



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Sale of National Asset Management Agency
Assets in Northern Ireland:
Mr Richard Pengelly

11 November 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Ms Michaela Boyle
Mrs Judith Cochrane
Mr Leslie Cree
Mr Gordon Lyons
Mr John McCallister
Mr Ian McCrea
Mr Gary Middleton
Mr Máirtín Ó Muilleoir
Mr Jim Wells

Witnesses:

Mr Richard Pengelly

The Chairperson (Mr McKay): Good morning, Richard. How are you?

Mr Richard Pengelly: It is like a homecoming for me.

The Chairperson (Mr McKay): You are before me this morning, and I will see you again this afternoon at the Health Committee, so it is a busy day for you.

Mr R Pengelly: Yes. I had two big folders last night.

The Chairperson (Mr McKay): Richard, thanks for agreeing to come and answer Committee questions. Can you start by giving us a brief overview of what part of the timeline is relevant to you, including when you left the Department of Finance and Personnel (DFP), and a bit of background?

Mr R Pengelly: Sure. I was in DFP for a long time at various grades. I had a couple of posts. I was there up to and including 31 December 2012. I moved to the Department for Regional Development (DRD) at the start of January 2013.

The Chairperson (Mr McKay): When did you first start to get involved with the establishment of NAMA?

Mr R Pengelly: Around that 2009 period. Dialogue with our counterparts in the South started at the tail end of 2009. You will have seen that, at that stage, the Minister was keen to have Northern Ireland representation on the full NAMA board. Brian Lenihan, the then Finance Minister in the South, felt that it was more appropriate for the establishment of an advisory committee. It was in and around that time — probably about autumn 2009 — that the dialogue started.

The Chairperson (Mr McKay): Obviously, your name, along with the names of two others, was put forward by the Minister for a position on the advisory committee. Were any criteria used? Why was your name put forward?

Mr R Pengelly: My name was put forward simply because I was the senior official with policy responsibility at the time. The day-to-day work fell under what was called the strategic policy directorate in DFP. There are a lot of papers. Originally, Mike Brennan was the grade 5, and he was succeeded by Bill Pauley. In DFP, that was where the day-to-day work was done on the relationship with the South and NAMA. That division covered all banking and economic issues, and it fell under my area of command. I was the senior official with policy responsibility, so it was for that reason alone.

The Chairperson (Mr McKay): The Minister's decision was to put forward your name, along with the names of two people from the banking sector, including Frank Cushnahan. What would you have brought to that role, given that it was, I think, quite an important one?

Mr R Pengelly: Chair, I just want to be very clear when I am speaking to you: we are talking about events from six years ago. I want, where I can, to differentiate between talking about things that I specifically remember the detail of and relying on my memory of how we generally operated in terms of discussion. I have to say that I cannot remember a very specific conversation about the aspect that you have just asked about. The advisory committee — as I say, I am trying to probe my memory — was very much about maintaining a relationship with Northern Ireland and ensuring that the strategic approach of NAMA was known in Northern Ireland and that particular Northern Ireland macro-level points were played back in to NAMA discussion. It was not about dealing with the detail of individual debtors or loans. If it had been at that level, with my experience, there would have been very little that I could have added. Given that I had broad policy responsibility for the area of DFP that looked after the economists and that wider grouping, it was really more about the relationship and the understanding of the broader public expenditure and wider economic context in Northern Ireland. In my mind, that is very much why there were a number of nominations. The other nominees, who were from outwith the public sector, had a more specific knowledge of the nuances of the banking sector.

The Chairperson (Mr McKay): What was your assessment at that time of how NAMA was performing up until 2012 on what became the Project Eagle portfolio?

Mr R Pengelly: We never undertook any detailed assessment of its performance; it was much more about taking the temperature of things around it. You will have seen in the papers that, at the time that NAMA was established, our significant concern, given the extensive loan portfolio in Northern Ireland and the underlying asset base, was that, if NAMA embarked on an approach of trying to realise the cash associated with that very quickly, it could flood the market — the term "fire sale" has been used. By the time that we got through 2011 and 2012 and NAMA was operating, concerns about that had diminished, partly as a consequence of the many assurances that we received and which the Minister received at a political level but also because we were not picking up any genuine concerns from the ground that that was happening in practice. That was the main measure of performance. The other issues of performance were more about the extent to which the Irish Government were recouping their investment, which was not an issue that we sought to monitor in any way.

The Chairperson (Mr McKay): Would it be fair to say that, by 2012, your view and that of the Department was that NAMA was playing a positive role?

Mr R Pengelly: I am not sure that I would ever characterise it as a positive role, but I am certainly very comfortable concluding that, by the end of 2012, the initial concerns that we had about the potential negative outworking of that had diminished because we saw no evidence of that being the case.

The Chairperson (Mr McKay): From the papers, the departmental lines at that time indicated to the Minister that NAMA was playing a positive role.

Mr R Pengelly: As I said, I am relying on memory for how we specifically characterised it. Again, working largely from memory, Chair, it was only in late 2012 that NAMA was really getting into the position of working with debtors and talking about possible refinancing to help debtors to grow their businesses out of their financial difficulties. In the early stages, our big concern was that there would be negative consequences from NAMA's management of the debt book: there was absolutely no sign of that. The messages and signals from NAMA were that it was keen to work with debtors. I do not think that, by the time that I left, I was seeing any specific examples of that, but we were never in the business of operating with individuals who had a relationship with NAMA. I do not think that it is unfair to characterise it as a positive view. At the time, our concern was to make sure that there were no negative implications.

The Chairperson (Mr McKay): So you are saying that you did not have any contact with the debtors during that period.

Mr R Pengelly: From time to time, there was a stocktake meeting. The advisory committee met the Minister from time to time, and I had the odd phone call with officials in the South. It was very much about whether there was anything that we should be worried about or aware of. It was a series of negative assurances: "There's nothing to worry about". It was not getting into massive detail, and it certainly did not get into the detail of individual operational issues within either NAMA or the advisory group.

The Chairperson (Mr McKay): What about the businesses that wrote to the Department — to the Minister? Was that the extent of the contact — written response?

Mr R Pengelly: Yes.

The Chairperson (Mr McKay): We have covered the appointments to the advisory committee. Was anybody encouraged by the Minister or the Department to apply directly for a position on the NAMA board?

Mr R Pengelly: Not that I am aware of. The only contact that I had was a meeting in, I think, September 2009. That one sticks in the mind: I think that it was at that meeting that Sammy Wilson sat in Brian Lenihan's chair at the start. Following that, there was agreement that the Minister could put forward a couple of nominations. We were not aware of any other processes that Brian Lenihan was pursuing either at a political level or through NAMA itself in seeking nominations. The only role for us was to ultimately send a couple of nominations to the Minister in the South.

The Chairperson (Mr McKay): Can you tell us what happened at that meeting on 15 November 2009?

Mr R Pengelly: Sorry, I am talking about the September meeting. The November meeting —

The Chairperson (Mr McKay): Following the November meeting, Sammy sent three names, including *[Inaudible.]*

Mr R Pengelly: This is one that I want to be very specific on: I simply cannot recall the detail of any discussion, but, if it is helpful, I can say that, reflecting on the way we tended to work and bearing in mind the time when this was an issue, when we look back with hindsight at events since late 2009 —

The Chairperson (Mr McKay): Do you recall whether you were at the November meeting in 2009?

Mr R Pengelly: I am not honestly sure, Chair. Was that 11 November?

The Chairperson (Mr McKay): It was 15 November.

Mr R Pengelly: I can check that and confirm for you. Off the top of my head, I cannot —

The Chairperson (Mr McKay): There was a meeting on 15 November between the Minister and Brian Lenihan, and then DFP officials met their counterparts in Dublin on 3 December to formalise the NAMA representation. Do you recall whether you were at that meeting?

Mr R Pengelly: As I said, Chair, the only papers that I have access to are the ones on the Committee's website. I do not have access to any DFP papers, so I am just looking at the timeline that is front of me. It does not mention specifically that meeting.

The Chairperson (Mr McKay): Is it fair to ask whether you were at any meetings in Dublin concerning the nominations being agreed?

Mr R Pengelly: I was certainly at the meeting in September at which the names of the nominees were not discussed. That was the dialogue about the Minister pursuing Northern Ireland representation at board level. I have no recollection of being at any meetings involving Ministers at which nominations were discussed. Your question is specifically about the names of nominees.

The Chairperson (Mr McKay): You were one of the nominees, so I presume that you were not at a meeting at which your nomination was discussed.

Mr R Pengelly: No, absolutely not. I have no recollection of being at meetings at which the names of any nominees were discussed. Just to be clear, are you talking about meetings between the two Ministers as opposed to meetings with —

The Chairperson (Mr McKay): Were you at any meetings at which your nomination was discussed?

Mr R Pengelly: As I said at the start, reflecting on the way that we operated with the Minister at the time and conscious that DFP has said it cannot find any record of the nomination process in DFP, I assume, on the basis of working practices at the time, that officials and I had a discussion with the Minister about the names that he would put forward. I suspect that there will have been a very brief discussion about my name simply because I was the lead policy official. That was to ensure that the Minister had access to the strategic approach. Again, Chair, I have no specific recollection.

The Chairperson (Mr McKay): You were at no meetings with Dublin officials or NAMA officials at which your nomination was discussed.

Mr R Pengelly: Absolutely not, Chair.

The Chairperson (Mr McKay): What was the role of the eventual advisory committee appointees, and what was the relationship from their appointment between them and the Department?

Mr R Pengelly: There was no formal relationship with the Department because they were appointments to an advisory committee of NAMA. They were not formally representing the Department; they were appointed by NAMA to represent Northern Ireland. There is a record of some meetings at which the advisory committee met the Minister from time to time just to update him, but, again, that was very much a high-level strategic discussion. There was no formal relationship, and there was no exchange of papers in any shape or form between the Department and the committee. Certainly, no advisory committee papers were sent to the Department. As I said, they were not representing the Department.

The Chairperson (Mr McKay): In the meetings between you and the advisory committee, was it, in your view, strategic issues that were discussed or more detailed matters — commercial matters?

Mr R Pengelly: My clear recollection is that the discussions were always strategic. The committee's role was engagement and ensuring that Northern Ireland was aware of NAMA's strategic approach and any implications for Northern Ireland at that level. My understanding — I never saw any indication otherwise — is that individual advisory committee members were never, even within the advisory committee, privy to conversations about individual entities or debts. It was always very much a strategic-level conversation.

Mr D Bradley: Good morning. The Chair has covered some of the questions that I wanted to ask you. First of all, who informed you of your nomination to the advisory committee?

Mr R Pengelly: As I said, on the basis of practices at the time, I assume that, as the lead policy official, I would have been part of the discussion with the Minister during which we concluded on the

nominees who were going forward. I do not recall that there was ever a debate about me, my experience or my background. It was simply the fact that I was in a certain seat at a point in time.

Mr D Bradley: Nobody came to you to say, "Look, Richard, we are nominating you for a place on the Northern Ireland advisory committee".

Mr R Pengelly: No.

Mr D Bradley: You did not know that you were nominated.

Mr R Pengelly: I assume that I was part of the conversation with the Minister that led to the Minister's letter nominating me and the two other nominees.

Mr D Bradley: How did you find out that you were nominated?

Mr R Pengelly: That I was nominated? I think that I was part of the conversation —

Mr D Bradley: You were part of the conversation.

Mr R Pengelly: Yes.

Mr D Bradley: Right. OK.

Mr R Pengelly: Sorry, I base that on reflecting on working practices at the time. I just want to be clear to the Committee: I do not have a specific recollection of a definitive conversation in which that happened, but that is my best estimate.

Mr D Bradley: Can you recall who else was part of the conversation?

Mr R Pengelly: As I say, I cannot recall the specifics of the conversation; I am just reflecting on experience at the time. I assume that it was me and the Minister, but, given that I cannot recall the exact meeting —

Mr D Bradley: Would the permanent secretary have been there?

Mr R Pengelly: I suspect that the permanent secretary probably was not there because the discussions tended to be in the context of discussions about issues in my business area. The permanent secretary had a separate weekly stocktake with the Minister about more strategic issues across the Department.

Mr D Bradley: You were saying that no minute was kept of that meeting and that DFP has no record of it.

Mr R Pengelly: DFP does not have that, but those sorts of informal discussions happen very frequently.

Mr D Bradley: OK. You would expect that a record or minute of a nomination that was quite strategic in relation to the Northern Ireland economy would have been kept.

Mr R Pengelly: I can certainly understand the point that you make, but, at the time, this was an evolving picture. The committee was going to have a role only in maintaining the relationship and dialogue at a very strategic level. From memory, at the time we were much more concerned about developing the relationship. There was an issue, yes, of keeping this moving forward. The Minister was still keen to pursue full board representation, so he saw this very much as an interim step at the time. It was about a relationship between the two Departments — hence the lead policy official. It was also about understanding the strategic implications of NAMA's approach for the banking sector in particular. I think, as the Chair has recorded, that the two other nominees had significant experience in that sector.

Mr D Bradley: Do you recall whether, during that conversation, the Minister outlined to you what your brief would be if you were to be appointed to the advisory committee?

Mr R Pengelly: As I said, I do not recall any such conversation. I doubt that such a conversation took place at that stage because it would have pre-empted any appointment. At this stage, it was just about putting forward nominees. We were aware that it was ultimately for our counterparts in the South to make any decisions on that.

Mr D Bradley: At the same time, you would expect that, if you were being discussed as a potential member of the advisory committee, the Minister would have outlined to you how he saw the role.

Mr R Pengelly: I would anticipate such a conversation taking place on appointment, rather than nomination.

Mr D Bradley: I would expect that some inkling would be given to you of what your role would involve and what would be expected of you.

Mr R Pengelly: I was very clear what my role would have been, had I been appointed: I would have been there to maintain the relationship and dialogue and to understand NAMA's strategic approach. I suspect that the Minister may well have wanted a more detailed conversation at the time of appointment, but this was only at nomination stage.

Mr D Bradley: Did he have a more detailed conversation with those who were appointed when they were appointed?

Mr R Pengelly: I cannot recall. That is not to say that it did or did not take place, but I cannot recall. I do not think that the papers reflect that there was such a discussion.

Mr D Bradley: If you do not mind me saying so, there seems to be a lot of vagueness in all of this.

Mr R Pengelly: With respect, it was six years ago, and I have done rather a lot in two very different, very heavily loaded jobs since then. My mind has been on other things.

Mr D Bradley: I understand that, but they were important appointments, and I would have expected you to remember a little more detail than you do.

Mr R Pengelly: I take that point, but I think that the perceived importance of the appointments has grown following events over the last year or two. When they were made, they were not perceived — certainly in the wider community, outside the little bubble in which we operated in terms of dialogue with the South — as having the strategic importance that you attach to them now. I am not suggesting that there is any flaw in that; it is more of a factual comment.

Mr D Bradley: I am saying that the context of the time was that the Minister quite often referred, in the Assembly and perhaps at this Committee as well, to the danger of NAMA initiating a fire sale that would have dire consequences for the property market and, indeed, the economy of Northern Ireland. To the Minister at the time, it seemed to be a potential danger that we needed protection against.

Mr R Pengelly: It was the existence of the committee and the dialogue between Ministers that ultimately achieved that. It is important to bear it in mind that the advisory committee had no executive authority in NAMA. It could do nothing to influence the approach. It had no knowledge and was, I think, explicitly prohibited from seeing the detail of any individual operation. It was about maintaining dialogue and a relationship. Ultimately, it was for the Minister to speak to his counterpart in the South to address the sort of issue that you have outlined. The advisory committee was seen as mainly a conduit of information.

Mr D Bradley: The Chair asked you about those who eventually became members of the advisory committee: was there any mechanism for those people to report back to the Department or to the Minister?

Mr R Pengelly: No, because they were not appointments by the Minister. There was no formal relationship whatever with the Department or the Minister. There was a dialogue, and there were

regular meetings between the advisory committee, including its chair, who was also appointed by NAMA, and the broader members, and the Minister had regular updates. Indeed, the chair of NAMA had update meetings with the Minister from time to time. The advisory committee was more about making sure that the Northern Ireland position was represented to NAMA in terms of influencing its strategic approach. There were periodic stocktakes with the advisory committee, but the appointments to the advisory committee were made by NAMA, not by the Department of Finance.

Mr D Bradley: Yes, but they were nominees of the Department of Finance. The Department of Finance nominated them.

Mr R Pengelly: One of them was a nominee of the Department of Finance, as I understand it.

Mr D Bradley: One of them was, yes.

Mr R Pengelly: But they were not appointments by the Department of Finance, so they had no formal relationship with the Department of Finance. There was no formal structure in place. It was a dialogue, but the dialogue was more with the advisory committee as opposed to the individual members of it.

Mr D Bradley: Even though the Minister did nominate one of them, there was no arrangement for that person to report back to the Department or the Minister.

Mr R Pengelly: There was no formal reporting mechanism, no.

Mr D Bradley: But there may have been informal mechanisms.

Mr R Pengelly: From time to time I think there was some form of dialogue.

Mr D Bradley: Between that individual member and the Department or Minister?

Mr R Pengelly: Yes. Again, we are stretching my memory to its limits. It is the point, too, that at that point in time Mr Cushnahan in particular — certainly, I had worked with him when the then Finance Minister had established PEDU. Mr Cushnahan was involved in that, so there were other issues that I spoke to him about.

The dialogue would not have been anything more than "Is there anything that we need to make the Minister aware of?". I cannot recall there being an issue that the Minister needed to be aware of. And then there were the normal stocktakes with the advisory committee. I am only emphasising that because I do not want to make the point that there was absolute zero dialogue. There may have been, but I cannot recall at any time an issue of substance raised through that that had to be brought to the Minister's attention. It was more just the assurance that things were working well.

Mr D Bradley: You have quite a range of experience now in the Civil Service. There seems to be a laissez-faire attitude to records, minute-taking and so on. Is that widespread in the Civil Service?

Mr R Pengelly: There is a judgement call. Bear in mind that the Civil Service and all the public sector is under intense and reasonable pressure to reduce bureaucracy and become more efficient. It is, of course, important that a record is kept of significant and strategic decisions. At the other end of the spectrum, the system would grind to a halt if we took a formal record of every conversation that took place throughout the system. That is not what is being asked of us.

Mr D Bradley: Well, I —

Mr R Pengelly: I take the point. There is a happy medium somewhere. I fully appreciate the Committee's frustration in looking back at a period a number of years ago when people like myself do not have a complete recollection of that to be able to help the Committee with its queries. A better record would have been more helpful, yes, but it is that trade-off in real time between conversations that are so significant that they must be recorded and others that are part of an ongoing dialogue. Of course, we do not get it right all the time.

Mr D Bradley: I take your point that every phone call and short conversation cannot be recorded. However, in the context of the fact that the Minister was flagging up to all and sundry his fear about a fire sale and the danger of a fire sale to the whole economy here, you would think that with appointments or nominations being made in relation to that or in relation to reducing that danger, it would have been helpful to the Minister if a record had been kept just to show that he was, in fact, acting in order to reduce the dangers to the economy.

Mr R Pengelly: The only point I would make is just to highlight again the difference between a nomination and an appointment. If there had been an appointment process, of course there would have been a much more detailed record of how the process had operated and been initiated. These were nominations. Counterparts in the South were, as I recall, looking for a fairly quick turnaround to get a few names of people who could develop that relationship and keep the information flow going. I am not taking issue with your point; I am just differentiating between that and something more substantive.

Mr D Bradley: Do you know how Mr Cushnahan was recommended for nomination?

Mr R Pengelly: As I mentioned previously, I have done some other work with Mr Cushnahan. A number of us in Finance were aware of his background and expertise in the sector, and it was useful also that he had a knowledge of the public sector. For someone to try to be a conduit for information flows in a complex area — colleagues in the Department obviously did not have that range of experience. We were aware of his skill set and that he knew the area. I surmise that that is why his name was among those considered.

Mr D Bradley: Were you surprised at the way in which he featured in all this more recently?

Mr R Pengelly: My views are elsewhere more recently, since January 2013.

Mr D Bradley: So you cannot comment on that.

Mr R Pengelly: I am here to help the Committee with my role as public spending director up to and including 31 December 2012, so I do not think that it is helpful to the Committee if I stray into territory outwith the very specific reason why I am here today.

Mr D Bradley: OK, thank you.

The Chairperson (Mr McKay): Just to follow on from a couple of questions from the Deputy Chair, the timeline that has been provided by the Research and Information Service is very useful, and it highlights the meeting on 3 December 2009 between the Finance Departments of the North and the South. This is from papers that were on the website of the Finance Department in the South. It confirms that the attendees at that meeting were Ann Nolan and Garrett O'Rourke, of the Department of Finance; and you, the DFP spending director. It says, in relation to NAMA, that:

"Nolan outlined the development of NAMA and there was a discussion regarding the NI Finance Minister Sammy Wilson's recommendations for the NAMA NIAC."

Clearly, you were at the meeting at which your nomination was discussed in December 2009. Surely you should recall that.

Mr R Pengelly: The record says that there was a discussion of recommendations for the NAMA board made by the Minister. My recollection of the meeting — this is almost six years ago — is that it was more about the fact that nominations were coming from Minister Wilson. It was not about a detailed assessment of the merits of any of those individual nominations. I have absolutely no recollection, at any point, of having a discussion with anyone about the merits of any of the nominations.

The Chairperson (Mr McKay): But the Department of Finance would have received those three names prior to that meeting, is that right?

Mr R Pengelly: Yes. I think it was November 2009.

The Chairperson (Mr McKay): Would it have been appropriate for you to have been there, with nominations on the agenda, given the fact that yours was one of the names put forward?

Mr R Pengelly: Our colleagues in the South were always absolutely specifically clear with us that the question of appointments was for them alone. They did not discuss them with us. I cannot recall any discussion at any stage about the merits of any individual, other than the merits of the process. I suspect that this conversation was more along the lines of when the Minister could expect to hear the conclusion of his counterpart's consideration of this.

The Chairperson (Mr McKay): OK. You suspect it was, or you know that was the case?

Mr R Pengelly: I would recall, because clearly it would have been uncomfortable for me to be part of a discussion about me. I assume that I would recall any meeting where there was specific discussion of the merits of any individual nomination. I cannot recall that happening at any stage, either at a meeting with officials or with me as part of a ministerial meeting where that was discussed.

The Chairperson (Mr McKay): Just to clear this up in terms of your name being put forward, was that the Minister's idea or the idea of another official in the Department?

Mr R Pengelly: I cannot be absolutely definitive on that, but I assume that it emerged out of a discussion between me, probably my colleagues at the time in the strategic policy division within DFP, and the Minister. I think the names just emerged from that.

The Chairperson (Mr McKay): Is there a possibility that you put your own name forward?

Mr R Pengelly: Did I put my name forward? The discussion would have been that, because it was about developing a relationship, it would —

The Chairperson (Mr McKay): You could have put your own name forward.

Mr R Pengelly: It would naturally fall to the lead policy official to be part of that dialogue. It is very much —

The Chairperson (Mr McKay): So your name came from either you, the lead officials or the Minister.

Mr R Pengelly: It is very much an ex officio appointment. The postholder was appointed. That happened to be my name at that point in time. It was not that I was personally appointed for my CV or my background; I was in the chair at the time.

The Chairperson (Mr McKay): So if you had been appointed to the advisory committee, would you have been there as an independent or would you have been there wearing a DFP hat and representing the Department?

Mr R Pengelly: The best way to answer that is that, if I had been appointed to the advisory committee and, a month or two later, I had been moved to another Department, I suspect that I would have been immediately replaced on the advisory committee, because the rationale for me being there would have instantly ceased at the point I left DFP.

The Chairperson (Mr McKay): So you would have represented the Department on the advisory committee, in effect.

Mr R Pengelly: I just want to be careful with my language, because I was very specific earlier that it was not a DFP —

The Chairperson (Mr McKay): Either you were or you were not.

Mr R Pengelly: No, I do not think it is that simple, Chair. It was not a DFP appointment. The South appointed people to the advisory committee because it was about a relationship with Northern Ireland. It is the implication that in some way this created a formal relationship —

The Chairperson (Mr McKay): Given the seriousness of those positions, surely you would have known, if you had been appointed to that Committee, whether you would have been acting independently or would have followed orders from the Department of Finance and Personnel. Obviously you should have known that before your name was even put forward.

Mr R Pengelly: Obviously, Chair, I would not have been acting independently. As I said, I was there because of the job I was in, so it was the job —

The Chairperson (Mr McKay): So you were a DFP nomination. You would have been acting for DFP on the advisory committee.

Mr R Pengelly: Sorry, forgive me if I have missed the obvious point. The Minister —

The Chairperson (Mr McKay): I would prefer yes or no answers.

Mr R Pengelly: OK. The Minister of Finance and Personnel nominated me, so I think it is safe to say that I was a DFP nomination.

Mr Ó Muilleoir: Thank you, Mr Pengelly. We have not met. They keep me off the more exciting Committees, so our paths have not crossed.

Mr R Pengelly: Go to the Health Committee this afternoon.

Mr Ó Muilleoir: No, I will skip that one. Thank you for responding so rapidly to the invite and agreeing to come in at the earliest opportunity. We are still on the hunt for the former Minister, who has not conceded just as quickly to come in.

The Chairperson (Mr McKay): To be fair, Máirtín, we have dates just in this morning, so you should see him shortly.

Mr Ó Muilleoir: I am glad to hear that. We will have the Minister in as well, but thank you, Mr Pengelly. What job do you do now in our wonderful Civil Service?

Mr R Pengelly: I am permanent secretary in the Department of Health.

Mr Ó Muilleoir: In the Department of Health, when they have to make an appointment, is there a process depending on the importance of the appointment? If they have to make a nomination for something, is there a different process? Are there processes in that Department in relation to appointments and nominations?

Mr R Pengelly: There are clear processes for appointments, largely governed by the Commissioner for Public Appointments. I am not aware of any areas where we have a process for making nominations.

Mr I McCrea: Again, I am not trying to stymie anybody asking questions, but we are here to deal with stuff in respect of a NAMA issue, not in respect of what the current witness is doing in his job and how he does his job.

Mr Ó Muilleoir: I thought he was doing very well. Thank you, Chair, but the relevance is that you referred to practices at the time. If you were asked today to make a nomination, would you use the same practice as was used in 2009?

Mr R Pengelly: If I was asked today to make a nomination, I would consider it in the context of the question I had been asked.

Mr Ó Muilleoir: If the Minister was asked to make a nomination to an important body, would you advise him to take advice from officials like you?

Mr R Pengelly: I am not sure that it is helpful to go down the hypothetical route. All I can say is that any such request where we do not have a set process is dealt with in the context of the situation at the time, as the request in 2009 was.

Mr Ó Muilleoir: OK. At the time, do you think that the path that was followed was good practice?

Mr R Pengelly: The practice that we followed, so far as I can recall, does not cause me any concerns.

Mr Ó Muilleoir: OK. So you were not consulted on your name going forward, or you cannot remember being consulted on your name going forward.

Mr R Pengelly: I am happy to say that I am confident that I was part of the discussion, but I emphasise that my name was a manifestation of the job that I did.

Mr Ó Muilleoir: That would point to the motivation of the Minister appointing you. It is your opinion that if the Minister nominated you, it was the position rather than you. Is that correct?

Mr R Pengelly: There is no doubt in my mind that it was the position rather than me.

Mr Ó Muilleoir: How did you come to that conclusion when you cannot remember the conversation? You remember that bit from the conversation.

Mr R Pengelly: I am trying to piece together the pieces. The only conceivable reason that my name would have gone forward would have been for the job that I was doing. I have never worked in the banking sector, and I have never had a discussion with the then Minister about my CV. If the nomination was for any reason other than the job that I was doing, those conversations would have had to take place.

Mr Ó Muilleoir: You assume that, but you cannot help us. I have already praised you for being helpful, but you cannot help us about this conversation in any way. You are now making assumptions about the conversation.

Mr R Pengelly: It is what I am doing with many of the questions. I am not disagreeing with you. We are talking about events from over six years ago. I am trying to offer the Committee the benefits of my recollection of the way that we did business at the time and the relationships that we had. All I can offer is a high degree of confidence that that is the way that this would have played out, but you are absolutely right that I cannot be definitive.

Mr Ó Muilleoir: OK, but you are being definitive about that.

Mr R Pengelly: About?

Mr Ó Muilleoir: About saying that you were appointed for the post, not for the —

Mr R Pengelly: I am absolutely definitive on that point.

Mr Ó Muilleoir: How can you be definitive about that when you cannot remember the conversation? It is the only thing that you can remember for sure about the conversation. You do not remember who was in the room when it was discussed and you do not remember what your role may have been, but you remember one thing, and that is, "I was going to be proposed as the postholder".

Mr R Pengelly: With respect, I have never had a conversation about gravity, but I know that apples fall from trees. I was nominated because I was the public spending director in the Department of Finance and Personnel. There is no other conceivable reason. Whilst I cannot remember the specifics of the conversation that led to that, I am acutely conscious of the fact that I would have been aware of any conversation that had been built on a different premise around my CV and my personal qualities.

Mr Ó Muilleoir: It is not terribly helpful, because you have some memory of or you assume that you have a memory of the bits that are useful, but on the bits that are important to us, which are why the nominations were put forward, you cannot help us with that, except for some assumptions.

If we move on to Mr Cushman, I take it that you cannot help us at all about why that nomination was made. Were you in the room?

Mr R Pengelly: Again, I am into the territory where I know that you would like more than relying on vague recollections of the time. As I said earlier, I assume that it was the same conversation. Mr Cushman was known to us from other work that he had done. We knew his background, and we knew that he understood the public sector, so I assume that it would have flown from that.

Mr Ó Muilleoir: So you were in the room for that conversation.

Mr R Pengelly: Given that it was my area of work — Chair, I am trying to help. If it would be more helpful for the Committee for me just to say, "I can't remember" and say nothing — I am trying to offer some colour to events that I do not have a complete recollection of.

Mr Ó Muilleoir: I understand.

Mr R Pengelly: Is it more helpful if I just say, "I can't recall anything"?

Mr Ó Muilleoir: If you cannot recall, Richard, tell us that you cannot recall. Do not give us —

Mr R Pengelly: I think that I am trying to do that.

Mr Ó Muilleoir: I do not think that you are doing that, with respect. Either you cannot recall or you recall. You cannot give us information as definitive fact if you cannot recall it. If you cannot recall, please tell us that. Obviously, you did not start thinking about these matters today. They have been in the public spotlight, so you have been thinking over the last while.

Mr R Pengelly: I have not given this any thought since I received the invitation from the Committee. I am dealing with my current job.

Mr Ó Muilleoir: So you have not given the NAMA/Cerberus affair any thought since it exploded into the spotlight in January.

Mr R Pengelly: Not as a public servant. It is not my responsibility as a public servant. The Committee is interested only in my views as a public servant.

Mr Ó Muilleoir: Even when you got the invitation from us, you have not given it any thought since then.

Mr R Pengelly: As I just said, prior to getting the invitation, I had not given it any thought.

Mr Ó Muilleoir: Let us focus on that. You have had several weeks to try to help us in our investigation. You will agree with that. So you have given it some thought.

Mr R Pengelly: As you said, colour is important. Yes, the invitation came in several weeks ago. I would like to be clear on your assertion that I had several weeks to think about it. I have not sat for several weeks thinking about this. I have other things going on; I have a fairly heavy job elsewhere. I have given it some thought, but I do not want you to come back to me at some point to say, "You've agreed that you've been thinking about this for several weeks".

Mr Ó Muilleoir: To be honest, I think you should have been thinking about it since it exploded into the public spotlight.

Mr R Pengelly: It is not my responsibility.

Mr Ó Muilleoir: I am just giving my opinion. I think that anyone who was anywhere near this deal should have been giving it thought. That is your prerogative. However, I am saying that, if you cannot recall, tell us that you cannot recall. Do you recall being at meetings with Minister Wilson, where the nomination of Frank Cushman was discussed?

Mr R Pengelly: Not specifically, no.

Mr Ó Muilleoir: OK. Do you recall being at meetings with Minister Wilson, where your nomination was discussed?

Mr R Pengelly: No.

Mr Ó Muilleoir: OK. That is a lot clearer. Nominations were made for appointments to a very important body. Minister Wilson and successive Ministers emphasised how important what became known as the Project Eagle portfolio was to our economy. It seems preposterous that there was not that discussion. We take it that not everything is minuted. I note that our colleagues in the South have been very helpful, because they did minute some of these meetings, including the meeting of 3 December. If I had to give it a score for transparency, accountability and being able to follow up the terms of the processes and practices, it would be very poor. What surprises me, Richard, is that, at no point, did you say to the Minister, "You've now nominated me for a body. We have no criteria, no job description, no idea what I am supposed to do on that. Why am I being appointed? Am I the right person? Should it be someone else?". That surprises me. Does any of that practice cause you any concern at all?

Mr R Pengelly: Not in the context of what was happening at the time. With the benefit of six years' hindsight and events subsequent to the establishment of NAMA —

Mr Ó Muilleoir: Do you think it is a good way to do business?

Mr R Pengelly: It is a reasonable way to do business.

Mr Ó Muilleoir: It would be an absolute disgrace if anyone, in any Department, today, were to make a nomination to a body that had such intrinsic importance to our economy and which would play a huge role, as it turned out, in the development of the economy in the time ahead, and have no consultation on record, that anyone can recall, on the assessment of who the best person for the job would be. While that is important in your position, it is more important for the external nominees, outside the Department. I think that you will agree that, with hindsight, it would have been better to have had a process for that, perhaps. There should have been a better watchdog and observance of how those appointments were made. Are you content that we went about the appointment of Mr Cushnahan in the right way?

Mr R Pengelly: I do not want to personalise it as regards any individuals, but I will continue to differentiate between an appointment process and a nomination process. Reflecting on this, I feel that, in the context of events at the time, there was nothing unreasonable about the way in which this process was conducted.

Mr Ó Muilleoir: The Department of Finance in the South minuted stuff. Are you content that we were correct not to minute that?

Mr R Pengelly: I am not offering comment on how the South does its business.

Mr Ó Muilleoir: I am asking you if you think we were correct, when you were in that position —

Mr R Pengelly: Issues like that are always a judgement call. It would be wonderful to have a record of everything that was discussed at any point, but there are administrative reasons why that cannot be done. Looking back, it would, of course, be better to have a record of those conversations, but we do not have that.

Mr Ó Muilleoir: The head of the Civil Service told us last week that one of the learning points from this affair is that more minutes should be kept of important meetings. Do you agree with that?

Mr R Pengelly: Absolutely.

Mr Ó Muilleoir: Do you think that there should have been a minute of the meeting on 3 December 2009?

Mr R Pengelly: Just to be clear, the head of the Civil Service was talking very specifically last week about important meetings with Ministers to record decisions taken. That was one of many meetings of officials nudging forward a series of issues. It is easy to conclude that it is always better that there is a record of meetings that took place. I cannot move away from my genuine fear that, given the number and frequency of meetings, there is a real risk of grinding process to a halt.

Mr Ó Muilleoir: Tell us about PEDU, which you mentioned. Those of us who are not as across our acronyms do not know what that means. Tell us about PEDU and what Mr Cushnahan and you did in it. Tell us what it is first.

Mr R Pengelly: It is the performance and efficiency delivery unit. It was established by the now First Minister when he was Finance Minister. It was to replicate Sir Michael Barber's work in Number 10 with the Prime Minister's delivery unit. It was about enhancing the pace and delivery of public services.

Mr Ó Muilleoir: You had a key role in that.

Mr R Pengelly: I was, technically, the head of PEDU, which flowed from the role that I occupied in DFP at the time. From memory, Mr Cushnahan and Mr Dennis Licence, who is the former managing director of First Trust Bank, were appointed as two external advisory panel members. Sir Michael Barber was —

Mr Ó Muilleoir: I am not going to ask you about the process for appointing him, but go ahead. You had a close working relationship with both chairs. Were they chairs or co-chairs?

Mr R Pengelly: They were just advisory panel members. It was nearly a quality assurance role; they had no role in the governance or accountability of PEDU. Fundamentally, in many places, PEDU was trying to bring a more quasi-private-sector approach in terms of the pace and speed of delivery. When we embarked on any piece of work, it was available to us as a source of dialogue and discussion.

Mr Ó Muilleoir: Did you work closely with those external advisory committees?

Mr R Pengelly: We met from time to time on specific pieces of work, but there was no role in governance, so there was not a regular meeting to talk about the management of PEDU; it was just when we did an individual piece of work.

Mr Ó Muilleoir: I take it that you met Mr Cushnahan when he came in to report from meetings with the NI advisory group on NAMA.

Mr R Pengelly: Yes.

Mr Ó Muilleoir: Is it a close relationship? It is a professional relationship? Is it a relationship that continued past that?

Mr R Pengelly: It is a relationship where we talk about work issues that the two of us need to engage on.

Mr Ó Muilleoir: Did you ever discuss his nomination to the NI advisory board?

Mr R Pengelly: I have no recollection of a specific discussion with him.

Mr Ó Muilleoir: Did he ever discuss NAMA issues with you, other than at the catch-up meetings with the Minister and so on?

Mr R Pengelly: *[Inaudible.]*

Mr Ó Muilleoir: OK. Thank you very much for coming in.

The Chairperson (Mr McKay): Richard, you mentioned a couple of names in regard to PEDU: Frank Cushnahan and —

Mr R Pengelly: Dennis Licence.

The Chairperson (Mr McKay): Who is Dennis Licence? What is his position?

Mr R Pengelly: He was previously the managing director of First Trust Bank. At the time, through the normal public appointments process, he was a non-executive member of the DFP board.

The Chairperson (Mr McKay): Does his name come up at all in regard to the advisory committee?

Mr R Pengelly: Not that I can recall. I cannot recall it coming up, but I am not saying that it specifically did not come up or that it came up and was dismissed —

The Chairperson (Mr McKay): So his name may have come up.

Mr R Pengelly: I cannot recall.

The Chairperson (Mr McKay): Millmount was on the agenda of a couple of meetings that you attended. How did that item get onto the agenda in regard to 2011 and 2012?

Mr R Pengelly: Obviously, it is my memory, Chair. Can you point me to a —

The Chairperson (Mr McKay): There was a meeting on 10 December 2012. That was one of the meetings at which Millmount was discussed.

Mr R Pengelly: There is no mention of it in the papers that I have in front of me. I cannot recall ever being part of a discussion on it. December 2012 was within a couple of weeks of my departure. I am saying this as an assumption rather than a factual observation: at that stage, everyone knew that I was packing my bags to leave DFP, so, if it was an issue that was going to go on past my end date, it is reasonable that I would not have been involved.

The Chairperson (Mr McKay): You were at the meeting at which it was discussed. Frank Cushnahan and Brian Rowntree were also at that meeting. Obviously, we had the discussion earlier about commercially sensitive information. If Millmount was discussed by the Department, Mr Cushnahan and Mr Rowntree, the Committee would be interested to know in what detail that development was discussed.

Mr R Pengelly: Sorry, I do not have access to the paper. I asked for all the papers to cover my tenure in DFP, but I do not have that paper. I am more than happy to take a look at that and come back to the Committee if I have any recollections that I can add to that.

The Chairperson (Mr McKay): Are you aware of Millmount at all?

Mr R Pengelly: No, Chair, not at all.

The Chairperson (Mr McKay): Not a notion.

Mr R Pengelly: I have no recollection of it.

The Chairperson (Mr McKay): Do you forget much in the Department of Health as well?

Mr R Pengelly: No, I focus on the business of my current Department. This is four years ago, Chair. Would it be presumptuous of me to ask what you were doing on that day?

The Chairperson (Mr McKay): If I had the minutes of the meetings that I was at four years ago, I would recall a bit —

Mr R Pengelly: But I do not have the minutes, because I have left DFP, so I do not have access to DFP papers.

The Chairperson (Mr McKay): These papers are all publicly disclosed.

Mr R Pengelly: I asked for copies of all the papers that have been on the Committee website, but I have not seen that one. I have not been given that one.

The Chairperson (Mr McKay): So, you have no recollection of —

Mr R Pengelly: To be clear; I have not asked the Committee for that. I am not making accusations about Shane's —

The Chairperson (Mr McKay): You left the Department in December 2012: have you had any discussions with any Ministers about NAMA since that point?

Mr R Pengelly: No.

The Chairperson (Mr McKay): So there have been no meetings regarding NAMA or Project Eagle since you left the Department of Finance.

Mr R Pengelly: No.

The Chairperson (Mr McKay): Concerns were raised by some parties when Frank Cushnahan was reappointed in 2012, because, at that time, the controversy around Red Sky was beginning to emerge. Did the Department have any concerns about Frank Cushnahan, given that fact?

Mr R Pengelly: None. My recollection is that we were just advised by the South that he had been reappointed. There was not a process that we were involved in. Again, at that stage, the appointment was not an issue for DFP. It was very much a Southern issue.

The Chairperson (Mr McKay): Why was your nomination to the advisory committee not successful?

Mr R Pengelly: My understanding is that the then Finance Minister in the South was very keen that the Civil Service was not part of any of the structures around NAMA and the advisory council. One of his colleagues highlighted to me at one stage — maybe I am just joining dots together — that no officials from the Department of Finance in the South were involved in any way. It would have been odd, then, for an official from DFP in the North to be part of that.

The Chairperson (Mr McKay): In hindsight, do you believe that it was appropriate for your name to go forward?

Mr R Pengelly: Absolutely, as the lead policy official in the area.

The Chairperson (Mr McKay): You said that you recalled the September 2009 meeting and that, at that meeting, it was agreed that the advisory committee would be set up. What discussion was there about appointments to that?

Mr R Pengelly: The discussion in the September meeting was not about the names of any nominees. The Minister pressed for board-level representation. The position of the South was that they were happy with an advisory committee role but not full board membership and said that they would welcome nominations from the then Finance Minister.

The Chairperson (Mr McKay): So there was no discussion about the number of nominations.

Mr R Pengelly: No.

The Chairperson (Mr McKay): Was there any indication from the South about who would be appropriate for nomination?

Mr R Pengelly: Not that I can recall, Chair. My recollection is that it was just a discussion about there being a committee and there could be nominations to it; there was no more detail than that.

Ms Boyle: Good afternoon, Mr Pengelly. You have a busy afternoon ahead of you with the Health Committee session as well. Many of the questions about the nomination have been asked, but I just

briefly wanted to ask one question. Did you have any conversation with the First Minister about the nomination to the advisory committee at that time or in the time after?

Mr R Pengelly: Again, just to be absolutely clear, I have no recollection whatever of ever speaking to the First Minister about any of these issues, but —

Ms Boyle: Or to any other Minister?

Mr R Pengelly: Again, just for completeness, it is difficult to give an assurance that something never happened when you have absolutely no recollection. Categorically, I have no recollection of a discussion with any Minister other than my own.

Ms Boyle: I am sure, looking back, after all the bad press — call it what you wish; others have called it a "dirty scheme" — you are glad that you were never appointed to the advisory committee.

Mr R Pengelly: I was nominated as a consequence of my job. If I had been appointed, it would have been as part of my job, and I would have gotten on with it.

Ms Boyle: Surely you are relieved, given the bad press.

Mr R Pengelly: I was not appointed, so I have not reflected on that.

Ms Boyle: Thank you, Mr Pengelly.

The Chairperson (Mr McKay): You said that Brian Lenihan indicated that he did not want Civil Service representation on the committee —

Mr R Pengelly: That was the sense that I got through subsequent dialogue with Department of Finance (DOF) officials; it was not a point that Brian Lenihan made specifically to me. I just want to be clear, Chair.

The Chairperson (Mr McKay): Was that in 2009 or 2010?

Mr R Pengelly: I cannot remember. I can remember a conversation on the margins of one of the many meetings that I had with officials. The official said that their Minister wanted to keep some clear air between officials and the committee, but I cannot attribute the conversation to a specific point in time. It was very much a line made in the margins of other business; we did not have a detailed discussion about the issue.

The Chairperson (Mr McKay): Just to return to this point, before we finish, was it clear while you were there that the decision was to oppose a fire sale by NAMA? Was there no radical change to that position until you left the Department?

Mr R Pengelly: The only concern that we had was that there would be a fire sale, and, up to and including the point when I left, there was no evidence of a fire sale.

Mr McCallister: Richard, you commented that the Department's preferred option at the time was full board membership. Did you and Minister Wilson continue to make that argument or once you were told —

Mr R Pengelly: The Minister continued to make the point. After the initial establishment of the advisory committee, Peter Stewart was appointed as chair. When he resigned, the Minister made the point that it would be a good opportunity to think about the matter again, as Peter Stewart was a full board member. The Minister did return to the point from time to time.

Mr McCallister: Your contact was very much with the advisory committee rather than individuals on it?

Mr R Pengelly: The advisory committee, including the chair — first, Peter Stewart and, then, Frank Daly — would have had more structured and formal engagement with the Minister to update him

regularly. There would not have been any formal engagement between officials and the advisory committee, because it was responsible to NAMA in the South rather than to us.

Mr McCallister: When you say there was regular engagement with the Minister, what does that mean? Quarterly?

Mr R Pengelly: Maybe a couple of times a year. I would need to get someone to go through the calendars. It certainly was not weekly or monthly.

Mr McCallister: By the time you left DFP, on 31 December 2012, you were broadly content that the risk of a fire sale had been averted.

Mr R Pengelly: Yes.

Mr McCallister: Because it is an issue that I raised with other witnesses, who seem to have run into difficulties when their assets were sold in 2013 and 2014, when you might have said that the property market was starting to recover.

Mr R Pengelly: By the end of 2012 there was no evidence of a fire sale, despite early concerns that NAMA might go down that path.

Mr McCallister: On the basis of your contact with the Northern Ireland advisory board, do you think that it made a useful contribution?

Mr R Pengelly: To be clear, the Finance Minister in the South and NAMA officials were very clear from day one that they had no interest in and were not in the business of conducting a fire sale. The advisory committee played a good role in developing relationships. I would not want to suggest that I have any evidence that it stood between us and a fire sale. The South was very clear that it did not want that, and experience, certainly up until my departure, showed that to be the case. The sense I got was that the role of the advisory committee was particularly useful when it came to ensuring that NAMA was aware of contextual issues in the Northern Ireland economy so that they were played into the strategic considerations behind the NAMA approach, as opposed to deliberately sending out a NAMA message on to the streets of Northern Ireland, so to speak. I think it was more about capturing the context of and information on the state of our economy and of liquidity and profitability in specific sectors.

The Chairperson (Mr McKay): OK members? Thank you very much, Richard. There are a couple of issues, and we will write to you on them.

Mr R Pengelly: Sure. Thanks.