

Enforcement Action

The Central Bank of Ireland

and

Gary McCollum

Mr William Garfield (“Gary”) McCollum, a Person Concerned in the Management of Irish Nationwide Building Society, fined €200,000 and disqualified for a period of 15 years by the Central Bank of Ireland for his admitted participation in breaches of financial services law relating to commercial lending and credit risk.

On 10 June 2021, the Central Bank of Ireland (the **Central Bank**) imposed a fine of €200,000 on Mr McCollum, disqualified him from being a person concerned in the management of a Central Bank regulated financial service provider for a period of 15 years, and reprimanded him for his admitted participation in breaches of financial services law in relation to commercial lending and credit risk by Irish Nationwide Building Society (**INBS**) that occurred between 1 August 2004 to 30 September 2008 (the **Relevant Period**).

Mr McCollum was Head of Commercial Lending (UK) and UK Branch Manager (Belfast and London) during the Relevant Period. He has admitted to participating in significant failures by INBS to adhere to its own policies at each stage of the commercial lending and credit risk processes, resulting in poor risk management, ineffective governance and high risk lending.

Mr McCollum joined INBS in 1997, at a relatively early stage in its entry into the development finance market. INBS’s strategy at the time was to build its commercial lending through repeat business with high net worth individuals with whom it already had strong relationships. Fast growth strategies and rapid credit decisions were the backdrop against which INBS’s commercial loan book grew by 128% in value from around €3.6bn at the end of 2004 to around €8.2bn at the end of 2008. A significant percentage of this exponential growth was related to increased commercial lending in the UK through the branches for which Mr McCollum was responsible. INBS’s UK commercial lending grew from €2.957bn in 2005 to €5.186bn in 2007 and comprised over 50% of the value of INBS’s commercial loan book in that period.

This expansion into development finance, which carried with it a much higher credit risk¹ for INBS than its traditional residential lending, proceeded with insufficient checks and balances during the Relevant Period. While policies and procedures existed on paper, there was a systemic failure to ensure they were implemented or followed in practice. Mr McCollum, as the person responsible for INBS's UK commercial lending, has admitted that he participated in significant failings by INBS, which included: (i) a failure to ensure that commercial loan applications were processed in accordance with internal policy; (ii) not following loan approval processes or requirements in relation to commercial mortgage offers; (iii) failures in relation to the taking of security, obtaining valuations and adhering to policy requirements concerning maximum loan to value ratios; and (iv) failing to ensure that loans were effectively monitored. In this respect, his actions and/or omissions whilst reckless, were not deliberate or dishonest.

Ultimately, the makeup of INBS's loan portfolio left it exposed during the global financial downturn. Between 2008 and 2010, INBS suffered financial losses in excess of €6 billion, primarily arising from the impairment of its commercial loan book. This in turn resulted in the collapse of INBS. The cost to the Irish taxpayer for INBS was €5.4bn.

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

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

"This enforcement action against Mr McCollum concludes one of a number of complex financial crisis related cases that the Central Bank has taken against senior individuals concerned in the management of financial services firms. The context of this case is important. Over a relatively short period, and with insufficient checks and balances, INBS's business model changed from being primarily a provider of residential mortgages to one which has been described as "in some ways closer to that of a venture-capital financier"² than that of a building society.

Mr McCollum, in his role as Head of Commercial Lending (UK), has admitted that through his action and inaction, he participated in significant breaches by INBS relating to commercial lending practices and credit risk in the period immediately preceding INBS's collapse. These breaches amounted to a

¹ Credit risk is the risk of a borrower defaulting on a loan. Financial institutions use credit risk modelling to calculate the amount of capital to hold against credit losses.

² Nyberg Commission, *Misjudging Risk: Causes of the Systemic Banking Crisis in Ireland* (2011)

consistent failure to ensure compliance with INBS's policies and procedures with a complete disregard for the consequences.

The Central Bank has highlighted on many previous occasions the potential risks that may arise for a firm, its customers and the wider financial market, when robust systems of internal control and procedures are not put in place and followed. This case serves to underscore a further fundamental point – robust systems of internal control are only as effective as the individuals implementing them. It falls to senior role holders to lead by example, so that a culture of compliance is the norm.

The sanctions imposed on Mr McCollum reflect the serious nature of his conduct. The Central Bank will not shy away from using the full extent of its powers, including referring cases to Inquiry, in order to hold senior individuals in financial services accountable for their actions when serious failures like this occur.”

The Admitted Prescribed Contraventions

As part of its investigation into INBS and the persons concerned in its management, the Central Bank gathered hundreds of thousands of documents. The Central Bank conducted a detailed examination of the documentation and electronic data underpinning a sample of 98 loans extended to specific INBS commercial lending customers during the Relevant Period, a significant proportion of which originated in the Belfast Branch, under the management of Mr McCollum. The Central Bank identified systematic failings, admitted to by INBS, at each stage of the commercial lending process, as demonstrated by the examination of the loan sample, reports prepared by INBS's internal audit function and external consultants engaged by INBS during the Relevant Period, electronic data (including emails) taken from INBS's systems and sworn witness interviews.

The admissions by Mr McCollum concern his participation 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);
- Section 76(1) of the Building Societies Act, 1989 (as amended); 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's authorisation under Section 17 of the 1989 Act (by way of a notice dated 6 July 2006).

Mr McCollum has admitted participation in breaches by INBS relating to the management of commercial loans and credit risk, in particular:

1. A failure to ensure that commercial loan applications were processed in accordance with internal policy;
2. A failure to ensure that commercial loans and variations were approved in accordance with internal policy and that commercial mortgage offers (**CMOs**) (the legal agreement between INBS and a borrower which set out the terms and conditions of the loan), complied with policy;
3. A 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 and that loan-to-value limits were adhered to in accordance with INBS's internal policies or otherwise approved as exceptions; and
4. A failure to ensure that commercial lending was effectively monitored in accordance with INBS's internal policies.

Mr McCollum's Participation

Mr McCollum has admitted to participating in a sustained practice of recklessly disregarding INBS's internal policies and procedures with respect to commercial lending and credit risk.

Mr McCollum held a senior role in INBS during the Relevant Period. As UK Branch Manager, he had responsibility for the Belfast and London branches as a whole, including management of UK staff, directing all UK commercial lending and managing UK customer relationships. He was also a member of INBS's Credit Committee from December 2007 to the end of the Relevant Period. This committee had a key role in assessing and approving, declining or recommending commercial loans as well as a role in the review and consideration of certain reports, information and matters pertaining to the monitoring of commercial lending.

It was Mr McCollum's overall responsibility as Head of Commercial Lending (UK) to ensure that all commercial loans originating under his remit were processed and managed in compliance with INBS's internal policies and procedures in force throughout the Relevant Period. Those policies outlined his responsibilities both by reference to his name specifically and to the roles he held. Furthermore, reports prepared by INBS's internal audit function during the Relevant Period specifically identified Mr McCollum as one of the people responsible for implementing recommendations contained in those reports to resolve issues arising in respect of commercial lending and credit risk management.

Mr McCollum accepts that by virtue of his role and his responsibilities, and his position on the Credit Committee, he knew or ought to have known of the controls contained in INBS's

commercial lending and credit risk policies and procedures. He accepts that that he participated in lending practices that persistently ignored INBS's internal policies and procedures and that he failed to implement recommendations to resolve these practices. These failures by Mr McCollum are all the more serious given his position on INBS's Credit Committee.

Mr McCollum has admitted being directly involved in, and responsible for, INBS UK loans (including loans ranging between STG£650,000 and in excess of STG£200 million) in respect of which:

- funds were extended without a commercial loan application ever being prepared. Mr McCollum was also responsible for loans where relevant information, such as audited accounts, business plans or cash flow analyses were not obtained from borrowers (which would have enabled INBS to assess the borrower's repayment capacity). Further, Mr McCollum oversaw loans where a credit grade was not assigned as part of the credit decision-making process (hampering INBS's ability to assess the borrower's credit worthiness);
- funds were extended without, or before, recommendation/approval from the Credit Committee and/or approval by the Board of Directors (including instances where additional advances were made on loans without approval). For a number of loans, Mr McCollum signed off on the CMO to the borrower, thereby concluding a legal contract, without internal approval having been obtained for the loan. Mr McCollum was also involved in the variation of loans without appropriate approval, including instances where he signed off on CMOs which contained explicit terms and conditions different to those recommended/approved by the Credit Committee and/or Board of Directors. A number of these CMOs signed by Mr McCollum were, in themselves, deficient and failed to adhere to INBS's internal requirements;
- no security at all was taken and funds were therefore extended on an unsecured basis and signed off on by Mr McCollum. In numerous instances Mr McCollum failed to ensure that, in the context of borrowers that were private companies, personal guarantees were obtained. A number of loans under Mr McCollum's management were granted where the maximum loan-to-value limit permitted by internal INBS policy was clearly exceeded and these were not approved as an exception to policy;
- no evidence at all was identified to indicate that the loans had been monitored after funds had been extended. Mr McCollum failed, as a commercial lender, to monitor loans within his own loan portfolio (for example, through regular contact with the borrower)

and failed, as a manager, to ensure that any staff reporting into him in Belfast and London were monitoring their loans.

Mr McCollum accepts that this high risk lending was not in compliance with INBS's regulatory requirements and consequently led to sustained breaches, by INBS, of financial services law, in which Mr McCollum admits that he participated.

Penalty Decision Factors

In deciding on the appropriate sanctions to impose, the Central Bank considered the Administrative Sanctions Procedure (ASP) Sanctions Guidance issued in November 2019. The following particular factors are highlighted in this case.

The Nature, Seriousness and Impact of the Contraventions

Mr McCollum has admitted to participating, for a period of over four years, in persistent failures by INBS to follow its own policies at each stage of the commercial lending and credit risk management process. The breaches were reckless, departed significantly from the required standard, and ultimately revealed serious and systemic weaknesses in INBS's internal controls. The high risk lending in which Mr McCollum participated carried with it an inherent risk to the market and consumers in the event of default by borrowers to which INBS was highly exposed. That risk crystallised.

As such, in considering the nature, seriousness and impact of Mr McCollum's participation in the contraventions by INBS, the following factors have been taken into consideration:

- That the contraventions and Mr McCollum's participation in them were reckless;
- That the contraventions were persistent for a period of over four years;
- That the contraventions revealed serious and systemic weaknesses of INBS's internal controls in relation to commercial lending and credit risk;
- That the contraventions departed significantly from the required standard; and
- That the contraventions caused a risk of loss or detriment caused to consumers or other market users, which crystallised.

Aggravating Factors - Conduct

By virtue of his roles and responsibilities Mr McCollum knew or ought to have known about the contraventions during the Relevant Period and further, he was responsible for implementing recommendations from audit findings relating to commercial lending originating under his remit. Despite this, he failed to report the contraventions to the Central Bank.

As such, the following aggravating factors have been taken into account:

- Mr McCollum's failure to notify the Central Bank that the breaches occurred; and
- Mr McCollum's failure to take remedial steps.

Mitigating Factor – No Previous Record

- The fact that Mr McCollum has never previously been the subject of an enforcement action by the Central Bank.

Other Considerations – Deterrence

- The prevalence of the contraventions by INBS and Mr McCollum's participation in them call for credible deterrence in the form of holding Mr McCollum to account through the imposition of the sanctions levied. This is necessary to create an effective and appropriate deterrent impact on individuals holding senior positions in regulated financial services providers.

Notes to Editors

Background – Central Bank’s Investigation and Inquiry

1. In 2010, the Central Bank commenced its investigation into INBS, Mr McCollum and certain other persons concerned in the management of INBS.
2. The Central Bank’s investigation focussed on INBS’s non-compliance with its own policies and procedures for commercial lending and credit risk management during the Relevant Period.
3. In December 2014, the Central Bank referred the cases against INBS, Mr McCollum and certain other persons concerned in the management of INBS to Inquiry before a three-person panel.
4. On 14 July 2015, INBS entered into a settlement agreement with the Central Bank. As part of the settlement, INBS admitted multiple breaches of financial services law and regulation and agreed to a reprimand and a monetary penalty of €5,000,000 in respect of its breaches.
5. The settlement with INBS on 14 July 2015 can be found [here](#). This settlement concluded the case as against INBS.
6. 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 INBS’s special circumstances.
7. In 2015, two of the persons concerned in the management of INBS instituted legal proceedings seeking to prevent the Inquiry as against them from proceeding and, in one case, challenging the constitutionality of the Central Bank’s administrative sanctions procedure powers. Between 2015 and 2018, the Central Bank successfully defended these challenges before the High Court and Court of Appeal.
8. On 11 December 2017, the substantive Inquiry hearings into Mr McCollum and certain other persons concerned in the management of INBS commenced in public.
9. On 22 January 2018, a settlement was reached with Mr Michael Walsh, one of the persons concerned in the management of INBS, which concluded the Inquiry against him. The settlement with Mr Walsh can be found [here](#).
10. On 11 December 2018, a settlement was reached with Mr Tom McMenemy, another of the persons concerned in the management of INBS, which concluded the Inquiry against him. The settlement with Mr McMenemy can be found [here](#).

11. On 20 December 2019, the Inquiry made a decision to permanently stay the Inquiry in its totality as against Mr Michael Fingleton, another of the persons concerned in the management of INBS. The decision of the Inquiry can be found [here](#).

Background – Administrative Sanctions Procedure

12. The Administrative Sanctions Procedure (**ASP**), provided for in Part IIIC of the Central Bank Act 1942 (as amended) (the **Act**), is the Central Bank's key administrative enforcement process under which it takes action against regulated firms that breach regulatory requirements (known as prescribed contraventions) and senior individuals who participate in those breaches.
13. Where a concern arises that breaches of regulatory requirements have been committed, the Central Bank may investigate. Following such investigation, which involves the gathering and interrogation of information, witness interviews (if applicable) and the assessment of evidence against regulatory requirements, the Central Bank will assess whether or not it has reasonable grounds to suspect that a prescribed contravention has been committed. At that point, the Central Bank may decide to:
 - a. Take no further action;
 - b. Issue a Supervisory Warning;
 - c. Resolve the matter by taking supervisory action;
 - d. Agree a settlement imposing sanctions; or
 - e. Refer the case to Inquiry for determination and sanction.
14. The Central Bank's statutory power to conclude ASP cases, and impose sanctions, by way of an agreed settlement, with firms or individuals accepting their failings, has proven effective. This is the 143rd settlement under the ASP, with 17 disqualifications and total fines imposed to date by the Central Bank now over €166m.
15. The statutory settlement procedure, provided for in Part IIIC of the Act, offers both the Central Bank and the firm/individual a means of saving resources and costs. The procedure envisages that a discount of up to 30% may be applied to the sanction to recognise this saving of costs and resources through resolution of the investigation.
16. Where firms or individuals do not accept their failings and settlement is not reached, or settlement is not appropriate, the Central Bank is committed to proceeding to Inquiry. An ASP case may still be concluded by way of settlement at any time before the conclusion of an Inquiry, however no early settlement discount is available after a Notice of Inquiry has issued.

17. While the settlement procedure offers an alternative, efficient means to conclude ASP cases, the Inquiry is the key statutory ASP mechanism by which the Central Bank can assess suspected breaches, make relevant determinations and impose sanctions. The Inquiry is comprised of one or more impartial decision-maker(s), appointed by the Central Bank to hear evidence. The Inquiry's function is ultimately to determine whether the suspected breach(es) occurred or is/are occurring and, if so, to determine the appropriate sanction(s).
18. Further information on Inquiries, and Inquiries to date, is available on the [Central Bank's website](#). Information on the establishment of the Inquiry process is included in the Central Bank's [Annual Report 2020 and Annual Performance Statement 2020 – 2021](#).

Other

19. 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.
20. 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.
21. 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's authorisation.
22. 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, The Irish Financial Services Regulatory Authority was replaced with a single fully integrated structure with a unitary board within the Central Bank.
23. The period of Mr McCollum's disqualification takes effect from 10 June 2021.