Central Bank Fitness and Probity – Prohibition Notice

For the first time ever, the Central Bank of Ireland (the "**Central Bank**") has availed of its powers of prohibition under the Central Bank Reform Act 2010 (the "**2010 Act**"). Mr Darren Gleeson, known nationally as a decorated Tipperary hurler, has been barred from carrying out any senior management function in a financial service provider. Mr Gleeson was formerly a director of a retail intermediary firm and will be prohibited from engaging in any controlled functions in any regulated financial service provider for an indefinite period. No details of the conduct giving rise to this penalty were disclosed by the Central Bank.

The prohibition framework is a separate, and parallel, system to the more commonly used administrative sanctions regime. The imposition of an outright prohibition in Mr Gleeson's case is part of a trend we have seen of the Central Bank using all of the enforcement tools granted to it in recent years.

Mr Gleeson's prohibition notice is particularly striking due to its severity. Under the 2010 Act, an individual may be prohibited from carrying out a senior management function where the Central Bank has formed the opinion that they do not meet the appropriate standards of fitness and probity. In this regard, a prohibition can be absolute in prohibiting the individual from carrying out controlled functions in any circumstances, or simply attach conditions to their performance. The prohibition can also apply for a specific period, or indefinitely. In Mr Gleeson's case, the penalty was both absolute and indefinite, placed at the uppermost scale possible. This is exceptional given that it is the first ever occasion in which the Central Bank has chosen to avail of its power of prohibition.

While the Central Bank refused to disclose the reasons for issuing a prohibition notice on this occasion, the 2010 Act is instructive. The Central Bank can form the opinion that a person is not of the appropriate fitness and probity standard where: (a) the individual does not have the experience or qualifications necessary to fulfil the controlled function; (b) the person does not meet specific standards prescribed by the fitness and probity code; (c) the individual has participated in serious misconduct in relation to a financial institution's business; (d) the individual has provided false or misleading information to the Central Bank; (e) the individual has been convicted of money laundering, or an offence involving fraud or dishonesty.

In practical terms, once a prohibition notice has issued, it is open to the individual concerned to enter into a written agreement with the Central Bank in respect of the terms of the notice. The effect of the agreement is to confirm that the individual will comply with the terms of the notice, and removes the need for the Central Bank to otherwise make a High Court application seeking to have the notice confirmed (in effect, ratifying the original prohibition order).

The prohibition notice applied to Mr Gleeson confirms an emerging tendency on the part of the Central Bank to use the full extent of the regulatory toolkit provided to it in the aftermath of the financial crisis. Following the immediate enactment of the 2010 Act, the use of the separate administrative sanction and settlement procedure was the regulatory instrument of choice. However, the sanctions imposed on individuals under this procedure were relatively minor, usually in the form of reprimands, or monetary fines below €1,000. In recent years, a more activist approach can be identified.

By way of example, last year, a former partner in Bloxhams Stockbrokers was disqualified for ten years and fined an unprecedented €110,000. Now, with the use of the separate prohibition notice procedure, we see the Central Bank becoming ever more active.

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