

An Inquiry pursuant to Part IIIC of the Central Bank Act 1942 (as amended) concerning the Irish Nationwide Building Society, Michael Fingleton, William Garfield McCollum, Tom McMenemy, John S. Purcell and Michael P. Walsh (the “Inquiry”)

SPC 5 Module

Monday 11 December 2017

Opening Statement of Marian Shanley, Inquiry Chairperson

This is the first day of hearing of this Inquiry, which has been established under Part IIIC of the Central Bank Act 1942 as amended (the “1942 Act”). This Inquiry is concerned with whether Irish Nationwide Building Society (“INBS”) committed certain suspected prescribed contraventions (“SPCs”) and whether any of five persons concerned in the management of INBS participated in those contraventions. The five persons concerned are: Mr Michael Fingleton, Mr William Garfield McCollum, Mr Tom McMenemy, Mr John S. Purcell and Mr Michael P. Walsh and they are referred to as “persons concerned in the management” or “Persons Concerned”, for ease of reference.

1. Appearances

2. Affidavits of Service LPT

Background

The Notice of Inquiry for this Inquiry was issued on 9 July 2015 and it stated that the Central Bank had determined that it had reasonable grounds to suspect that the Irish Nationwide Building Society had committed certain prescribed contraventions during the Review Period. The Review Period for the purposes of this Inquiry is 1 August 2004 to 30 September 2008. This determination by the Central Bank was made following an investigation carried out by the Enforcement Directorate of the Central

Bank (“Enforcement”) and the furnishing of a report prepared by the investigation team.

The Central Bank further determined that it had reasonable grounds to suspect that persons concerned in the management of INBS during the Review Period had participated in all or some of these prescribed contraventions by INBS.

The first named party in the Inquiry notice, namely the Irish Nationwide Building Society has reached a settlement with the Central Bank and is no longer a party to these proceedings.

A prescribed contravention is defined by Section 33AN of the 1942 Act as “a *contravention of -*

- (a) A provision of a designated enactment or designated statutory instrument, or*
- (b) A code made, or a direction given, under such a provision, or*
- (c) Any condition or requirement imposed under a provision of a designated enactment, designated statutory instrument, code or direction, or*
- (d) Any obligation imposed on any person by this Part or imposed by the Regulatory Authority pursuant to a power exercised under this Part”.*

Having determined that it had reasonable grounds to suspect that a number of prescribed contraventions had been committed, the Central Bank decided to hold an Inquiry. In accordance with the Inquiry Guidelines published by the Central Bank in November 2014, the Enforcement Directorate of the Central Bank informed the Regulatory Decisions Unit (the “RDU”) within the Central Bank of this decision and provided the RDU with the following:

- An outline of the suspected prescribed contraventions
- An Investigation Report
- A schedule of the categories of materials and information gathered during the investigation
- Copies of documentation relied upon in preparing the Investigation Report and
- Copies of the Investigation Letters issued to the regulated entity and Persons Concerned and any responses.

All of this documentation was provided to INBS and to the five Persons Concerned with the Notice of Inquiry. The Investigation Report set out the details of the allegations against the Society and against the five Persons Concerned. The notice parties were provided with a USB key containing approximately 110,000 documents that had been gathered in the course of the investigation undertaken by Enforcement.

Inquiry Management Meetings

The Inquiry held 9 Inquiry Management Meetings over a total of 15 days between December 2015 and November 2017 to address procedural issues. The Inquiry Members' Determinations following each of these Inquiry Management Meetings have now been published in whole or in summary on the Central Bank website, www.centralbank.ie.

The first Inquiry Management Meeting to be conducted in public took place on 30 November 2016. At the commencement of that meeting, the Inquiry outlined in detail the background to this Inquiry and the three legislative provisions and conditions in respect of which a breach is alleged. These are:

Regulation 16(1) of the EC (Licensing and Supervision of Credit Institutions) Regulations 1992 (as amended) – the “1992 Regulations”,

Section 76 (1) of the Building Societies Act 1989 (as amended) – “the 1989 Act”, and

Part 1 of the Financial Regulator, Credit Institutions Regulatory Document Impairment Provisions for Credit Exposures, 26 October 2005 (the “2005 Regulatory Document”).

At that Inquiry Management Meeting, the Inquiry also outlined in detail the 7 SPCs which are the subject matter of this Inquiry. I do not propose setting these 7 SPCs out in detail again but they may be summarised as follows:

SPC1 relates to the initial loan application stage;

SPC2 relates to the loan approval process;

SPC3 relates to the taking of security, obtaining valuations and adherence to maximum loan to value ratios;

SPC4 relates to the monitoring of commercial loans;

SPC5 relates to the role of the Credit Committee;

SPC6 relates to reporting obligations to the Boards of Directors relating to commercial lending; and

SPC7 relates to the absence of a formal credit risk policy relating to the establishment of profit share agreements.

Where an Inquiry Management Meeting was held wholly in public, the full Determination of the Inquiry is published. Where the Inquiry Management Meeting was held wholly or partly in private a summary of the Determination has been published on the website. The Inquiry has issued determinations on issues such as costs, jurisdiction of the inquiry, whether the inquiry should be conducted in public or in private, the modular format of Inquiry hearings, proof of documents, access to documents, as well as on applications for particularisation and stays on the Inquiry. The most recent Inquiry Management Meetings have dealt with document management issues and preparations for the substantive hearing that is now commencing.

The Inquiry Members have sought, to as large an extent as possible, to ease the engagement of the Persons Concerned with the documentation that is part of this Inquiry. I will leave it to the Legal Practitioner Team to outline the details of the measures that have been put in place, but a significant amount of work has been done to make the documentation accessible and manageable for the Persons Concerned.

By Determination dated the 20 January 2017, the Inquiry directed that hearings would be divided into Modules: SPCs 1 – 4 were to be treated as one module and SPC5, 6 and 7 were each to be treated as separate modules. The Inquiry further directed that it would be more expeditious and cost effective to proceed with SPCs 5, 6 and 7 before commencing Module 1 comprising of SPCs 1 – 4.

In this regard it should be noted that the Inquiry is subject to the provisions of Section 33 AY(1) of the 1942 Act which requires the Inquiry to act with *“as little formality and technicality, and with as much expedition, as a proper consideration of the matters before it will allow”*. This is subject to the requirement outlined at Section 33 AY(2) that

“At an Inquiry the [Bank] shall observe the rules of procedural fairness, but is not bound by the rules of evidence”.

Accordingly, the first Module to be considered is SPC5 and that is the subject matter of today’s hearing. As indicated, the LPT and three of the Persons Concerned will make opening statements over the coming days. Although the Inquiry Members would request that these statements are confined to as large an extent as possible to the allegations outlined in SPC5, it is appreciated that this is the opening module of this Inquiry and a certain amount of context may be deemed necessary. For the ease of the Persons Concerned, representatives from Grant Thornton will be present in the hearing room from 9.30am during this opening week to assist with any issues there may be with documents to be presented on TrialDirector during the opening statements.

I will now ask Mr Brian O’Moore of the Legal Practitioner Team to address the Inquiry.