiting a sit-down with the PSNI. We have already spent a lot of time with the NCA, and we continue to speak to the NCA. We believe that there exists a criminal conspiracy against my family and my companies, and, as such, we are in the process of formulating a criminal complaint. Lots of the things that you would like me to answer are within that criminal complaint. We have already indicated to the NCA and the PSNI that we are here to help and that this information is available to all the law enforcement authorities that wish to get their hands on it and listen to it. We will provide copies of it. They would be better at answering the sort of question that you are asking than I would, because I do not want to jeopardise any criminal actions or prosecutions that, I think, will inevitably flow.

Mr Cree: Thank very much for your evidence, gentlemen; it was certainly interesting. I just want to explore this with you, if you would. You mentioned the Bank of Ireland. Were all the family businesses in the Bank of Ireland?

Mr Graham: My father died in 1986, Mr Cree, and all our banking interests went exclusively to the Bank of Ireland shortly after that.

Mr Cree: So it has experience of all your businesses?

Mr Graham: Bank of Ireland was our exclusive banker; we did not bank with any of the other banks.

Mr Cree: At the time when your business, or part of it, was going to be transferred to NAMA, did the Bank of Ireland give you any particular reason?

Mr Graham: Yes. It told us that everybody who was involved in property was going in. We objected. Whilst we were in NAMA, we objected. We raised it with every NAMA officer or employee that we ever met, but we got the same answer: everybody in property had to go in. We were not aware, until possibly two months ago when we went to seek advice, that we were not eligible.

Mr Cree: It is strange that, because, as you know and I think we all know, this was a way of resolving a bad-bank situation. Therefore it seems unusual that someone who was actually meeting obligations and being an exemplary client would end up being thrown into the pot with everybody else.

Mr Graham: I appreciate the meaning of the media term "bad bank". We believe that the Bank of Ireland actually received 100p in the £1 for our loans.

Mr Cree: OK. I have a final question. I am intrigued that Mr Cushnahan took an office in one of your premises. What was the reason for that? Was that unusual? Did he not have an office anywhere else?

Mr Graham: Mr Cushnahan was recommended to my mother as a good person who could bring expansion to the business and strengthen it, and that he had lots of experience and that that would stand us in good stead. We welcomed him in; we thought that it sounded good.

Mr Cree: He was on site, then?

Mr Graham: Yes, in our family business. He was working on site from our office, part time. It was two and a half or maybe three days maximum in the week.

Mr Cree: OK. Thank you for that.

Mr Wells: A couple of points were raised by others. First of all, it is absolutely crucial that we tie down this issue about Mr Cushnahan's involvement in your companies. He has issued a statement to say that, seven years ago, he detached himself from any connection with your firms. At that stage, presumably, his name would have been removed from the companies register as director or shareholder. How would he have been defined?

Mr Graham: At that time, he would have been a director and a shareholder.

Mr Wells: Presumably there is a set process: you send off the appropriate form to the companies register, you tell them that you are no longer involved in the business and your name is removed. You are saying that the records will show that his name was not removed.

Mr Graham: No. I am not saying that at all. I am saying that, at that time, Mr Cushnahan resigned as director, but if you resign as director, you still hold your shareholding.

Mr Wells: Right, but would the companies register not indicate that he held a 5% holding in —

Mr Graham: It does.

Mr Wells: But he is saying that he instructed the companies register to remove all trace of his contact with your company. Could that have been an administrative error? Could it have been that the paperwork was just not carried out properly?

Mr Graham: There is paperwork that, most recently, has been circulated by an accountancy practice in Belfast. That paperwork is with our solicitors. As I said in my opening statement — what you are referring to, Mr Wells, is the press statement that said:

"Frank Cushnahan resigned from the SP Graham group approximately seven years ago, and at that time relinquished all equity interests in the group and associated companies."

Mr Wells: That is Mr Tweed's statement.

Mr N Murphy: What I will say to assist is that independent evidence exists that contradicts that position.

Mr Wells: Could Mr Cushnahan genuinely not have known that he still maintained the link with your companies? Could he have believed that the paperwork was all sorted out?

Mr Graham: No, he could not. He could not have not known, because he owned a similar percentage of other companies prior to his leaving, from which there was a distribution where the developments were completed and the company was wound down.

Mr Wells: Those were not your companies.

Mr Graham: They were, yes.

Mr Wells: Could it have been that Mr Cushnahan quite legitimately believed that that had happened in regard to the four companies where you believe he remained having an interest in them?

Mr Graham: No, the four companies are continuing to trade. When a development is completed and you are preparing to close a company down, the shareholders receive a distribution from the company, in line pro rata with their shares. In layman's terms, you basically cash in your chips in the company that was wound down. If you cash in the chips in the companies that are not yet wound down, your chips remain on the table or your shareholdings stay intact until those companies complete their development.

Mr Wells: But Mr Tweed's statement —

Mr Graham: Is wrong.

Mr Wells: Mr Tweed is one of the most eminent legal practitioners in Northern Ireland. That is a very sweeping statement.

Mr Graham: Yes, I appreciate that. My opening statement says that what Mr Tweed said in absolute good faith is not the case.

Mr N Murphy: It may be that Mr Tweed is representing a position that he has received on instruction.

Mr Wells: I would like to see the paper trail on this if it is in line with the Committee's — because I think this is relevant to the Committee. I am looking for guidance here. This is relevant to the Committee's —

The Chairperson (Mr McKay): We could seek that information through Companies House.

Mr N Murphy: The shareholding in companies is in black and white.

Mr Wells: Thank you. Just to make one point, my reference to other companies being wound up very suddenly was not related to NAMA or Cerberus; it was in relation to other banks in Northern Ireland who were behaving almost as brutally as the experience that you had. We all, as MLAs, have had companies approaching us saying that they have very tight deadlines, they are trading well, they have a bright future and their bottom line is increasing dramatically, but they have been wound up because the company that has bought the loans wants the assets. It is go in, get the asset, sell it and make a profit. So it is important to say that, while it sounds very cold, calculating and cruel, the reality is that that is what was going on for the first four or five years after the recession — this type of behaviour.

Mr Graham: This was after the first four or five years of the recession. This was when the market was starting to improve. I gave an answer slightly earlier in which I said that I am not aware, although I cannot be certain, of any other development companies whose shareholder was sitting on the Northern Ireland NAMA advisory board when they were transferred to NAMA, where we subsequently find out that they are not eligible and that that person has had a part, or a hand, in the sale of Project Eagle, and where I am subsequently attacked. We now know the background and intentions of that individual, which we did not know at the time.

Mr Wells: Let us assume that Mr Tweed is wrong, which I must say I have great doubts about, but let us assume that he is wrong. What interest would Mr Cushnahan have in actually forcing that situation? What would he gain by it?

Mr Graham: That is a very —

Mr N Murphy: That might be a matter best answered by Mr Cushnahan and not by Mr Graham.

Mr Wells: OK.

Finally, Mr Graham, I have to ask you this question because it has been alluded to already by an MLA in this Committee. You mentioned alleged political involvement. Did you lobby anybody on this issue?

Mr Graham: Yes.

Mr Wells: You did. Are you at will to tell us who you lobbied?

Mr Graham: I lobbied every political party in this room.

Mr Wells: Right. Well, I do not think that any of our Committee members were lobbied.

Mr Graham: No, I lobbied the Democratic Unionist Party, the Ulster Unionist Party, Sinn Féin, the SDLP and the Alliance Party. Some of that was done via correspondence and letters. Some was done one to one. I also lobbied people who are not in this room; other parties. I lobbied people not just in Northern Ireland but in the Republic of Ireland.

Mr Wells: Did you lobby anybody who is in this room at the moment?

Mr Graham: Yes.

Mr Wells: Are you at liberty to name them?

Mr Graham: I lobbied Máirtín Ó Muilleoir.

The Chairperson (Mr McKay): On Jim's earlier point, can you provide us with the papers regarding the question about Companies House?

Mr Graham: Yes.

The Chairperson (Mr McKay): OK.

Paul, you wanted to ask a quick question.

Mr Girvan: I just want to come in very quickly. Thank you very much for your evidence so far. In relation to your comment about the Bank of Ireland and all businesses that had an interest in property being transferred across to NAMA; that was not the approach of every bank, and I want to find out —

Mr Graham: We have discovered that, actually, it was not the Bank of Ireland's approach either.

Mr Girvan: That is what I want to find out. Are you aware, as I am sure some of us sitting around the table are aware, of other companies that were in development that were not part of the NAMA portfolio?

Mr Graham: Yes we are.

Mr Girvan: So, why are you pursuing the approach that they said "all"?

Mr Graham: Because, sitting across the table, that is exactly what they told us.

Mr Girvan: OK. Do you have any confirmation from them other than the verbal communication?

Mr Graham: I have minutes of meetings, and I have other people in attendance at those meetings. My objections, which I raised with every NAMA officer I ever met, are that I believe that there is something wrong and that we should not be here.

Mr Girvan: You went through quite a lot of detail at the very outset of your statement. I am wondering about a timeline and the meeting when the bank told you that your property portfolio was the subject of the full NAMA portfolio. When that happened, was Mr Cushnahan involved in your business?

Mr Graham: He was not a director in our business. He was sitting on the NAMA Northern Ireland advisory committee, and he was a shareholder in our business.

The Chairperson (Mr McKay): Máirtín, did you want in there?

Mr Ó Muilleoir: You had to point to the guilty man. I just want to put it on the record that I have mentioned the Graham case several times in the Committee since we started considering this issue. I am very happy to represent Gareth as a constituent and do what I can for him. He knows that when I brought up the issue at my six-minute meeting with NAMA, it said that it knew nothing about it. So, I have not been very helpful to date, but I will continue to lobby for anyone who believes that they have been poorly treated by Cerberus, as the rest of the MLAs here would do, of course.

The Chairperson (Mr McKay): Gareth, can you tell us more about Mr Cushnahan's character? How influential a figure was he? How influential a figure is he in Belfast, in business circles, and so on and so forth?

Mr Graham: He is a very influential person. He held public positions in the Office of the First Minister and deputy First Minister, he held a public position in the performance and efficiency delivery unit (PEDU), he held a public position in the Housing Executive and he was — I am not sure of the correct term — head of the harbour commissioners.

Mr N Murphy: The chair.

Mr Graham: Chair of the harbour commissioners. He has held a range of very high-profile public positions, culminating in the NAMA Northern Ireland advisory committee.

The Chairperson (Mr McKay): So, given his influence, he would be in a position to be of great assistance to a business — or the opposite?

Mr Graham: Yes.

The Chairperson (Mr McKay): When did he vacate his office in Sean Graham's? Did he move from that office to the office that he had in Tughans?

Mr Graham: I do not know. Our relationship, by and large, ended in 2008. I was given the job of informing him that my family were not, at that point, disposed to selling their business. We agreed that, as he did not want to stick around, it would be appropriate for him to leave.

The Chairperson (Mr McKay): Has there been any contact or communication?

Mr Graham: There was a small bit of contact. Up until very recently, if I met him in the street I would say hello. I am not sure I would do that now, after what we discovered.

The Chairperson (Mr McKay): You made reference to the interviews you had with the NCA. I do not want to go into the detail of those because of the conflicts of interest, but did the NCA contact you or did you volunteer information to it?

Mr Graham: My solicitor, Kevin Winters, contacted the NCA on 29 July. That was our first contact with the NCA, and we have had subsequent contact.

The Chairperson (Mr McKay): Gareth, I thank you very much for your testimony. A lot of issues have been raised. As a Committee, we need to go back to Sammy Wilson and to the Department of Finance in Dublin and ask both parties what criteria were used to appoint not only Frank Cushnahan but Brian Rowntree. It would be an absolute scandal if appointments to those two positions — two positions of significant power, given the portfolio that was concerned — were made without any criteria. I have not seen any criteria. The Department of Finance and Personnel also has a responsibility to come to this Committee and tell us what criteria were used in terms of the two names that they put forward to the Minister in Dublin. Obviously, there is also a responsibility on the Dublin Government to volunteer information on how they signed off on those appointments.

From your testimony — and people are free to contest what you have said — you have suffered greatly as a result of one of those appointments, you allege. I think that it is important that we establish what the processes were in regard to the appointments to the advisory committee in the North. There is now a greater need for NAMA to come before this Committee, and I believe that there are questions being raised about Bank of Ireland that need to be probed.

I wish you well, Mr Graham.

Mr I McCrea: The issue of due diligence and who is responsible for that was raised on a couple of different occasions. We have a duty to find out exactly who was responsible for due diligence. As part of what you are saying, we can seek to clarify whether there are due diligence responsibilities with DFP or whether they rest solely with the Republic of Ireland Government. If we could clarify that.

The Chairperson (Mr McKay): OK. Gareth, thank you very much. I wish you the very best.

Mr Graham: Thank you.