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Former INBS CEO loses appeal against Central Bank Inquiry

On 10 July 2015, the Central Bank of Ireland (the "**Central Bank"**) announced that it had referred a case concerning Irish Nationwide Building Society ("**INBS**") and "…*certain persons who were concerned in the management of INBS at the relevant time*…" to Inquiry (the "**Individuals**") under its Administrative Sanctions Procedure. Mr. Michael Fingleton, a former Chief Executive Officer of INBS, is one of the Individuals subject to that Inquiry.

In 2015 Mr. Fingleton brought a High Court challenge seeking to stop the Inquiry in respect of him from proceeding. He was unsuccessful before the High Court and appealed elements of that decision to the Court of Appeal. The Court of Appeal (the "**Court**") recently issued its decision dismissing Mr. Fingleton's case. The key arguments made by Mr. Fingleton and the decision of the Court are summarised below.

What arguments did Mr. Fingleton make?

Mr. Fingleton appealed the High Court decision on three grounds: jurisdiction, settlement and delay.

Jurisdiction

Mr. Fingleton argued that he should not be part of the Inquiry as he was not a "*person concerned in the management*" of INBS at the time when the Notice of Inquiry was issued by the Central Bank. The Court however found that the legislative reference to the Central Bank's power to hold an Inquiry in respect of a "*person concerned in*

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the management" of a regulated financial service provider related to the status of the relevant individual at the time when the regulatory breach was suspected to have been committed. It did not require the person to still be concerned in the management of the relevant regulated entity at the time the Inquiry was held.

Settlement

Mr. Fingleton also argued that the decision to hold an Inquiry should be quashed as the Inquiry had been compromised by prejudgment and / or objective bias. Shortly after the Notice of Inquiry was issued, INBS entered into a settlement agreement with the Central Bank under which it was fined the maximum available monetary penalty (€5 million) and details of the settlement were published. Mr. Fingleton noted that the members of the Inquiry were agents of the Central Bank. He therefore argued that the settlement gave rise to a concern of prejudgment, as well as to an objective perception that the settlement would influence the outcome of the Inquiry.

The Court rejected Mr. Fingleton's arguments, noting that the Inquiry had confirmed that admissions made by INBS in the settlement, as well as the fact of that settlement, would not be admissible as evidence before it. The Court found this had the effect of placing the settlement and the imposition of the sanction on INBS "*at nought*" for the purposes of the Inquiry into Mr. Fingleton. While acknowledging that the members of the Inquiry were appointed by the Central Bank, the Court observed that they had no involvement in the settlement with INBS and that they had undertaken to carry out their functions in an independent and impartial manner.

Delay

Mr. Fingleton's last ground of appeal was delay. He submitted that the Central Bank had delayed in commencing the Inquiry in 2015 (which concerns some matters going back to 2004) and that the High Court judge had not taken into account Mr. Fingleton's age and his deteriorating eyesight.

The Court disagreed and found that there was no undue delay on the Central Bank's part. It accepted the Central Bank's evidence that the financial crisis placed a significant burden on it in 2009 and 2010 and that prior to referring the case to Inquiry, the Central Bank had to review a significant volume of material to decide whether it had reasonable grounds to refer the case to Inquiry. The Court also noted that Mr. Fingleton was likely to engage legal advisors to represent him at Inquiry who would review all documents and bring any relevant material to his attention. Therefore it was not accepted that any issues with Mr. Fingleton's eyesight would impact on his ability to defend himself before the Inquiry.

Conclusion

There have been several legal challenges to the Central Bank's Inquiry process to date before the Courts, all of which have been unsuccessful.

It is clear from these cases that a person who has resigned from a regulated entity can still find

themselves subject to an Inquiry if the Central Bank believes that they may have "*participated"* in any regulatory breaches while they were involved in the company's management. The Courts have also found that the Central Bank has a right to enter into a settlement with one party to an Inquiry, without consulting with other parties in respect of the same case.

Six Inquiries are currently ongoing - four in relation to individuals who were concerned in the management of INBS and two in respect of individuals who were concerned in the management of Quinn Insurance Limited (Under Administration).

It will be interesting to see what decisions are ultimately made by these Inquiries and if any negative findings are made, what type of sanction(s) might be imposed, including the level of any fine.

Currently when entering into settlements the Central Bank makes an assessment as to the sanction which it believes would likely be imposed if a case were to be referred to Inquiry. However without any "precedent" decisions by an Inquiry it is difficult to challenge that assessment.

Contact information

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