

24 October 2016

Irish Financial Services Appeals Tribunal Upholds Central Bank's Decision under Fitness & Probity Regime to Refuse a Retail Intermediary's Application for Authorisation

The decision of the Central Bank of Ireland to refuse an application by Mr David Redmond for authorisation as a sole trader retail intermediary¹ has been upheld by the Irish Financial Services Appeals Tribunal (“**IFSAT**”)². IFSAT's Determination was published on its [website](#) on 24 October 2016.

The Central Bank's decision to refuse Mr Redmond's application for authorisation was made on the basis that Mr Redmond failed to satisfy the Central Bank's fitness and probity requirements to be authorised as a retail intermediary. In upholding the Central Bank's decision, IFSAT made no findings in relation to Mr Redmond's probity.

The Central Bank sought and was awarded its costs in this matter.

Fitness and Probity Requirements

In line with the Central Bank's role to safeguard financial stability and protect consumers, the granting of any new authorisation is a key element of the Central Bank's “gatekeeper function” to permit or refuse an applicant to provide financial services to the public. The Central Bank adopts a robust, structured and risk-based process that seeks to ensure that only those applicants that demonstrate compliance with the relevant requirements are authorised. The Central Bank's authorisation processes are designed to deliver a rigorous level of scrutiny and to mitigate against possible risks that firms may pose to customers, counterparties and the wider market once they are authorised and start operating.

The Central Bank's fitness and probity regime protects consumers by requiring that persons in senior functions within regulated firms must meet the Central Bank's [Fitness and Probity Standards](#). Under the Fitness and Probity Standards, such a person is required to be competent and capable; to be honest, ethical and act with integrity; and to be financially sound. The Central Bank will not authorise firms, and will not approve persons to perform senior functions in regulated firms, where they do not meet the Fitness and Probity Standards.

The Central Bank's Decision in respect of Mr Redmond's Application

The matters relevant to the Central Bank's decision to refuse Mr Redmond's application for authorisation included the following:

¹ Mr Redmond had made applications to the Central Bank for authorisation as an investment business firm under section 10 of the Investment Intermediaries Act 1995, and registration as an insurance intermediary under Regulation 8 of the EC (Insurance Mediation) Regulations 2005.

² IFSAT was established by the Central Bank and Financial Services Authority of Ireland Act 2003, which inserted Part VIIA into the Central Bank Act 1942. It is an independent tribunal which hears and determines appeals against certain decisions of the Central Bank. Further information is available on [IFSAT's website](#).

1. Mr Redmond failed to satisfy the Central Bank as to his knowledge of the business of a retail intermediary, and also failed to demonstrate a clear and comprehensive understanding of the legal and regulatory obligations applicable to a retail intermediary.
2. Simple Financial Solutions Limited (a retail intermediary firm with which Mr Redmond was formerly a director)³ (“SFSL”) failed to comply with the Central Bank’s requirements in relation to the online reporting of regulatory returns. SFSL also failed to submit a list of pre-approval controlled functions (“PCFs”) to the Central Bank, and to confirm that it had carried out due diligence in relation to the persons performing those PCFs, as required under the Central Bank’s fitness and probity regime. Mr Redmond was a director of SFSL at the relevant times.
3. Mr Redmond failed to investigate and take action in relation to allegations that he made of irregular conduct by his co-director at SFSL, namely allegations that his co-director had forged his signature. Neither the Central Bank nor IFSAT made any findings of fact in relation to these allegations.
4. SFSL was convicted in the District Court for failing to file an annual return with the Companies Registrations Office, as required under company law. Mr Redmond was a director of SFSL at the relevant time.

IFSAT’s Determination of the Appeal

In refusing the appeal brought by Mr Redmond and upholding the Central Bank’s decision, IFSAT stated the following:

“as an applicant for the statutory licences concerned, the onus lay with [Mr Redmond] at all times to demonstrate and to provide any necessary supporting proofs that he possessed the experience, qualities, character and expertise required to fulfil the statutory and regulatory conditions. This is so for all applicants irrespective of their previous activities, if any, in the financial services sector.”⁴

1. Knowledge and understanding

In relation to the failures by Mr Redmond to demonstrate his knowledge of the business of a retail intermediary and that he had a clear and comprehensive understanding of the legal and regulatory obligations applicable to a retail intermediary, IFSAT stated the following:

“In the judgment of the Tribunal, the [Central Bank] had no option but to refuse the application on this basis. At the interview on 10th September 2015 [Mr Redmond] had been invited on a number of occasions to explain his understanding of the applicable legal and regulatory obligations but did not provide any specific or cogent indication of familiarity with the regulatory regime or the applicable standards.”⁵

2. Non-filing of required returns

³ The authorisations of Simple Financial Solutions Limited have now been revoked.

⁴ Paragraph 48 of the Determination.

⁵ Paragraph 51 of the Determination.

Regarding the failure by Simple Financial Solutions Limited to file periodic regulatory online returns, IFSAT stated that “as one of only two principals in a small firm [Mr Redmond] had a responsibility to ensure and to check that routine regulatory obligations ... were being complied with.”⁶

3. Failure to investigate and take action

Regarding Mr Redmond’s failure to investigate and take action in relation to the allegations that he made of irregular conduct by his co-director at SFSL, IFSAT stated the following:

“[Mr Redmond], while aware of the gravity and implications of the [alleged] irregular conduct of his co-director in early 2013 and while possibly delayed in facing up to them by his situation of stress and sick leave in May 2013, postponed taking appropriate steps to regularise or address the position of SFSL or to pursue appropriate legal remedies to resolve the disputes, for reasons which were primarily motivated by his personal interests. This is a factor which bears upon the criterion of fitness for a position as or in a regulated financial service provider.”⁷

IFSAT further noted that:

“[Mr Redmond], while not personally dishonest was misguided in failing to act earlier to address the obvious implications of the irregularities in the affairs of SFSL and as such fell short of the qualities of fitness which the [Central Bank] is entitled in law to require a person seeking authorisation as an investment intermediary or registration as an insurance intermediary.”⁸

4. Conviction of SFSL in the District Court

IFSAT did not rule on the relevance of the conviction of SFSL in the District Court, deeming it unnecessary to do so.

⁶ Paragraph 65 of the Determination.

⁷ Paragraph 58 of the Determination.

⁸ Paragraph 62 of the Determination.

NOTES TO EDITORS

The Fitness and Probity Regime

The Central Bank Reform Act 2010 (“**the 2010 Act**”) gave the Central Bank a consolidated power to approve senior appointments to regulated firms and powers to investigate, suspend, or prohibit persons from the financial services industry where concerns arise about their fitness and/or probity.

Under the 2010 Act, the Central Bank issued the [Fitness and Probity Standards](#), a statutory code specifying the standards of fitness and probity with which all persons performing controlled functions (“**CFs**”)⁹ or pre-approval controlled functions (“**PCFs**”) in regulated firms shall, at a minimum, comply. The Fitness and Probity Standards provide that a person performing a CF or PCF is required to be:

- competent and capable;
- honest, ethical and to act with integrity; and
- financially sound.

One of the core functions of the Central Bank’s fitness and probity regime under Part 3 of the 2010 Act is to protect consumers from dealings with persons in PCFs/CFs who do not meet the Fitness and Probity Standards. The regime allows the Central Bank to refuse proposed appointments to PCFs where the Central Bank considers that the proposed appointees are not of such fitness and probity as is appropriate to perform the relevant PCF.

Further detail on the Central Bank’s fitness and probity regime is available on the [Fitness and Probity section](#) and the [Enforcement section](#) of the Central Bank’s website.

⁹ The Central Bank has issued regulations prescribing particular roles in regulated firms as PCFs and CFs.