



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Enforcement Action

The Central Bank of Ireland
and
Tom McMenamin

6 December 2018

Mr Tom McMenamin, Senior Manager of Commercial Lending in Irish Nationwide Building Society, fined €23,000 and disqualified for a period of 18 years by the Central Bank of Ireland in respect of his admitted participation in breaches of financial services law.

The Central Bank of Ireland (the “**Central Bank**”) disqualified Mr McMenamin for 18 years from being a person concerned in the management of a regulated financial service provider, reprimanded him and imposed a fine of €23,000 for his admitted participation in the breaches of financial services law by Irish Nationwide Building Society (“**INBS**”) from 1 August 2004 to 30 September 2008 (the “**Relevant Period**”).

The Central Bank considers that the breaches admitted by Mr McMenamin merited a monetary penalty of €250,000. However, the Central Bank had regard to Section 33AS(2) of the Central Bank Act 1942 (as amended) (the “**Act**”) and may not impose a monetary penalty that would be likely to cause Mr McMenamin to be adjudicated bankrupt. In such circumstances and having regard to the current financial position of Mr McMenamin, the Central Bank has imposed a reduced monetary penalty of €23,000.

In his role as the most Senior Manager of Commercial Lending for the Republic of Ireland (“**Senior Manager of Commercial Lending ROI**”), Mr McMenamin has admitted his participation in multiple breaches of financial services law and regulation by INBS. These admitted breaches relate to INBS’ admitted multiple failures to adhere to its policies and procedures in relation to commercial lending and credit risk. The INBS commercial loan book represented the majority of INBS lending during this period. These failures involved: (i) not properly documenting commercial loan applications including borrower information; (ii) not following loan approval processes; (iii) not following processes in relation to security and loan to value ratios; (iv) not monitoring commercial lending; and (v) the Credit Committee failing to discharge its functions.

The failings admitted by Mr McMenamin demonstrated a serious lack of due skill, care and diligence in carrying out his role and responsibilities as Senior Manager of Commercial Lending ROI. Mr McMenamin accepts that he participated in a pattern of systemic policy breaches by INBS leading to poor risk management, ineffective governance and an overall culture of high risk lending. In this respect, his actions and/or omissions were not deliberate or dishonest. INBS’ financial instability lead to its ultimate collapse.

In 2010, the Central Bank commenced its investigation into INBS, Mr McMEnamin and certain other persons concerned in the management of INBS. At the conclusion of the investigation in December 2014, the Central Bank referred the cases against INBS and the individuals to Inquiry before a three-person panel.

INBS admitted multiple breaches of financial services law and regulation as part of its settlement with the Central Bank under the Administrative Sanctions Procedure on 14 July 2015 and agreed to a reprimand and a monetary penalty of €5,000,000 in respect of its breaches.

This settlement concludes the Central Bank's Inquiry into Mr McMEnamin. The Central Bank emphasises that the settlement relates to Mr McMEnamin alone and has no effect on the ongoing Inquiry into other persons concerned in the management of INBS.

The Central Bank's Director of Enforcement and Anti-Money Laundering, Seána Cunningham, stated:

“Responsibility for robust systems of control and procedures around commercial lending and credit risk rests with regulated firms and their senior management. These systems are fundamental to ensuring the financial stability of regulated firms. Where there are failings in this regard, it creates an unacceptable level of risk and exposure for the firm and has the potential to impact on the financial soundness of the wider financial market.

Mr McMEnamin has admitted to participating in multiple failings by Irish Nationwide Building Society to adhere to its commercial lending and credit risk systems of control and procedures. These failings demonstrate a serious lack of due skill, care, diligence and competence in carrying out his role as the most Senior Manager of Commercial Lending in Irish Nationwide Building Society for the Republic of Ireland. He failed to discharge his responsibilities in the day-to-day management and operation of the commercial lending function and disregarded requirements for commercial loans to comply and adhere to INBS' policies on commercial lending and credit risk. The sanctions imposed on Mr McMEnamin reflect the serious nature of his conduct. This type of behaviour gave rise to a pattern of systemic policy breaches by Irish Nationwide Building Society leading to poor risk management, ineffective governance and an overall culture of high risk lending.

This enforcement action demonstrates the Central Bank's resolve to hold individuals, entrusted with influential roles in regulated firms, to account for their role in serious misconduct. The Central Bank will use all available powers to protect consumers and financial stability and this outcome serves as a deterrent to others in senior management positions.”

Penalty Decision Factors

In deciding on the appropriate sanctions to impose, the Central Bank has taken the following matters into account:

- the reckless nature of Mr McMenemy's conduct as a senior manager of a regulated firm and his admitted failure to meet the required standard of competence, skill, and professionalism in carrying out his responsibilities to ensure the implementation of, and compliance with, management systems and internal controls on commercial lending and credit risk;
- the significant degree to which Mr McMenemy's failure to fulfil his role and discharge his responsibilities departs from the standards required by the Central Bank of senior management in a regulated firm;
- the seriousness with which the Central Bank views Mr McMenemy's participation in the admitted failures by INBS to properly manage its commercial lending and credit risk management in accordance with INBS' internal policies, procedures and controls which led to systemic internal controls weaknesses and contributed to undermining INBS' financial stability;
- the extended duration of the admitted breaches over a period of 4 years and 2 months, i.e. the Relevant Period;
- the prevalence and systemic nature of the admitted breaches in internal controls;
- Mr McMenemy's failure to notify the Central Bank that the breaches occurred; and
- the need for an effective deterrent impact on other regulated firms and persons concerned in their management concerning their responsibility to act appropriately.

The Admitted Prescribed Contraventions

The admissions by Mr McMenemy concern his participation as Senior Manager of Commercial Lending ROI in INBS during the Relevant Period, in multiple breaches of financial services law and regulation (admitted by INBS), namely:

- Regulation 16(1) of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (SI 395/1992) (as amended)(the "**1992 Regulations**");
- Section 76(1) of the Building Societies Act, 1989 (as amended)(the "**1989 Act**"); and
- Part 1 of the Credit Institutions Regulatory Document titled "*Impairment Provisions for Credit Exposures*", dated 26 October 2005, which was imposed as a condition on INBS' authorisation under Section 17 of the 1989 Act (by way of a notice dated 6 July 2006)(the "**2005 Regulatory Document**").

These admitted breaches relate to the management of commercial loans and credit risk. Specifically, the admitted breaches relate to distinct aspects of the commercial lending process and Mr McMenamín's admitted participation in each as follows:

- (i) INBS' failure to ensure that commercial loan applications were processed in accordance with INBS' internal policies;
- (ii) INBS' failure to ensure that commercial loans and variations to commercial loans were approved in accordance with INBS' internal policies and that commercial mortgage offers complied with internal policies;
- (iii) INBS' failure to ensure that security (including personal guarantees) for commercial loans was obtained, that valuation reports on the assets used as security for commercial loans were received before all or part of the loan was advanced, that loan to value ("LTV") limits were adhered to and that where LTVs were greater than the maximum applicable LTV limits set out in INBS' internal policies, that these LTVs were approved as exceptions to policy, in accordance with INBS' internal policies;
- (iv) INBS' failure to ensure that commercial lending was effectively monitored in accordance with INBS' internal policies; and
- (v) INBS' Credit Committee's failure to function in accordance with INBS' internal policies.

Mr McMenamín's Participation

Mr McMenamín has acknowledged that he was a member of INBS senior executive management and acted as Senior Manager of Commercial Lending ROI during the Relevant Period with responsibility for all commercial lending originating in the Republic of Ireland. He was also a member of INBS' Credit Committee and Provisions Committee during the Relevant Period.

Mr McMenamín has accepted that he failed to oversee and monitor adherence to INBS' internal policies relating to commercial lending and credit risk in the management and operation of the commercial lending function. In his capacity as Senior Manager of Commercial Lending ROI and a member of the INBS Credit Committee, Mr McMenamín was required to be extensively involved in both the approval and processing stages of commercial loan applications and had a duty to ensure that all commercial loans were processed and managed in compliance with INBS' internal policies and procedures in force throughout the Relevant Period, particularly those related to financial information on borrowers, security for loans, and LTV ratios. Mr McMenamín has admitted that he did not discharge this duty properly and did not take any effective action in this regard notwithstanding that he was aware from his operational role of persistent deficient commercial lending practices in INBS during the Relevant Period.

Examples of this include (i) applications for loans, loan offers and the actual loans being undocumented and/or improperly documented, (ii) commercial loans not being approved in accordance with INBS internal policy, (iii) key information required for the assessment of repayment capacity, credit grading and LTV ratios being omitted, no security and/or valid

security in respect of borrowings being obtained, (vi) lack of any effective monitoring of commercial lending, and (v) non-performance by the INBS Credit Committee of core functions.

This pattern of admitted systemic policy breaches was the backdrop against which INBS' commercial loan book grew by 128% from 31 December 2004 to 31 December 2008. The commercial loan book represented 65% of the total value of the INBS loan book at the end of 2004 and had increased to 78% by the end of 2008.

Mr McMenemy accepts that these admitted failings contributed to a pattern of systemic policy breaches by INBS that led to a culture of high-risk lending in INBS. Mr McMenemy's conduct fell far short of the required standard of competence, due skill, care, diligence and professionalism.

In particular, Mr McMenemy has admitted that he:

- failed to ensure that INBS managed its commercial lending business in accordance with sound administrative and accounting principles and failed to ensure that INBS implemented and adhered to the internal control and reporting arrangements and procedures that were in place for this purpose;
- failed to ensure that INBS in respect of its commercial lending business (i) adhered to proper systems of control and records, (ii) adhered to its existing documented internal policies and procedures, (iii) maintained systems of inspections to monitor compliance on behalf of the Board on a continuous and consistent basis, and (iv) reported on such systems of inspection appropriately to its Board;
- failed in his responsibility as a member of senior management of INBS to manage credit risk systems of control and procedure in the context of impairment provisions and to challenge and probe internal INBS management decision-making in relation to the proper processing of commercial loans;
- failed in his duty as a member of the Credit Committee (and Chairman of the Credit Committee up to December 2007) to ensure that the Credit Committee performed its functions in accordance with its terms of reference and discharged its functions properly;
- failed to consider and address numerous issues and concerns raised by INBS' internal audit department, external auditors and the then Financial Regulator in respect of INBS' commercial lending practices; and
- failed as a member of the INBS executive management to act with competence, professionalism, due skill, care and diligence required of his role in respect of the management and oversight of the INBS commercial loan book.

Background – Central Bank’s Investigation and Inquiry

In 2010, the Central Bank commenced its investigation into INBS, Mr McMenemy and certain other persons concerned in the management of INBS. The backdrop to the Central Bank’s investigation was INBS’ financial instability, which ultimately led to its collapse. Between 2008 and 2010, INBS suffered financial losses in excess of €6 billion, primarily arising from the impairment of its commercial loan book.

The Central Bank’s investigation focussed on INBS’ non-compliance with its own policies and procedures for commercial lending and credit risk management during the Relevant Period.

In December 2014, the Central Bank referred the cases against INBS, Mr McMenemy and certain other persons concerned in the management of INBS to Inquiry before a three-person panel. On 14 July 2015, INBS entered into a settlement agreement with the Central Bank. This settlement concluded the case against INBS. On 11 December 2017, the Inquiry hearings into Mr McMenemy and certain other persons concerned in the management of INBS commenced in public.

On 22 January 2018, a settlement was reached with one of the persons concerned in the management of INBS, namely, Dr Michael Walsh, which concluded the Inquiry against him. This settlement with Mr McMenemy concludes the Central Bank’s Inquiry into Mr McMenemy.

The Inquiry continues against certain other persons concerned in the management of INBS. The Central Bank makes no comment on any other cases. In particular, the Central Bank emphasises that the settlement relates to Mr McMenemy alone and has no effect on the ongoing Inquiry and other persons concerned in the management of INBS.

END

Notes to Editors

1. Since 2006, 125 cases have settled under the Central Bank's Administrative Sanctions Procedure (pursuant to Part IIIC of the Act).
2. The settlement with INBS on 14 July 2015 can be found [here](#).
3. Part IIIC of the Act provides the Central Bank with the power to administer sanctions in respect of the commission of prescribed contravention(s) by regulated financial service providers and the participation in the commission of the prescribed contravention(s) by persons concerned in their management.
4. The Central Bank's power to impose sanctions are set out in Section 33AQ of the Act.
5. The Administrative Sanctions Procedure (pursuant to Part IIIC of the Act) provides that, any time before the conclusion of an Inquiry, the matter may be resolved with the financial service provider or person concerned in the management of the regulated financial service provider by entering into a settlement agreement.
6. Where a concern arises that a prescribed contravention has been or is being committed, the Enforcement Investigations Division of the Central Bank may investigate. Following an investigation, an Inquiry may be held where there are reasonable grounds to suspect that a prescribed contravention has been or is being committed. The purpose of the Inquiry is to determine if the regulated financial service provider has committed the prescribed contraventions and, where relevant, determine if any persons concerned in the management of the regulated financial service provider have participated in the commission of the prescribed contravention. If the Inquiry makes any such finding, it may then determine and impose appropriate sanctions.
7. The period of disqualification takes effect from today's date 6 December 2018.
8. Section 33AS(2) of the Act states as follows " *If the Bank decides to impose a monetary penalty on a person under section 33AQ or 33AR, it may not impose an amount that would be likely to cause the person to be adjudicated bankrupt.*"
9. Regulation 16(1) of the 1992 Regulations required every credit institution to manage its business in accordance with sound administrative and accounting principles and to put in place and maintain internal control and reporting arrangements and procedures to ensure that the business was so managed. The 1992 Regulations were revoked by Regulation 161 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158/ 2014) with effect from 31 March 2014. However, Regulation 162 of these Regulations specifically provides that the revocation does not affect any enforcement action brought by the Central Bank.

10. Section 76(1)(b) of the 1989 Act requires every building society to establish and maintain systems of control of its business and records and systems of inspection and report thereon.
11. Part 1 of the 2005 Regulatory Document sets out specific obligations for credit institutions and their board of directors / senior management in the context of credit risk policies and procedures. These obligations were imposed on 10 July 2006, pursuant to Section 17 of the 1989 Act, as a condition on INBS' authorisation.
12. Following the Central Bank's settlement with INBS on 14 July 2015, INBS did not have any assets so it was deemed not to be in the public interest to pursue the collection of the maximum applicable fine of €5,000,000. Consequently, the Central Bank waived the monetary penalty in its entirety due to the special circumstances of INBS.
13. The Irish Financial Services Regulatory Authority was the regulator responsible for the supervision of INBS during the Relevant Period. With effect from 1 October 2010, this was replaced with a single fully integrated structure with a unitary board within the Central Bank.