



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Settlement Agreement between the Central Bank of Ireland and McSharry & Foley (Sligo) Limited

The Central Bank of Ireland ("the Central Bank") has entered into a Settlement Agreement with effect from 24 October 2011 with McSharry & Foley (Sligo) Limited ("the firm"), a regulated financial services provider, in relation to breaches of regulatory requirements contained in the Consumer Protection Code ("the Code") and the Handbook for Authorised Advisors ("the Handbook").

Four breaches were identified relating to the sale of general insurance products to customers. These are:

- failure by the firm, during the period 1 August 2004 to 31 December 2008, to carry out detailed reconciliations of amounts due to regulated entities with the balances on each client premium account it operates in contravention of the provisions of the Handbook and Provision 29, Chapter 5 of the Code;
- the application by the firm, from 1 January 2008 to 31 October 2009, of its charges to rebate amounts due to customers without the prior written agreement of those customers in contravention of Provision 33, Chapter 5 of the Code;

- failure by the firm, from 1 August 2004 to 31 October 2009, to act with due skill, care, and diligence in the best interests of its customers in accordance with the requirements of the Code and the Handbook by applying fees to the policies of some customers which were in excess of the maximum fees advised on the firm's Terms of Business document in the aggregate amount, over a five year period, of €32,578.91; and
- failure by the firm, from 1 August 2004 to 31 October 2009, to have and employ effectively the resources and procedures, systems and controls checks that are necessary for compliance with the requirements of the Code and the Handbook.

The Central Bank reprimanded the firm and required it to pay a monetary penalty of €10,000.

The Central Bank carried out an inspection of the firm in April 2009. In relation to those fees charged in excess of the maximum outlined in the firm's Terms of Business (which excess fees represented approximately 1.6% of the firm's fee income for the period), separate disclosure of these fees was made to customers in all invoices relating to new business and all renewal notices. All such fees in excess of the maximum outlined in the firm's Terms of Business have been refunded to customers.

The taking of this administrative sanctions case reflects the importance the Central Bank places on the obligation of firms to comply with the General Principles of the Code and the requirement to have adequate systems and controls in place to ensure compliance with the requirements of the Code (and formerly the Handbook).

In deciding the appropriate penalty to impose, the Central Bank has taken the following into account:

- the firm acted promptly to rectify the issues once discovered, including appointing an independent third party auditor to identify the level and amount of overcharging involved and number of affected customers;

- the firm has made prompt refunds with appropriate interest to all affected customers;
- the co-operation of the firm during the investigation and in settling at an early stage in the administrative sanctions procedure; and
- the financial position of the firm.

The Central Bank confirms that the matter is now closed.

- End -

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The Central Bank of Ireland also issued a general comment from Director of Enforcement, Peter Oakes:

"This is the latest in a number of cases taken by the Central Bank for controls failures that result in customers paying fees in excess of those set out in the firm's terms of business. We have said previously, and we highlighted in our Enforcement Strategy, that issues relating to the overcharging of customers and the causes of overcharging are priority areas for the Central Bank.

The Central Bank's supervisory framework, of which the Enforcement Strategy is a key component, is squarely focused on the Central Bank being more assertive and prioritising the allocation of resources on a risk based approach. Retail intermediaries such as insurance brokers, although being "low impact" entities, can cause consumer detriment through overcharging, misselling and poor systems and controls.

Where serious breaches of regulatory requirements occur, regulated entities and their management can expect that we will investigate fully and vigorously follow through the facts to conclusion. In the case of lower impact firms, where we do

not have a close supervisory relationship with them, our enforcement actions should be seen by other lower impact firms as clear signals of the types of behaviours we aim to change in a way that improves standards across the industry.

Firms should note that where our Consumer Protection Directorate identifies breaches of regulatory requirements it will work with our Enforcement Directorate to rectify those breaches and deliver a clear message to industry as to what is, and what is not, acceptable conduct. We will do this by ensuring that, irrespective of the size and impact rating of a regulated entity, the financial penalties and other enforcement tools available to us are applied robustly to those who fail to meet our standards, in a manner that reflects not only the seriousness of the issue at hand but also acts as a meaningful deterrent to others."