



JULY 2020

Individual gets 10 year prohibition for providing misleading information in an Individual Questionnaire

The Central Bank of Ireland (the “CBI”) has recently published a [Prohibition Notice](#) prohibiting an individual (“Mr. A”) from performing any controlled function in any regulated financial service provider for a period of ten years. The Prohibition Notice was issued as the CBI found that Mr. A provided information to it in an Individual Questionnaire (“IQ”) which he should have known was false or misleading, and for failing to co-operate with the CBI’s investigation into his fitness and probity.

Background

The CBI may commence an investigation into a person who is performing a controlled function if it has reason to suspect the person’s fitness and probity.¹

Mr. A submitted an IQ seeking approval to be appointed as an executive director of a mortgage intermediary (the “Firm”), which approval was subsequently given by the CBI. Information later came to the CBI’s attention which suggested that Mr. A may have been untruthful when completing the IQ. The CBI therefore decided to commence an investigation into Mr. A’s fitness and probity.

The Findings

Over the course of the investigation Mr. A was served with several evidentiary notices compelling him to attend interviews with the CBI in relation to the investigation into his fitness and probity. Mr. A did not attend three of the scheduled interviews. Although Mr. A stated that he did not receive certain email correspondence from the CBI (including correspondence relating to the three evidentiary notices), the CBI did not find Mr. A’s explanation for non-receipt of these

For further information on any of the issues discussed in this article please contact:



Muireann Reedy

DD: +353 (0)1 674 1002

Muireann.reedy@dilloneustace.ie

¹ The investigation can be carried out by the Governor, the Deputy Governor or can be delegated by them to another “suitably qualified person” who is usually a CBI staff member.
www.dilloneustace.com

emails to be credible.

The CBI found that Mr. A had provided false and misleading information in reply to “*numerous*” questions in the IQ, including not disclosing that he had been the director of two companies which had been involuntarily struck off the Register of Companies, not disclosing that he had been the subject of a High Court Order which found Mr. A to be in contempt of a previous Order made, and not disclosing a number of unsatisfied judgment debts against him (as well as other matters).

Although Mr. A submitted that certain responses in the IQ were given after taking legal advice, he was not able to produce copies of the relevant legal advice to the CBI, stating that the advice was mostly given verbally. While the CBI accepted that Mr. A could claim privilege over legal advice, it stated the he could not rely on the terms of the alleged advice in his defence, if he was not willing to produce copies of the advice to the CBI.

Sanctioning Factors

In determining what sanction to impose, the CBI said it was irrelevant that the Firm had not traded and did not have any clients. The CBI noted that Mr. A had been “*entirely uncooperative*” in his dealings with the CBI, had provided “*extensive*” false and misleading information to the CBI when applying for approval as an executive director of the Firm, and that Mr. A did not self-report any of the information to the CBI which was the subject of the fitness and probity investigation.

The CBI stated that Mr. A’s conduct had to be marked by a significant prohibition period but said his actions were not at the most serious end of the scale (which would warrant an indefinite prohibition) as no customer money was taken.

Comment

This is the second Prohibition Notice which the CBI has issued in relation to the provision of false or misleading information in an IQ. The CBI published a Prohibition Notice last October, prohibiting an individual from performing any controlled function for a period of two years for providing misleading information in an IQ (see link to an article on that Prohibition Notice [here](#)). These Prohibition Notices serve as reminders to all individuals who wish to be approved to perform pre-approval controlled functions to ensure that the information contained in the relevant IQ is accurate.

Overall this is the eighth Prohibition Notice to issue since the commencement of the fitness and probity regime, and the third that the CBI has published in full.

Contact information

If you have any queries about the information contained in this article, please contact Muireann Reedy of our Regulatory Investigations Unit at Muireann.Reedy@dilloneustace.ie or at 01-674 1002.

Dillon Eustace
July 2020

DILLON EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York

Tower 49, 12 East 49th Street, New York, NY10017, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

DISCLAIMER

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2020 Dillon Eustace. All rights reserved.