

THIS PROHIBITION NOTICE SOLELY RELATES TO THE CONDUCT OF MR. MICHAEL KEARNS. NO FINDING AND/OR CRITICISM IS MADE IN RESPECT OF ANY OTHER PARTY/PERSON.



Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Prohibition Notice

Section 43 of the Central Bank Reform Act 2010 (as amended)

TO: Michael Kearns

And

Home Credit Ireland Limited

CC: The Governor, Central Bank of Ireland

DECISION OF: Michael Hodson, delegate of the Central Bank of Ireland to perform certain functions of the Central Bank under Part 3, Chapter 4 of the Central Bank Reform Act 2010 (as amended)

DATE: 2 May 2019

Decision

In accordance with my appointed function under Part 3, Chapter 4 of the Central Bank Reform Act 2010 (as amended), I hereby notify Michael Kearns and Home Credit Ireland Limited of my decision to issue a Prohibition Notice prohibiting Mr Kearns from performing any controlled function (including pre-approval controlled functions) in relation to every regulated financial service provider for a period of two years from the date of first service of this Prohibition Notice on either Mr Kearns or Home Credit Ireland Limited under Section 43 of the Central Bank Reform Act 2010 (as amended), for the reasons given in this Prohibition Notice.



Definitions

The definitions below are used in this Prohibition Notice:

"1995 Act" means the Consumer Credit Act 1995 (as amended);

"2010 Act" means the Central Bank Reform Act 2010 (as amended);

"2012 Regulations" means the Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2012 (SI No 56/2012);

"Central Bank" or **"Bank"** means the Central Bank of Ireland;

"CP:PA" means the Consumer Protection: Policy & Authorisations Division of the Central Bank;

"Deputy Governor" means the Deputy Governor (Prudential Regulation) of the Central Bank who is the Head of Financial Regulation within the meaning of the 2010 Act;

"ENFI" means the Enforcement Investigations Division of the Central Bank;

"Firm" means Home Credit Ireland Limited;

"Governor" means the Governor of the Central Bank;

"Guidance on the Standards" means the Guidance on Fitness and Probity Standards issued by the Central Bank under Section 50 of the 2010 Act;

"Investigator" means the person appointed by the Deputy Governor, pursuant to Section 52(2) of the 2010 Act to investigate and report through the use of powers contained in Part 3, Chapter 3 of the 2010 Act as supplemented by the 2012 Regulations on the fitness and probity of Michael Kearns as PCF-1 in Home Credit Ireland Limited and any controlled function;

"Investigation" means the fitness and probity investigation into Michael Kearns in accordance with Section 25 of the 2010 Act;

"Investigation Report" means the report prepared pursuant to Section 41 of the Act and the appendices thereto;

"Mr Kearns' Solicitors" means Sean Ormonde & Co. Solicitors;

"Regulation 13 Notice" means the Notice dated 13 February 2019, which was made under Regulation 13 of the Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2012;

"Standards" means the Fitness and Probity Standards (Code Issued under Section 50 of the 2010 Act).



1. Background

- 1.1 The background to this matter is set out in detail in the Investigation Report. Mr Michael Kearns is the Executive Director of the Firm which is authorised as a moneylender under the 1995 Act.
- 1.2 On 4 April 2017, Mr Kearns was notified that Glenn Calverley, who was appointed by the Deputy Governor to perform functions under Section 25 of the 2010 Act, had formed an opinion that:
 - (a) there was reason to suspect Mr Kearns' fitness and probity to perform the relevant controlled function, namely the controlled function of PCF-1, in respect of the Firm on the grounds of Section 25(3)(b) and/or Section 25(3)(d); and
 - (b) in the circumstances, an investigation into his fitness and probity was warranted.
- 1.3 An Investigator was appointed by the Deputy Governor to investigate and report on the fitness and probity of Mr Kearns under Part 3 of the 2010 Act (as supplemented by the 2012 Regulations).
- 1.4 In accordance with Section 41 of the 2010 Act, the Investigation Report, which recommended indefinite prohibition, was served on Mr Kearns on 26 September 2018 and he was given until 10 October 2018 to provide submissions. Requests were made for extensions of time on behalf of Mr Kearns and, ultimately, submissions were received on his behalf on 30 October 2018.
- 1.5 I was appointed by the Central Bank to perform its functions under Part 3, Chapter 4 of the 2010 Act in accordance with Section 52 of the 2010 Act and the Investigation Report and the correspondence and submissions referred to above were provided to me for consideration.
- 1.6 On 24 December 2018, at my request and having regard to the requests made and points raised on behalf of Mr Kearns, the Regulatory Decisions Unit wrote to Mr Kearns' Solicitors indicating that, while it did not appear to have been submitted that there was a factual dispute in this matter which would require oral evidence, I was willing to hear from Mr Kearns in person regarding the circumstances in which the matters under investigation occurred. On 8 January 2019, Mr Kearns' Solicitors indicated that he welcomed the offer of a meeting for the purpose of making oral submissions. A meeting was held on the 21 January 2019 at which Mr Kearns and his solicitor were present and during which oral submissions were made. A copy of the transcript of that meeting was circulated thereafter.
- 1.7 On the 13 February 2019, Mr Kearns received notification that I was minded to issue a Prohibition Notice under Part 3, Chapter 4 of the 2010 Act prohibiting Mr Kearns from performing any controlled function (including pre-approval controlled functions) in relation to every regulated financial service provider for a period of two years, and inviting submissions from him by 25 February 2019. On 20 February 2019, correspondence was received from Mr Kearns' Solicitors seeking an extension of four weeks to properly consider the Regulation 13 Notice and prepare appropriate submissions. An extension was granted to 25 March 2019. On



25 March 2019, submissions in response to the Regulation 13 Notice were provided by Mr Kearns' Solicitors on his behalf and those submissions have been carefully considered by me in the making of this Prohibition Notice.

2 Background to the Investigation

- 2.1 The Investigation Report states that the Firm applied for authorisation under the 1995 Act on 21 January 2014. An Individual Questionnaire ("IQ") was submitted to the Central Bank by Mr Kearns on 29 January 2014 seeking his approval as its Executive Director.
- 2.2 Section 3.1 of the IQ required Mr Kearns to:
"Please provide details of (a) your employment history and other relevant experience obtained during last 10 years and (b) any other relevant employment or experience outside the 10 years starting with the most recent employment".
- 2.3 In the IQ completed by Mr Kearns, he disclosed an employment history with [REDACTED]. Under the same section, the IQ required that Mr Kearns disclose his "reason for leaving" [REDACTED] to which Mr Kearns responded "Unfair Dismissal".
- 2.4 Section 5.1 of the IQ noted that:
'A person is required to be honest, ethical, act with integrity and be financially sound. In this regard, have you any information to disclose regarding a material issue or do you have any concerns about your ability to perform the relevant function?'
In response Mr Kearns answered 'No'.
- 2.5 Section 5.5 of the IQ queried:
'Have you ever, in any jurisdiction, been dismissed or asked to resign and did resign from any profession, vocation, office or employment, or from any position of trust or fiduciary appointment, whether or not remunerated?'
In response Mr Kearns answered 'No'.
- 2.6 Section 5.11 of the IQ queried:
'Have you ever been untruthful or provided false and misleading information to the Central Bank of Ireland or been uncooperative in any dealings with the Central Bank of Ireland?'
In response Mr Kearns answered 'No'.
- 2.7 At Section 11.2 of the IQ, Mr Kearns confirmed that *'I will promptly notify the Central Bank of Ireland of any material changes in the information which I have provided and confirm that I will inform the Central Bank of Ireland in writing of the details of such changes and any other relevant/material information of which I may become aware at any time after the date of this declaration'.*



- 2.8 At Section 11.8 of the IQ, includes the following:
"I am aware that it may be an offence and/or grounds for refusal of my application and/or grounds for revocation of an authorisation/approval granted on foot of the within Application and/or grounds for the Central Bank of Ireland to commence an administrative sanctions procedure against both myself and/or the proposing entity for me to knowingly or recklessly:
a. Provide false or misleading information and/or to make a false or misleading statement (which I acknowledge, may include the withholding by me of relevant information) in this application for approval"
b. Fail to inform and/or withhold from the Central Bank of Ireland detail of any material change in circumstances/new information which is relevant and/or material to my status as an approved person."
- 2.9 At Section 11.10 of the IQ, Mr Kearns acknowledged that:
'I certify that I comply with the Fitness and Probity Standards applicable to my authorisation/approval/registration issued by the Central Bank of Ireland pursuant to Section 50 of the Central Bank Reform Act 2010 and agree to abide by them'.
- 2.10 At Section 11.14 of the IQ Mr Kearns confirmed that, to the best of his
"knowledge, information and belief, I have truthfully and fully answered each question in this questionnaire, and have disclosed any and all other information which might reasonably be considered relevant to this application and I confirm my understanding and acceptance of all statements in this declaration.'
- 2.11 Having considered the contents of Mr Kearns' application for appointment, the Central Bank sent an email to Mr Kearns dated 11 February 2014 stating as follows:
'According to the information provided in Section 3 of the IQ, your only experience during the last 10 years relevant to the proposed role was your time at [REDACTED] from October 2009 until September 2013. You state that the reason for leaving this employment was 'Unfair Dismissal'. Please provide further details on the circumstances of your leaving [REDACTED] and any relevant supporting documentation'.
- 2.12 Mr Kearns responded on the same day stating that:
[REDACTED] restructured their Irish operation in 2012 and are still currently doing so there were redundancies and job losses across the board, I went out [REDACTED] on the 28th of June 2013 and as a result of this was dismissed from my position on 20th September. I am currently taking action against that decision and I have attached a copy of a letter from my solicitor".
- 2.13 The Central Bank responded requesting an up-to-date letter from Mr Kearns' Solicitors detailing the current status of the unfair dismissal case. An update was provided by Mr Kearns' Solicitors on 18 February 2014 which confirmed that they were acting on behalf of Mr Kearns with respect



to various claims he was pursuing against his former employer and that this included a claim for unfair dismissal on foot of the termination of his employment which, in their view, constituted an unfair dismissal. They confirmed that papers had been lodged with the Workplace Relations Commission and that they would be vigorously pursued. The circumstances surrounding the dismissal were not detailed.

2.14 The Firm's authorisation was granted by way of letter from the Central Bank to Mr Kearns dated 17 April 2014 and the approval of Mr Kearns' appointment as Executive Director was confirmed on 23 April 2014.

2.15 On 16 March 2015 and 19 February 2016, Mr Kearns, in his capacity as Executive Director, furnished Annual PCF Confirmation letters to the Central Bank confirming that the Firm was satisfied that he was compliant with the Standards.

2.16 In the course of supervision, in February 2016, an Employment Appeals Tribunal ("EAT") determination pertaining to Mr Kearns' unfair dismissal case against [REDACTED] came to the attention of the Central Bank. The EAT determination indicated that Mr Kearns had been dismissed for gross misconduct arising from an allegation that he had taken a number of cheques without authorisation which were returned the next day. The allegation that cheques were taken without authorisation was strenuously denied by Mr Kearns. While the EAT accepted Mr Kearns' explanation for what happened in relation to the cheques as plausible, it upheld the dismissal on the basis that Mr Kearns had failed to properly engage with the process of investigation. While the case between Mr Kearns and [REDACTED] subsequently settled in 2017, and the factual allegations surrounding the dismissal fall outside the scope of the Investigation, the information contained in the EAT determination suggested that Mr Kearns may have provided false and misleading information to the Central Bank in connection with his application for PCF-1 approval.

2.17 The Central Bank then engaged in correspondence with Mr Kearns and his solicitor in early 2016 in relation to this. A Notice of Intention to Commence an Investigation issued to Mr Kearns on 15 August 2016 following which the Investigation commenced into his fitness and probity.

3. Consideration of Statutory Requirements

3.1 Section 43(1) of the 2010 Act provides:

"Subject to subsection (4), if the Bank or Governor has reasonably formed the opinion that a person is not of such fitness and probity as is appropriate to perform a particular controlled function, a specified part of a controlled function or any controlled function, the Bank or Governor, as the case may be, may issue a Notice in writing (in this Part called a "prohibition notice") forbidding the person -



- (a) *to carry out the controlled function, the specified part of a controlled function or any controlled function, as the case requires, or*
- (b) *to carry out the controlled function, the specified part of such a function or any controlled function, as the case requires, otherwise than in accordance with a specified condition or conditions, either for a specified period or indefinitely.”*

3.2 Section 43(2) of the 2010 Act sets out a non-exhaustive list of broad categories which may constitute a lack of fitness and probity. These include Section 43(2)(b) where *“the person does not satisfy an applicable standard of fitness and probity in a code issued pursuant to section 50”* (i.e. the Standards) and Section 43(2)(d) which refers to the person having *“directly or indirectly provided information to the Bank, the Governor or the Head of Financial Regulation (whether pursuant to this part or otherwise) that the person knew or ought to have known was false or misleading”*.

3.3 Section 43(3)(a)(i) of the 2010 Act provides that:

“The Bank or the Governor shall not issue a Prohibition Notice in relation to a person unless all of the following requirements have been satisfied:

- (I) *the Head of Financial Regulation has conducted an investigation into the person’s fitness and probity in accordance with this Chapter;*
- (II) *section 41 has been complied with in relation to that investigation and the report of it;*
- (III) *the Bank or the Governor, as the case may be, has considered the report and any submissions made (within the period specified pursuant to section 41 (4)) to the Head of Financial Regulation in relation to any matter in the report”*.

3.4 Section 43(3)(b) of the 2010 Act provides that the Bank or the Governor shall not issue a prohibition notice in relation to a person unless the person and the regulated financial service provider have been afforded such a hearing in relation to the proposed issue of the prohibition notice as is necessary to do justice in the circumstances.

3.5 Section 43(3)(c) of the 2010 Act provides that the Bank or the Governor shall not issue a prohibition notice in relation to a person unless satisfied that the issue of a prohibition notice is necessary in the circumstances.

3.6 The Standards as issued by the Central Bank require as follows:

“2. Fitness and Probity Standards

2.1 A person to whom this Code applies shall comply with these Standards at all times.

2.2 In order to comply with Section 2.1, a person is required to be:

- a) competent and capable;*
- b) honest, ethical and to act with integrity; and*



c) *financially sound.*"

4.1(i) *a person must be able to demonstrate that his or her ability to perform the relevant function is not adversely affected to a material degree where the person has been untruthful or provided false or misleading information to the Central Bank or been uncooperative in any dealings with the Central Bank."*

3.7 The **Guidance on the Standards** provides that in determining the standard of probity, individuals must be "*honest, diligent and independent-minded and must act ethically and with integrity*". The **Guidance on the Standards** also provides at paragraph 16.2 "*that Probity is a matter of character illuminated by a person's past behaviour. In general, where a person is found not to be a person of probity due to lack of honesty, integrity or ethical judgement, that person may not be suitable for any CF or PCF*".

3.8 **Section 43(4) of the 2010 Act** provides that when considering whether to issue a prohibition notice, the Bank (or the Governor, as the case may be,) shall have particular regard to the need to prevent potential serious damage to the financial system in the State and ensure the continued stability of that system and the need to protect users of financial services.

3.9 **Section 43(12)(a) of the 2010 Act**, provides that a prohibition notice should not continue for longer than is necessary to achieve the purposes stated therein.

4. Prohibition

4.1 In accordance with Section 43(3) of the 2010 Act I confirm that:

(a) I am satisfied that the delegate of the Deputy Governor has conducted an Investigation into Mr Kearns' fitness and probity in accordance with the 2010 Act;

(b) I am satisfied that the provisions of Section 41 of the 2010 Act have been complied with; and

(c) I have read and carefully considered the Investigation Report and all of the correspondence and the submissions made by and on behalf of Mr Kearns during the Investigation and since.

4.2 *Such hearing as is necessary to do justice in the circumstances*

I am also satisfied that Mr Kearns has been afforded such hearing in relation to the proposed issue of the Prohibition Notice as is necessary to do justice in the circumstances and I confirm that I have considered all of the submissions made by Mr Kearns and Mr Kearns' Solicitors to



include oral submissions made on 21 January 2019, and the submissions in response to the Regulation 13 Notice received on 25 March 2019.

4.3 *Fitness & Probity of Mr Kearns*

I am satisfied, in accordance with Section 43(1) of the 2010 Act, having carefully considered all aspects of this matter, including submissions received from Mr Kearns' Solicitors and the oral evidence of Mr Kearns, that Mr Kearns is not of such fitness and probity as is appropriate to carry out any controlled function for the reasons set out below.

4.4 I concur with what is set out in the Investigation Report that the fitness and probity regime seeks to protect users of financial services, to ensure trust and uphold standards in the financial system. Honesty and integrity are explicit requirements for those seeking regulatory approval. This encompasses the fundamental requirement of truthfulness in an application for approval. The Central Bank is entitled to expect and insist on absolute candour and honesty and otherwise will not be in a position to fulfil the crucial gatekeeping function which is expected of it in its role in protecting both consumers and the financial system. An applicant for approval, seeking the advantages and responsibilities for approval, must be taken to understand the unambiguous requirement for truthfulness, and candid and accurate information.

4.5 I am satisfied that Mr Kearns, in completing his IQ and in subsequent correspondence with the Central Bank provided information which he knew or ought to have known was false and misleading. Mr Kearns in his application responded 'no' to the question as to whether he had ever been dismissed or asked to resign from any employment¹ when he had in fact been dismissed from ██████████ for gross misconduct. While Mr Kearns believed the dismissal was unfair and had taken an unfair dismissal action against ██████████ this did not negate his obligation to provide full and truthful information to the Central Bank. In addition, when asked by the Central Bank in subsequent correspondence to provide further details on the circumstances of his leaving ██████████ Mr Kearns responded that ██████████ *restructured their Irish operation in 2012 so there were redundancies and job losses across the board, I went out ██████████ on the 28th of June 2013 and as a result of this was dismissed from my position on 20th September*". This information, which Mr Kearns knew or ought to have known was false and misleading, had a direct impact on Mr Kearns' application. Had the Central Bank had the full information in relation to the circumstances of Mr Kearns dismissal, further investigation would have been carried out before a decision was made regarding Mr Kearns' application. The provision of information to the Central Bank which Mr Kearns knew or ought to have known was false and misleading in his IQ and in subsequent interactions with the Central Bank likely conferred an advantage on Mr Kearns in allowing him to commence his business which may otherwise not have been permitted or which may have been delayed.

¹ Q. 5.5 of IQ



- 4.6 Mr Kearns provided oral evidence to explain and give context to his state of mind when completing the IQ and when subsequently corresponding with the Central Bank. I have considered Mr Kearns' evidence and acknowledge the [REDACTED] at the time, and that he never accepted the allegations that his former employer levelled against him.
- 4.7 Notwithstanding Mr Kearns' explanation of the circumstances he found himself in, I am satisfied that the information provided was false and misleading and it did not allow the Central Bank to properly evaluate his application. On 17 January 2014, five days before the submission of Mr Kearns' application for approval to the Central Bank, [REDACTED] had submitted a Notice of Appearance to the EAT again stating that the reason for Mr Kearns' dismissal was gross misconduct, the circumstances of which were set out in detail. I am satisfied that Mr Kearns was involved in an ongoing process with his former employer and had ample time and opportunity to reflect and consider that this was information which should have been notified to the Central Bank. I am satisfied that Mr Kearns, as an applicant and then as an executive director of a regulated Firm, was aware or ought to have been aware of his obligations to the Central Bank at all times. Indeed, it has been accepted on behalf of Mr Kearns that the information he provided was false and misleading and that it prevented the Central Bank from properly assessing his application².
- 4.8 In view of the above, I have considered Section 43(2) of the 2010 Act which sets out a non-exhaustive list of circumstances which may constitute a lack of fitness and probity and I note in particular that Section 43(2)(b) provides for where "*the person does not satisfy an applicable standard of fitness and probity in a code issued pursuant to section 50*" (i.e. the Standards). I note that the Standards provide at paragraph 2.2 that a person is required to be, *inter alia*, honest, ethical and to act with integrity.
- 4.9 I am satisfied that the fact that Mr Kearns provided false and misleading information in his IQ, the characterisation of the dismissal in the context of redundancies, job losses and [REDACTED] (see paragraph 2.12 above) and the fact that correct information was not disclosed in subsequent interactions with the Central Bank demonstrates Mr Kearns' failure to act honestly, ethically and with integrity, in breach of the Standards.
- 4.10 I have also considered Section 43(2)(d) of the 2010 Act which refers to the person having "*directly or indirectly provided information to the Bank, the Governor or the Head of Financial Regulation (whether pursuant to this Part or otherwise) that the person knew or ought to have known was false or misleading*" and am satisfied that Mr Kearns did provide information to the Central Bank that he knew or ought to have known was false and misleading. As stated above, it has been accepted by Mr Kearns that information he provided was false and misleading.

² Transcript of Meeting 21 January 2019 Page 15 Lines 12-17 and page 17 lines 7-12



5. Necessity of Prohibition Notice

- 5.1 I am satisfied that it is necessary in the circumstances of this case to issue a Prohibition Notice for the reasons set out in detail below. I confirm that in coming to this decision that I have had regard to the requirements of Section 43(4) of the 2010 Act, and have given consideration to the need to prevent potential serious damage to the financial system in the State and ensure the continued stability of the system, and to the need to protect users of financial services.
- 5.2 The backdrop as to why it is necessary to issue a Prohibition Notice in the circumstances of this case is that the Central Bank must be able to rely on the accuracy of any information given to it by both regulated entities and individuals holding, or being proposed to hold, controlled functions, including pre-approved controlled functions. The core function of the Central Bank's fitness and probity regime is to ensure that persons in senior positions within regulated entities are competent and capable, honest, ethical and of integrity. Central Bank approval is required before an individual can be appointed to any pre-approval controlled function ("PCF"). This allows the Central Bank to control access to the financial system and thereby to minimise the risk of detriment arising. This is critical both to the protection of users of financial services and to ensuring public trust and confidence in the financial system by signalling that where a particular individual is approved to carry out a particular function, these standards of fitness and probity have been met.
- 5.3 As set out above, in particular in paragraphs 4.3 – 4.10, I am satisfied that Mr Kearns failed to act honestly, ethically and with integrity in breach of the standards. In my view, a Prohibition Notice is necessary in the circumstances of this case for a number of reasons. Firstly, to demonstrate to Mr Kearns that the Bank views the provision of false and misleading information to it as a very serious matter and to deter him from any similar behaviour in the future. I also believe that a Prohibition Notice is necessary to demonstrate to the financial services industry as a whole, to other regulated entities, to those occupying controlled functions within them and indeed those who are applying to come into the financial services industry of the gravity of providing false and/or misleading information to the Central Bank. This is necessary for the purpose of upholding standards within the industry and as a deterrent to others and it will thereby have the effect of both protecting users of financial services and of preventing serious damage to the financial system for the reasons set out in greater detail below.
- 5.4 In considering whether it is necessary to issue a Prohibition Notice, I have had regard to the submissions of Mr Kearns' Solicitors in response to the Regulation 13 Notice and in particular to their submissions that the Regulation 13 Notice did not show evidence of any actual consideration of how the Firm has behaved vis-à-vis its customers since Mr Kearns' approval as Executive Director.



- 5.5 It is not the case that I did not consider how Mr Kearns behaved vis-à-vis customers of the Firm; however, in considering the protection of users of financial services, I am not confined to considering a narrow view, such that I can only consider customers of the Firm. I am entitled to take a more global view of the protection of users of financial services which is what I am doing in this case. The reason it is necessary to issue a Prohibition Notice in this case is to provide confidence to users of financial services that the provision of false and misleading information to the regulator by persons seeking approval by the Central Bank to be in senior positions in regulated entities has consequences. I am of the view that a failure to demonstrate that there is a consequence for this behaviour would undermine confidence in the financial services industry as a whole, would amount to a failure to protect users of financial services and a failure to prevent serious damage to the financial system by not upholding standards. By issuing this Prohibition Notice, I am clearly demonstrating to potential PCF applicants the absolute need to provide full and truthful information to the Central Bank.
- 5.6 In this context, I am taking a macro view of users of financial services and their protection and I am not limited to considering customers of the Firm and how the Firm has behaved vis-à-vis its customers since Mr Kearns' approval as Executive Director.
- 5.7 In considering whether it is necessary to issue a Prohibition Notice, I have considered the statement in the Investigation Report that some consumers of money lending services could be considered particularly vulnerable. I am satisfied that while the business of the Firm is that of a money lender, I am not applying any particular weight to that in this case. In my view, if an individual is found to have fallen short of the fitness and probity standards, the same protections should apply to all users of financial services.
- 5.8 I am satisfied that it is necessary to issue a Prohibition Notice in this case both to prevent serious damage to the financial system and for the protection of users of financial services within that system as it will have the effect of upholding standards within the financial system by demonstrating to the financial system, of which consumers are part, and to Mr Kearns that there is a consequence for those holding senior positions who fall short of the fitness and probity standards by providing false and/or misleading information to the Central Bank.

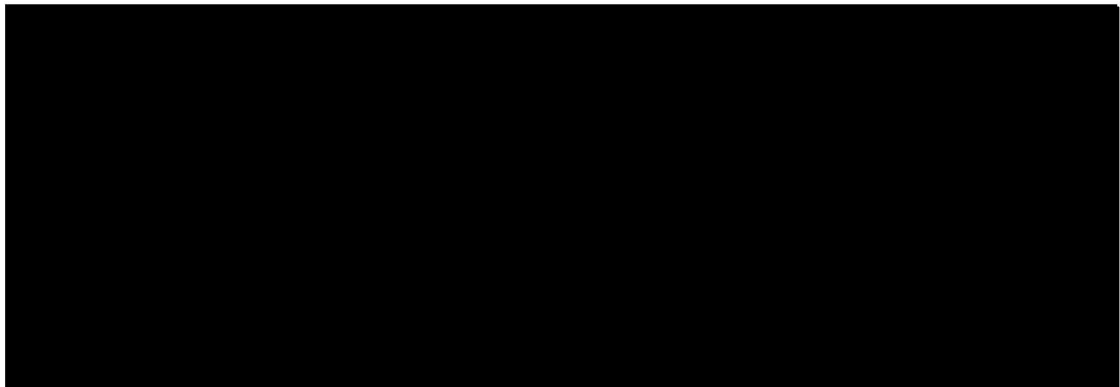
6 Mitigating Factors

- 6.1 In considering whether it is necessary to issue a Prohibition Notice in this case, I have also considered the following factors put forward by Mr Kearns' Solicitors on his behalf in mitigation including their submissions in response to the Regulation 13 Notice.
- 6.2 **Mr Kearns' explanation for his misguided subjective belief at the material time**
I have considered the submission made by Mr Kearns' Solicitors in the letter dated 30 October 2018 that he was not of the view that the employment issues at [REDACTED] to include



disciplinary proceedings, were of relevance to the IQ at the time he filled it in. I have also considered all of the detailed oral evidence that Mr Kearns gave on 21 January 2019 regarding the circumstances leading up to his filling in of the IQ and in subsequent interactions with the Central Bank. However, I am of the view that anyone applying for a PCF role is expected to know that disclosure of information of this type is required. I consider the fact that Mr Kearns did not make full disclosure (and indeed provided misleading information) in relation to his dismissal from [REDACTED] as very serious. Mr Kearns had an ongoing interaction with [REDACTED] in relation to his case over a substantial period and at no time disclosed to the Central Bank that he had been dismissed for gross misconduct, whether or not he believed this was justified. The financial system expected Mr Kearns to be truthful and honest irrespective of whatever else was going on in his life. The financial system also expects the Central Bank to uphold the fitness and probity standards and to take measures where people in controlled functions fall short of those standards.

6.3

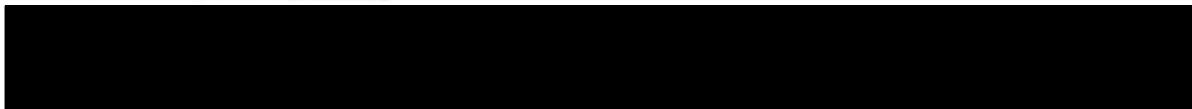


6.4 Cooperation

I have considered the submissions made that Mr Kearns' approach in co-operating with the Central Bank investigation "*must be of some mitigating value when compared to a contrasting, obstructive approach*". While I do acknowledge Mr Kearns' cooperation during the course of the investigation process, I am of the view that cooperation with the Central Bank is expected of a PCF and is a neutral factor. I would view an obstructive approach as an aggravating factor and proactive owning up might in appropriate circumstances attract credit, but the minimum expected of regulated entities is that they would cooperate with their regulator.

6.5 The absence of any evidence of prejudice accruing to any customers of the Firm

I have also noted Mr Kearns' submissions in response to the Investigation Report that there is no evidence of prejudice to customers of the Firm. I have also considered the submissions of





Mr Kearns' solicitors in response to the Regulation 13 Notice which take issue with my view that this is a neutral factor. Mr Kearns' Solicitors submit that the fact that during the four years and eleven months during which time Mr Kearns held a PCF function in the Firm that there has been just one complaint made by a customer against the Firm which was reported by the complainant to the Central Bank. According to the Mr Kearns' Solicitors' submission, Mr Kearns engaged with the Central Bank and the complainant and no action was taken by the Central Bank⁴. Mr Kearns' Solicitors submitted that it was illogical for Mr Kearns not to be extended any credit in mitigation in light of this fact. I do, however, view this to be a neutral factor in the circumstances of this particular case. It is a neutral factor because this is not a case about Mr Kearns causing damage to customers of the Firm, this is a case about Mr Kearns providing and accepting that he provided false and misleading information to the regulator in his application and perpetuating that over time. A Prohibition Notice is necessary to make clear to Mr Kearns the serious view taken of this behaviour. It is also necessary to demonstrate to the financial services industry as a whole that the provision of false and/or misleading information to the Central Bank is taken very seriously by the Central Bank and this will ensure that other applicants to the financial services industry are deterred from so doing. In deterring others, this will have the effect of protecting users of financial services and of preventing serious damage to the financial system by ensuring that standards are upheld. In those circumstances, Mr Kearns' behaviour towards customers of the Firm is a neutral factor.

6.6 Regret

I have considered the regret now shown by Mr Kearns in relation to his failure to provide relevant information required by the Central Bank. While I do acknowledge that Mr Kearns does appear to regret his actions, it took some time during this process for Mr Kearns to express regret. For a period of time during this process he believed that he had done nothing wrong. I do not believe this is a mitigating factor.

6.7 Isolated Nature of the incident

Mr Kearns' Solicitors submitted that there is nothing in the Investigation Report which evidences systemic dishonesty by him or by the Firm in any other respect in the general conduct of its business or its interactions with the Central Bank. I have considered this submission and that the issue occurred at the time of Mr Kearns' application, however Mr Kearns could have disclosed the information on number of other occasions to the Central Bank and did not.

6.8 In submissions made by Mr Kearns on 21 January 2019, the explanation given for the fact that Mr Kearns did not make disclosure when he had subsequent opportunities to do so was that there was no "catalyst" for Mr Kearns to bring the information to the Central Bank. Mr Kearns stated that in 2015 (during the licensing cycle following his authorisation in 2014), when he had to submit a fitness and probity questionnaire to the Central Bank, the case with the EAT was ongoing and Mr Kearns was of the view that nothing had changed that he felt he needed to

⁴ Mr Kearns does not accept the veracity of the complaint



disclose. The following year, in 2016, while the EAT determination had issued, it had been immediately appealed to Court. Mr Kearns said that in 2016, it would have been his intention to say he had received a determination from the EAT but because he was not happy with the outcome, he had appealed it and had not made any disclosure to the Bank. However, in early 2016, he received the letter from the Central Bank saying there may be an issue with his fitness and probity.

6.9 In my view, the provision of false and misleading information in the IQ and follow up correspondence was effectively compounded by the subsequent instances whereby Mr Kearns could have volunteered the correct information to the Central Bank. I do not accept that this is a factor in mitigation.

7 Consideration of Section 43(12)(a) of the 2010 Act

7.1 In accordance with Section 43(12)(a) of the 2010 Act, I am cognisant of the requirement that a Prohibition Notice should not continue for longer than is necessary to achieve the purposes of Part 3 of the 2010 Act and of the requirement that the Prohibition Notice should be proportionate in all the circumstances.

7.2 I have considered the recommendation of the Investigator that Mr Kearns should be prohibited indefinitely. However, in balancing the need to protect users of financial services and serious damage to the financial system with the rights of Mr Kearns, I am satisfied that indefinite prohibition is not necessary and proportionate in this case and that a lesser form of prohibition is more appropriate. Mr Kearns has himself accepted that there should be some level of consequence for not providing fulsome and honest information to the Central Bank⁵. I note that Mr Kearns did not make a submission in relation to the proposed duration of two years set out in the Regulation 13 Notice.

7.3 I am also having regard to issues addressed at paragraph 6 above in coming to the conclusions set out below. For the reasons set out below, I am satisfied that the Prohibition Notice should apply to all controlled functions (to include pre-approval controlled functions) in every regulated financial service provider for a period of two years.

7.4 The misconduct in this case is not at the same level as theft or misappropriation of funds. On that basis, I do not believe that an indefinite prohibition would be appropriate. In my consideration of an appropriate timeframe for prohibition, I have balanced the following factors:

⁵ Transcript of Meeting on 21 January 2019 Page 32 lines 25-29, Page 23 lines 19-29, Page 24 lines 1-12



- (i) demonstrating to Mr Kearns and the financial system that the provision of false and misleading information to the Central Bank has real consequence;
- (ii) that the period of prohibition is proportionate to the nature of the conduct in this case;
- (iii) a consideration of the impact of prohibition on Mr Kearns.

7.5 I consider that a period of two years is appropriate for the reason that this period is necessary to protect consumers and to uphold standards in the financial system and to demonstrate to the financial system and Mr Kearns that there are consequences to providing false and misleading information to the Central Bank thereby preventing the Central Bank from being able to carry out its functions, whether they be the gatekeeper role or on-going supervisory tasks. I am of the view that this conduct, while very serious, is not at the highest end of potential misconduct. The Central Bank in carrying out its functions must demonstrate proportionality and have regard to individual circumstances, which I am doing in this case.

7.6 I am satisfied that a two year Prohibition Notice balances the need to demonstrate to Mr Kearns and the financial system that the Central Bank views the misconduct in this case, namely the provision of false and misleading information to the Central Bank as very serious while at the same time providing Mr Kearns with a possibility of re-entering the industry in the future subject to all necessary approvals. Further, I would hope that a two year prohibition might provide Mr Kearns with a useful opportunity to reflect on his ethical obligations and to conduct further professional training in that area.

7.7 In considering why this Prohibition Notice should apply to all controlled functions (to include pre-approval controlled functions) in every financial service provider, I am of the view that it should apply to all controlled functions (to include pre-approval controlled functions) in every regulated financial service provider because probity applies to all controlled functions (to include pre-approval controlled functions).

7.8 In accordance with Section 43(7) of the 2010 Act, the terms of this Prohibition Notice take effect on the date of service on Mr Kearns or the Firm.

Signed: _____

Handwritten signature of Michael Hodson in blue ink.

Michael Hodson
Central Bank of Ireland