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Our Ref: JJR/HB/

09 September 2015

URGENT

Daithí McKay
Chair of the Committee for Finance & Personnel
Room 144
Parliament Buildings
Stormont
Belfast
BT4 3XX

Your Ref:

Dear Sir,

Re: Evidence of Gareth Graham before the Committee for Finance and Personnel on the 3rd September 2015

On Thursday 3rd September 2015 the Committee received evidence from Gareth Graham. A substantial proportion of that evidence related to our client, Mr. Frank Cushnahan.

Given that the issue of the sale of the NAMA loan book is the subject of a criminal investigation, you will appreciate that our client is not in a position to consider any invitation to appear before the Committee until that investigation has concluded. That said, our client has been alarmed not only by what Gareth Graham has said but also by some elements of procedure and relevance. Notwithstanding the limitations of the restrictions imposed by an on-going external investigation our client is anxious to facilitate the Committee by offering some clarity and background to his relationship at Grahams.

On Mr. Graham's evidence he has instructed us to advise you of the following:

- (a) Mr. Cushnahan was a former friend and Business Adviser as and when required of Sean Graham deceased. As such, he was also friendly with his wife, Mrs. Brenda Graham.

Joe Rice, BA, LL.M. MA
Mediator

Eamon O'Connor, LL.B
Member of the Children Order
& Guardian Ad Litem Panel
Family Mediator

Paul Dougan, LL.B LL.M.

Susan Brennan, BA(Hons) MA

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- (b) Following his death Mrs. Brenda Graham became the sole shareholder in all of Sean Graham's businesses, which was essentially a bookmaking business then operating in Ireland and Scotland.
- (c) Mr. Cushnahan was approached in 2005 by Mrs. Brenda Graham and invited to join the business. This was against the background of a struggling business structure and concerns that she had over succession planning, and emerging family tensions.
- (d) Mr. Cushnahan whose services have always been widely sought after, and particularly in recognition of his previous friendship associated with the family, agreed to assist on a part time basis.

However it was made clear to Mrs. Graham, who understood, that he would maintain his other work for other clients. His role was to review the Group operations and if required to restructure the business and, if necessary, to arrange for the sale of the business.

- (e) For convenience, Mrs Brenda Graham provided Mr Cushnahan with an office initially at the Graham's premises in King Street and subsequently in Oyster House, Wellington Place, Belfast, from which to undertake all of his work. He was also provided with a telephone and permitted to use that telephone to conduct all of his work.
- (f) At no time was Mr. Cushnahan ever informed that his telephone calls would be recorded. Illegally, it now appears that his calls were subject to recording. Many of these calls deal with all aspects of Mr. Cushnahan's professional and personal life.
- (g) During Mr. Cushnahan's employment at Grahams between 2005 and 2008, as far as our client is aware, Brenda Graham held the main Directorship and Shareholding.
- (h) Gareth Graham has no proprietary right to the tapes or their content. He has not sought permission from Mr. Cushnahan to listen to tapes or to divulge their content or to disclose their content to any third party including any lawyer, journalist or politician. He has never sought Mr. Cushnahan's permission to breach or to compromise his right of privacy.
- (i) Mr. Cushnahan's remuneration was salaried and given by Mrs Brenda Graham a 5% shareholding in the Sean Graham businesses.

- (j) Mr. Cushnahan resigned his directorship on 30 October 2008 when his advice to Mrs Brenda Graham to sell the business for an ascertainable price was rejected.

Despite requests by Mrs Graham to Mr Cushnahan to remain for a further extended three year period Mr Cushnahan considered there was no further role for him to play in the business at that time. There was no fall out between Mr. Cushnahan and the Graham family.

Mr Cushnahan considered he had, over the three year period achieved his specific remits which included the restructuring and repositioning of the Group.

Most importantly, in anticipation of a major recession, he considered that he had achieved a maximisation of shareholder value for the SP Graham Group.

- (k) In 2009, Gareth Graham confronted Mr. Cushnahan over retention of his shareholding. Mr. Cushnahan readily signed an express authority drafted by Gareth Graham relinquishing any claim that he might have had to any shareholding.
- (l) From that time our client has understood that he has held no shareholding in any of the Sean Graham Group of companies including any of the four Property Companies which Gareth Graham alluded to in his evidence.

He has never been treated by any of the Directors as though he was a shareholder. For example, he has never received the Annual Accounts of the Company/Companies. Until now he has never been challenged by any member of the Graham family over his apparent continued shareholding. Indeed our client corresponded with the Companies Registry in 2009 to this effect and copied same to Adam Dickson, Graham's Financial Director.

- (m) If the Register in Companies House continues to record that Mr. Cushnahan remains a shareholder, that is solely the result of the failure of the Graham Group of Companies to update the register.

- (n) Accordingly, the Committee can be clear that Mr. Cushnahan's position is that after 2008 he had no interest in any of Sean Graham's Group of Companies.

- (o) Accordingly, no conflict of interest ever arose subsequently that required any form of disclosure to NAMA or any third party.
- (p) Contrary to the claims of Mr. Graham, at no time was Mr. Cushnahan ever involved in deciding which loans should be placed in NAMA by the Bank of Ireland. One can only assume that the Bank followed its statutory obligation in placing Graham's loans with NAMA.
- (q) Most importantly, our client has never had any meetings, dealings, correspondence or contact of any kind with the New York investment firm Cerberus, or any Cerberus representatives.

Our client states the above to be a true and accurate account of his engagement, relationship and departure from Graham Bookmakers.

However our client has further concerns as to how witnesses are permitted to use the forum of the Committee to make such sweeping and unsubstantiated allegations against third parties.

The transcript reveals that prior to presenting his evidence Gareth Graham had lobbied a member of this committee. That member did not disclose this information voluntarily at the start of the Committee hearing until plainly challenged by another member of the Committee. Surely members are required to declare any conversations or lobbying by witnesses to an inquiry in order to rule out a potential conflict?

It would appear that it was never a matter of record that Mr Graham had lobbied a Committee member prior to Graham being invited to give evidence to this Committee. If the member made a disclosure, perhaps you could identify where we can find this disclosure recorded.

Unsurprisingly our client is concerned that when the Committee next sits it will hear from a political blogger who has made false and sensationalised claims on his blog about many third parties.

Our client wishes to know what steps the Assembly and you are taking as Chairman of the Finance Committee to ensure that this individual is not given a platform to extend his unsubstantiated claims.

Our client expects the Committee to engage in a robust examination of the circumstances by which any witness was and apparently it seems, is permitted to give sensationalist and wholly inaccurate evidence to this Committee.

Yours faithfully

JOHN J RICE & CO
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