



Northern Ireland
Assembly

Committee for Finance and Personnel

Report on progress of the Review of the sale of the National Asset Management Agency property loan portfolio in Northern Ireland

Ordered by the Committee for Finance and Personnel to be printed 9 March 2016

This report is privileged and is the property of the Northern Ireland Assembly Committee for Finance and Personnel ('the Committee').

Neither the Report nor its contents should be disclosed to any person unless such disclosure is authorised by the Committee.

**THE REPORT REMAINS
EMBARGOED UNTIL
00:01am on 10th March 2016**

Committee Remit, Powers and Membership

Powers

The Committee for Finance and Personnel is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Finance and Personnel (DFP) and has a role in the initiation of legislation.

The Committee has the power to;

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Finance and Personnel.

Membership

The Committee has eleven members, including a Chairperson and Deputy Chairperson, with a quorum of five members. The membership of the Committee during the current mandate has been as follows:

Mr Daithí McKay MLA¹
Ms Claire Hanna MLA⁹
Mrs Michaela Boyle MLA⁴
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE, MLA
Mr Gordon Lyons MLA⁷
Mr John McCallister MLA²
Mr Ian McCrea MLA³
Mr Gary Middleton MLA^{7&8}
Mr Máirtín Ó Muilleoir MLA⁵
Mr Jim Wells MLA⁶

¹ With effect from 02 July 2012 Mr Daithí McKay replaced Mr Conor Murphy as Chairperson

² With effect from 15 October 2012 Mr John McCallister replaced Mr Roy Beggs

³ With effect from 16 September 2013 Mr Ian McCrea replaced Mr David McIlveen

⁴ With effect from 02 December 2013 Ms Michaela Boyle replaced Ms Megan Fearon

⁵ With effect from 10 November 2014 Mr Máirtín Ó Muilleoir replaced Mr Raymond McCartney

⁶ With effect from 18 May 2015 Mr Jim Wells replaced Mr Peter Weir

⁷ With effect from 5 October 2015 Mr Gordon Lyons and Mrs Emma Pengelly replaced Mr Paul Girvan and Mr Adrian McQuillan

⁸ With effect from 9 November 2015 Mr Gary Middleton replaced Mrs Emma Pengelly

⁹ With effect from 4 February 2016 Ms Claire Hanna replaced Mr Dominic Bradley as Deputy Chairperson

Contents

List of Abbreviations and Acronyms used in the Report	4
Introduction	5
Background	5
Procedural and Legal Advice	
Terms of Reference	6
Evidence received and outputs to date	7
Facts established to date	10
Lessons identified to date	12
Evidence outstanding	14
Areas requiring further scrutiny	16
Next steps	18

List of Abbreviations and Acronyms used in the Report

BBC (NI)	British Broadcasting Corporation (Northern Ireland)
the Committee	Committee for Finance and Personnel
Cerberus	Cerberus Capital Management, LP
DFP	Department of Finance and Personnel
NAMA	National Asset Management Agency
NIAC	Northern Ireland Advisory Committee
NCA	National Crime Agency
OFMDFM	Office of the First Minister and deputy First Minister
PAC	Public Accounts Committee
PIMCO	Pacific Investment Management Company, LLC
PSNI	Police Service of Northern Ireland
RoI	Republic of Ireland
ToR	Terms of Reference
USA	United States of America

Introduction

Background

1. The review by the Committee for Finance and Personnel ('the Committee') was initiated following allegations, reported in the media in relation to the sale of the National Asset Management Agency (NAMA) property loan portfolio in Northern Ireland to Cerberus Capital Management. This sale, known as 'Project Eagle', took place in April 2014 and consisted of loans owned by Northern Ireland-based debtors and secured by assets in Northern Ireland, the Republic of Ireland, Great Britain and other European locations.
2. The Committee held a special meeting on 7 July 2015. At this meeting members agreed that, in exercising its statutory functions, the Committee would hold preliminary fact-finding hearings with a range of organisations and individuals identified from the media reports.
3. On 8 July the Police Service of Northern Ireland (PSNI) announced a criminal investigation by the police, which was subsequently led by the National Crime Agency (NCA). It later emerged that the Law Society of Northern Ireland was conducting a related investigation, while the Public Accounts Committee in Dáil Éireann also took an active interest in the issues, and investigations were reportedly commenced by the authorities in the United States of America (USA).
4. In light of the commencement of the NCA's investigation, Committee representatives held an informal meeting with NCA officers on 15 July 2015 to discuss the Committee's work in the context of the NCA inquiry. Members consequently agreed to develop terms of reference for the purpose of setting out a framework for the Committee to continue with its inquiries, whilst seeking to minimise the risk of its work inadvertently prejudicing the ongoing criminal investigation by the NCA, and taking into account the risk of undermining the fairness of any future court proceedings.

Procedural and Legal Advice

5. To inform its terms of reference and its approach to evidence gathering, the Committee received procedural and legal advice from the Assembly Secretariat on a range of key considerations, including: subjudice; contempt of court; Assembly privilege; data protection and confidentiality issues; and, the Committee's statutory powers to call for persons and papers. This advice has assisted members in setting out the parameters for the Committee's review, including the questioning of witnesses, given the context of continuing the Committee's work in tandem with investigations by the NCA and other authorities, in addition to live legal proceedings.

6. In addition to the procedural and legal advice received, as the review progressed, Committee representatives held two further meetings with the NCA, which took place on 28 September 2015 and 2 March 2016, and the Committee continued to take legal advice as required.

Terms of Reference

7. Having regard for the circumstances of the review, the advice received and the statutory remit and powers of the Committee in relation to the Department of Finance and Personnel (DFP), members agreed that the terms of reference (ToR) would include the following purpose and objectives:

The purpose would be ‘to undertake a fact-finding review in relation to the operations of NAMA in Northern Ireland, including the “Project Eagle” sale and related policy and regulatory issues that fall within the DFP remit.’

The key objectives of the review would include *‘establishing the factual position in relation to:*

- i. the relationship between DFP and NAMA in respect of the Agency's operations and assets in Northern Ireland, including the role of DFP policies and actions in relation to NAMA's operations and assets in Northern Ireland and the response of NAMA to the actions of DFP.*
 - ii. the role of DFP in the establishment of and appointments to the NAMA Northern Ireland Advisory Committee (NIAC), and the detail of the subsequent relationship and interaction between DFP and NIAC (including its members);*
 - iii. matters relating to the sale of the NAMA property loan portfolio in Northern Ireland, including the basis, rationale and implications of any actions by DFP in this area and whether relevant requirements and standards have been complied with in that regard; and*
 - iv. the role, functions and practices of the Law Society in regulating the profession of solicitors in light of the matters arising from aspects of Project Eagle and in the wider context of DFP's proposed legislation for the regulation of the legal profession in Northern Ireland which is currently being scrutinised by the Committee.’*
8. As regards the envisaged outputs from the Committee's work, the agreed ToR also stated the intention that the review will result in an evidence base and public record of factual information arising from the Committee's fact finding in relation to its objectives. As part of the fact finding the Committee also sought to establish a timeline of events, meetings and correspondence. As a corollary of its work, the Committee also

gathered further evidence to inform its scrutiny of proposed legislation on the regulation of the legal profession in Northern Ireland.

9. **In terms of context, the Committee points out that the circumstances of this review differ from those of parliamentary committee inquiries normally. The review was conducted amid ongoing criminal and other investigations and legal proceedings relating to aspects of the Project Eagle sale. Rather than interpreting and drawing inferences from the evidence conclusively at this stage, this progress report focuses on the Committee's fact finding on issues within the remit of DFP specifically, as set out in the review's ToR. The report also outlines: lessons to be learned, as identified in the evidence to date; further evidence to be taken; particular areas requiring scrutiny; and, proposed next steps.**

Evidence received and Outputs to date

10. In initiating the review members identified a range of witnesses to be invited to provide oral and/or written evidence. They also agreed that there would be an open invitation to anyone possessing relevant information that could be provided to the Committee. Given the general public interest in disclosure of information regarding the issues considered by the review, the Committee sought to have maximum transparency of its work. In so doing, however, the Committee also has had due regard to both the basis upon which evidence has been provided, as well as the need to avoid compromising the other ongoing investigations and any current or future legal proceedings.
11. The Committee's evidence gathering process faced challenges. These included a reticence on the part of some witnesses to provide oral and/or written evidence, particularly given the NCA investigation. While some witnesses eventually agreed to provide their evidence, as outlined below, others continue to decline the Committee's invitations. For its part, DFP provided initial oral evidence and papers on 23 July 2015, but subsequently delayed providing further evidence until 9 October 2015, after it had concluded an internal file review and engaged with the NCA. NAMA, on the other hand, while agreeing to answer questions in writing, refused to give oral evidence. The reason cited by NAMA is that the appropriate forum to which it should account for its activities is the Oireachtas and to committees established by the Oireachtas. While the Committee does not dispute this point, it believes greater co-operation from NAMA would have assisted it in fully understanding the DFP-NAMA relationship since 2009.
12. As with the oral and written evidence received from the other stakeholders, including the documents received from the Republic of Ireland's (RoI) Department of Finance and NAMA, the Committee placed the DFP papers in the public domain, except for seventeen documents relating to individual borrowers. In this latter case, DFP cited data protection and commercial sensitivity concerns for its request that the

documents were not to be released. The Committee, however, took legal advice on this matter and continues to pursue the issue with DFP.

13. Arising from its work to date, the Committee has gathered a significant body of oral and written evidence, which is publicly available via the Committee's webpages. The main oral and written evidence received is set out below in **Table 1**, which includes links to the related source documents.

Table 1: Schedule of main oral and written evidence received

Date of Evidence	Witness/Evidence Provider	Papers Received
23 July 2015	Mr David Sterling, Permanent Secretary, DFP (Oral Evidence)	Batch of documents released in response to Committee's request
27 August 2015	Law Society of Northern Ireland (Oral Evidence)	Batch of documents
3 September 2015	Mr Gareth Graham, local businessman and former NAMA debtor (Oral Evidence)	Batch of documents provided in response to the Committee's request
4 September 2015	NAMA	Batch of documents published in response to Committee's request for papers
16 September 2015	Cerberus	Written submission in response to the Committee
23 September 2015	Mr Martin McGuinness MLA, deputy First Minister (Oral Evidence)	Written response to Committee's follow-up questions
23 September 2015	Mr Jamie Bryson, Member of the public who responded to Committee's open invitation for evidence (Oral Evidence)	Written submission
30 September 2015	Department of Finance (RoI)	Batch of documents published in response to Committee's request for papers
6 October 2015	Cerberus	Written response to Committee's follow-up questions
7 October 2015	Rt Hon Peter Robinson MLA, the then First Minister (Oral Evidence)	Written responses here and here in follow up to oral evidence
13 October 2015	PIMCO	Written response to the Committee's questions
28 October 2015	Office of the First Minister and Deputy	Batch of documents

	First Minister (OFMDFM)	released in response to Committee's request
4 November 2015	Mr David Sterling, Permanent Secretary, DFP (Oral Evidence)	Further batch of documents released in response to Committee's request
4 November 2015	Mr Paddy Kearny, local businessman and former NAMA debtor (Oral Evidence)	
11 November 2015	Mr Richard Pengelly, former Public Spending Director, DFP (Oral Evidence)	
27 November 2015	NAMA	Written response to the Committee's follow-up questions
3 December 2015	Mr Sammy Wilson MP, former Minister of Finance and Personnel (Oral Evidence)	
9 December 2015	Dr Dara O'Hagan, Special Adviser to the deputy First Minister (Oral Evidence)	Written response in advance of oral evidence
9 December 2015	Mr Richard Bullick, Special Adviser to the First Minister (Oral Evidence)	
22 December 2015	NAMA	Written response to the Committee's follow-up questions
12 January 2016	Bell & Company Accountants (Oral Evidence to Committee for Enterprise, Trade and Investment)	Written briefing on experience of some Cerberus debtors Cerberus response to Bell & Company evidence

14. In gathering the evidence outlined in **Table 1**, the Committee was mindful of both the high media profile of the review and the fact that, during the course of some of the evidence sessions, allegations arose in relation to certain named individuals. In its follow up work, the Committee endeavoured to offer such individuals the opportunity to reply and to provide their account of events, and this opportunity was taken by several individuals.
15. During the course of the review, the Committee commissioned the Assembly Research and Information Services to develop a Timeline which provides an extensive chronology of documented events leading up to, at the time of, and following the Project Eagle sale. This has drawn on a range of publicly available sources, including official reports of Assembly and Dáil proceedings, documents from government, private organisations and individuals, as well as media reports. The Committee

published online the regular updates of the [Timeline](#), which have been produced as further source documents have become available.

16. In addition to the aforementioned evidence gathering exercise, the Committee accepted an invite from the Dáil Public Accounts Committee (PAC) to make a formal address on the progress of the review. This invitation was made in light of the respective committee inquiries into the Project Eagle sale. During the address on 1 October 2015, the Chairperson also took the opportunity to point out that there was an increased onus on NAMA to appear before the Committee, even simply out of courtesy and respect for the institutions in Northern Ireland.
17. **In reporting on progress, the Committee believes that to date its review has delivered significantly against the outputs envisaged in the agreed ToR. This is especially so in terms of the review resulting in ‘*an evidence base and public record of factual information ... in relation to its objectives*’ and in establishing ‘*a timeline of events, meetings and correspondence*’. While some of the evidence has fallen outside the ToR and has not been corroborated, the Committee has secured the release and publication of over two-thousand pages of relevant documentation from a range of sources, including DFP, Department of Finance (RoI), NAMA, OFMDFM, PIMCO and Cerberus. These include: minutes of meetings and conference calls; memoranda; correspondence; and, written answers to Committee questions. Much of the contents of this information was previously undisclosed. This documentary evidence has been supplemented with Hansard records of applicable oral evidence.**

Facts established to date

18. Arising from the written and oral evidence received to date, the Committee has already made some important findings of fact. The published [Timeline](#) sought to chronologically outline key apparent participants and activities leading up to, at the time of and after the Project Eagle sale, including the related actions by DFP and others. While the full facts surrounding the Project Eagle sale remain unclear and apparent anomalies have arisen from some of the publicly available information sources, much of the information provided in the Timeline represents uncontested facts in terms of who, what, when and where. As regards DFP involvement, this includes, for example, details of:
 - the nominations made by the DFP Minister in relation to the appointment of external members to the NAMA NIAC;
 - issues of relevance discussed at NIAC meetings;
 - the meetings which took place between DFP ministers, departmental officials and representatives of the NAMA Board and NIAC in relation to NAMA’s operations in Northern Ireland;

- the policy advice provided by DFP to its ministers (and by OFMDFM to its ministers) in relation to NAMA's operations in Northern Ireland;
- the policy positions of DFP ministers in relation to NAMA's operations in Northern Ireland and to the sale of the NAMA loan portfolio in Northern Ireland;
- meetings between prospective purchasers of the NAMA-secured assets in Northern Ireland and DFP ministers, amongst others, including, on at least one occasion, an external member of the NAMA NIAC;
- communications/representations by DFP ministers to the RoI Finance Minister and NAMA regarding an unsolicited/third-party approach in relation to the prospective purchase of NAMA's Northern Ireland portfolio;
- copies of draft 'letters of intent' or memorandums of understanding from PIMCO and Cerberus relating to their proposed management of the Northern Ireland portfolio in event of being the successful purchaser;
- meetings and conference calls involving DFP ministers, amongst others, and the RoI Finance Minister and/or representatives of NAMA, which discussed the treatment of assets in NAMA's loan portfolio in Northern Ireland and, subsequently, progress towards a sale of the portfolio;
- the responses of the Department of Finance (RoI) and NAMA to the policy positions and actions of DFP ministers and others; and,
- meetings involving DFP ministers, amongst others, and representatives of Cerberus, which took place prior to and following the Project Eagle sale.

19. In gleaning detailed factual information on these matters, the Committee addressed various elements of the ToR, especially in relation to the role and actions of DFP, as set out in the first, second and third key objectives of the review. In addition, the evidence from the Law Society of Northern Ireland provided background information to inform the Committee's scrutiny of legislation for the regulation of the legal profession in Northern Ireland, as envisaged under the fourth key objective of the review.

20. **In overall terms and notwithstanding concerns raised over an absence within DFP (and OFMDFM) of official records of some relevant meetings and discussions, the Committee believes that the factual information it collected to date has helped to both illuminate the involvement of DFP in relation to the operations of NAMA in Northern Ireland and inform the wider public discourse. The Committee's interim findings of fact are therefore reflected in the published [Timeline](#), in terms of the information contained in the official and other uncontested source documents and evidence.**

Lessons identified to date

21. Notwithstanding the fact that the review has not concluded, the Committee believes that the evidence received to date suggests that there are lessons to be learned by DFP and others.
22. In particular, lessons need to be learned from the experience of making nominations for appointment to the NAMA NIAC. **Whilst recognising that the Minister of Finance and Personnel did not have responsibility for making appointments to the NAMA NIAC, the Committee recommends that any future Ministerial decisions on nominations to positions which are of strategic importance to the economy should be made in light of having taken the advice of senior departmental officials. Such practices may have avoided much of the controversy which surrounded the nominations for appointment to the NAMA NIAC. The Committee further recommends that DFP and the wider Northern Ireland Executive set out the principles and practices to be followed by all Executive Ministers in such circumstances in future.**
23. **When Ministers are making nominations in circumstances similar to the NAMA NIAC, robust systems should be in place to ascertain any financial or other interests which the possible nominees might have that are relevant to the business of the body to which they may be appointed. The Committee considers that such systems, including the routine checking of information proffered, could have avoided much of the controversy over alleged conflicts of interest highlighted during the review.**
24. **While it is overly bureaucratic and prescriptive to suggest that every meeting between Ministers and business representatives should be minuted, it is clear from the Committee's review that failure to log many of the crucial meetings which occurred around the Project Eagle sale fuelled public concern about the deal and led to a dearth of information when it came to understanding how the sale developed. The Committee calls on the Executive Ministers and senior departmental officials to consider how best to avoid such information gaps in the future.**
25. The evidence to the review to date suggests that Executive Ministers and senior departmental officials had insufficient professional advice to fully assess the strategic considerations in relation to NAMA's operations in Northern Ireland, including the Project Eagle bidding process and the interests of the various parties involved. **Whilst acknowledging that Northern Ireland Executive Ministers did not have a decision-making role in relation to NAMA and Project Eagle, the Committee recommends that DFP and the wider Executive take steps to ensure that**

independent, expert advice is available when Ministers are taking a policy position on matters which are of systemic importance to the economy.

26. The evidence received by the Committee to date has also raised questions for the Law Society of Northern Ireland in regard to how robustly its own rules and regulations were policed. **The Committee recommends that the Law Society of Northern Ireland reviews its practices in regulating the profession of solicitors in light of the matters arising from aspects of Project Eagle. This should aim to identify how the Society can provide more transparency and a swifter response in any future case of this kind, which would enhance public confidence in the legal profession.**
27. The Committee notes with regret the decision of the NAMA Board not to suspend the Project Eagle sales process once PIMCO had disclosed to the Agency in March 2014 that PIMCO's proposed fee arrangement with the Brown Rudnick international law firm included also the payment of fees to Tughans, a Belfast law firm, and to a former external member of NAMA NIAC. From the evidence to date, the Committee considers this development to be a core area of concern within the entire sale and purchase process. The need for further information and clarification in this regard underlines the case for NAMA attending an oral hearing of the Committee.
28. Whilst it does not fall to this Committee to pursue, given the seriousness of the revelation by PIMCO, it is unclear why the Irish Government's Minister for Finance, Michael Noonan, did not intervene at this point, by exercising his general powers of direction over NAMA to suspend the sales process until matters were investigated fully. The Committee also notes that Minister Noonan did not inform the Northern Ireland Executive of this development. In addition, the Committee regrets that Minister Noonan did not encourage NAMA to attend an oral hearing of the Committee. The Committee recognises that the Irish Government may therefore wish to clarify these issues and to set out what steps it plans to take to prevent such shortcomings occurring in future, especially in light of the significance of Project Eagle to the economies on both sides of the border.
29. **From the evidence to date, the Committee is concerned that different aspects of the Project Eagle controversy could be seen as having caused reputational damage to DFP, the Northern Ireland Executive, the Irish Government and NAMA respectively. In the case of DFP and the Executive, this relates to how the nominations were made for appointments to the NAMA NIAC and from the perceptions arising from involvement of Ministers with potential purchasers of NAMA-secured assets in Northern Ireland. In the case of the Irish Government and NAMA, the available information suggests shortcomings in the handling of the bidding process and related decisions. It is therefore imperative that the lessons identified to date are acted on as applicable.**

Evidence outstanding

30. While significant progress has been made against the key objectives of the review, there are elements of the ToR which remain to be addressed fully. These include, in particular:

- the *'relationship and interaction between DFP and NIAC (including its members)'*, which was cited under the second key objective; and,
- the issue of *'whether relevant requirements and standards have been complied with'* which was cited under the third key objective.

31. **Notwithstanding the important outputs and facts established to date, the Committee considers that oral evidence is needed from a number of further key witnesses if it is to realise all of the review objectives.** These include the following:

- Mr Simon Hamilton MLA, former Minister of Finance and Personnel – who had agreed to attend an oral hearing on 18 November 2015, but which was postponed due to additional plenary business being scheduled in the Assembly on that date; and who was offered a further opportunity to provide oral evidence before the end of the mandate;
- NAMA – which released papers and responded in writing to questions from the Committee, but refused to attend oral hearings (as outlined at paragraph 11);
- Mr Frank Cushnahan, a former external member of the NAMA NIAC – who, acting through his legal representatives, John J Rice & Co, declined to provide oral evidence, citing as his reason the ongoing investigations by the NCA and other bodies; who then refused to engage further with the Committee, including in terms of responding in writing to questions; and who was subsequently offered a further opportunity to attend an oral hearing, including to respond to the issues highlighted in the BBC (NI) Spotlight programme broadcast on Monday 29 February 2016;
- Mr Brian Rowntree, a former external member of the NAMA NIAC – who has not yet formally agreed to attend an oral hearing;
- Cerberus Capital Management LP, a private investment firm based in New York City with affiliate and advisory offices across the USA, Europe and Asia; and the successful bidder for Project Eagle – which provided a written submission, but declined to provide oral evidence, citing as its reason the ongoing investigations by the NCA and other bodies;
- Mr Andrew Creighton, a local property developer – who has not responded to the Committee's invitation to attend an oral hearing to respond to issues raised in evidence;

- Mr John Miskelly, a local businessman and former NAMA debtor – who agreed to give oral evidence but has been unable to attend for a hearing on medical grounds; and who was therefore offered a further opportunity to provide evidence, including in written form, before the end of the mandate;
- The Lagan Group, a local construction, manufacturing and civil engineering company – which has not yet formally agreed to attend an oral hearing to respond to issues regarding the Millmount site raised in evidence;
- Mr Stephen Peover, a former Permanent Secretary, DFP – who agreed to attend an oral hearing on 18 November, but which was postponed due to additional plenary business being scheduled in the Assembly on that date;
- Mr Graham Craig, a former Ministerial Special Adviser in DFP – who did not respond to the Committee’s invitation to attend an oral hearing;
- Mr Allan Ewart, a former Ministerial Special Adviser in DFP – who did not respond to the Committee’s invitation to attend an oral hearing;
- Mr Brendan McGinn, local representative of Fortress Investment Group – who declined the Committee’s invitation to provide oral evidence, citing as his reason the ongoing NCA investigation;
- Mr David Watters, a Belfast-based accountant – who declined the Committee’s invitation to attend an oral hearing to respond to issues raised in evidence, citing as his reason the ongoing NCA investigation;
- PIMCO, a global investment management firm headquartered in California USA, which withdrew its bid for Project Eagle – which declined to provide oral evidence to the Committee, citing as its reason the ongoing NCA investigation; but which provided a written submission in response to questions from the Committee;
- Brown Rudnick LLP, an international law firm which acted on behalf of both PIMCO and Cerberus in respect of Project Eagle – which has not yet agreed to provide oral evidence, citing as its reason the ongoing investigations by the NCA and other agencies;
- Mr Ronnie Hanna, the former Head of Asset Recovery at NAMA – who was offered the opportunity to respond to issues raised in the BBC (NI) Spotlight programme prior to the end of the mandate;
- Mr David Gray, a Belfast-based accountant – who was offered the opportunity to respond to issues raised in the BBC (NI) Spotlight programme prior to the end of the mandate; and,
- Mr Gareth Robinson, a Belfast-based businessman – who was offered the opportunity to respond to issues raised in the BBC (NI) Spotlight programme prior to the end of the mandate.

32. In light of some key witnesses declining the invitation to provide oral evidence, the Committee obtained legal advice on the scope for exercising its statutory powers to require witnesses to attend its proceedings for the purpose of giving evidence. There was insufficient time in the current mandate to complete this

process. This is an area which may need to be revisited in the event that the successor Committee decides to conclude the review in the next mandate and faces similar difficulties. That said, the Committee recognises that a conclusion to the investigations by the NCA and other agencies may, depending on the outcomes, create further scope for taking oral evidence from identified witnesses and others who in time may be identified.

Areas requiring further scrutiny

33. In addition to the aforementioned evidence outstanding, the Committee believes that any further scrutiny should include the following specific areas:

- There is a need to clarify the identity of the company or its representative that Mr Sammy Wilson and Mr Peter Robinson referred to, in their evidence, as ‘Schwartz’/‘Swartz’. It was stated that Mr Frank Cushnahan set up a meeting which included Mr Wilson and Mr Robinson and this party in relation to NAMA’s Northern Ireland portfolio;
- When questioned about the role of Mr Frank Cushnahan (and Mr Ian Coulter, then a managing partner at Tughans law firm) in the lead up to the Project Eagle sale, Mr Richard Bullick told the Committee that he assumed that Mr Cushnahan (and Mr Coulter) had clients who would benefit from *‘being freed up from NAMA’*. It is important that Mr Cushnahan responds to this assertion to provide necessary clarification;
- The Committee established that NAMA *‘...had no knowledge of meetings between Mr Cushnahan and prospective purchasers of NAMA-secured assets in Northern Ireland...’* including whilst he was on the NAMA NIAC. This is deeply concerning to the Committee;
- When questioned about his interaction with Mr Frank Cushnahan in the lead up to the Project Eagle sale, Mr Paddy Kearney stated the following during his [oral evidence](#):

‘I was in Spain and got a call from Ian Coulter to ask if I would come home to meet him and Frank Cushnahan. Ian Coulter was the managing partner of Tughans, who are our lawyers. They wanted some information on my portfolio. They were acting for one of the bidders for the Northern Ireland portfolio and asked me if I would come home to give them some information because the people that they were acting for wanted to be in a position to make a proper bid. They needed some private information on the portfolio that was not public. It was private company information.’

The Committee believes that it is important that Mr Cushnahan (and Mr Coulter) responds to this assertion to provide necessary clarification;

- The Committee is alarmed by the issues arising from the BBC (NI) Spotlight programme which was broadcast on Monday 29 February 2016. The programme included a video recording which appears to show a number of parties discussing practices which, by their nature, have given rise to public concern. In particular, the Committee notes with concern the assertion that a fee was payable to Mr Frank Cushnahan in relation to the successful bid by Cerberus for Project Eagle. The Committee has subsequently written to these parties to offer them the opportunity of an oral hearing to respond to the issues raised in the programme. This evidence should also be pursued by the successor Committee in the event that it decides to continue the review.
- The Committee also noted from the BBC (NI) Spotlight programme that the other former external member of the NAMA NIAC, Mr Brian Rowntree, stated that the NIAC members had access to information which was of a 'commercially sensitive nature' and which offered 'commercial opportunity' and would have been of some value to a bidder for Project Eagle. This is of particular significance as it appears to contradict the position adopted by NAMA to date.

For example, in written evidence to the Committee on [27 November 2015](#), NAMA stated that the external members of the NAMA NIAC '*never had access to confidential information*'. Furthermore, in evidence to the Dáil PAC on [9 July 2015](#), the NAMA Chairman, Mr Frank Daly, stated that the external members of the NAMA NIAC '*did not gain any confidential information or any useful insider information from being a member of that advisory committee*'. Therefore, given these seemingly contradictory positions, the Committee recommends that a full examination is made of what precisely was discussed at the NAMA NIAC meetings and what information was shared with the NIAC members.

- The Committee is also concerned that the sale to Cerberus of the Project Eagle portfolio and other loans owned by Northern Ireland-based debtors appears to have left a number of local businesses in an extremely difficult position. Whilst this is somewhat outside the ToR of the review, the Committee believes that it is important to express its concern at the apparent handling of some debtors by Cerberus. This is an issue which is being considered separately by the Assembly's Committee for Enterprise, Trade and Investment in liaison with this Committee.

34. The Committee found the refusal of NAMA to attend an oral evidence session particularly unhelpful. NAMA needed to be more open and accessible given the importance of the Project Eagle portfolio to the Northern Ireland economy. The Committee does not accept NAMA's rationale for not attending an oral hearing of

the Committee, especially given that Agency representatives have previously held many meetings with Ministers and officials in Northern Ireland.

Next Steps

- 35. Given the ongoing criminal and other investigations, and in the absence of having concluded the review, the Committee will not comment further on particular events regarding the Project Eagle sale. As there is insufficient time in the current Assembly mandate to gather the evidence outstanding, the Committee recommends that the successor Committee makes a decision on concluding the review early in the next mandate.**