



AIB's €2.275 million fine raises questions about Ireland's laws – and the Central Bank's enforcement approach

Back in October as I was writing an article for this paper on why we should expect to see a slew of enforcement activity following a Central Bank fine of €1.4 million on KBC Bank Ireland, news broke of another million-plus fine against Capita Life and Pensions Services (Ireland) for €1.15 million.

In that article, I asked whether we would see a slew of enforcement actions being announced because 2016 was looking quite low based on previous years.

Perhaps I was tempting fate, but for whatever reason the six enforcement cases, including the two mentioned above, were joined by three more as predicted: Ulster Bank Ireland (€3.325 million), Springboard Mortgages (€4.5 million) and Bray credit union (€98,000).

To put this into some perspective, since 2012 the number of enforcement actions for what are coined “prescribed contraventions” has not increased despite a better resourced regulator but has, in fact, declined. Nor has any penalty exceeded the former ceiling of €5 million despite a change of law in 2013 which doubled the maximum monetary penalty to €10 million or 10 per cent of turnover for a regulated financial institution.

It is no surprise then that the Central Bank has hit the ground running in 2017 fining three companies thus far, including this week's fine against Allied Irish Banks for €2.275 million for money laundering and terrorist financing legislation failures. Although a multi-million euro fine, it's a lot less than the precedent money laundering fine handed

to Ulster Bank six months earlier for breaching the same law. To show that the big boys that the regulator is watching, it recently dished out a money laundering fine on Bray credit union too.



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A noticeable impact of the AIB fine is that it has re-ignited debate about the importance of both Ireland's money laundering laws and the enforcement activity of the Central Bank, not just here but in London, where I was asked this week by the chief compliance officer of a large financial house about what the fines are in terms of the regulator's policy.

I was also asked by the US head of finance of a large treasury group with operations in Ireland whether the Central Bank is ramping up money laundering enforcement activity. The three most common questions I have been asked this week are:

1. Was the fine too low?
2. Why is the regulator focusing on money laundering of late?
3. Why didn't criminal action arise for the failure to report "without delay" suspicious transactions to law enforcement?

It is important to remember that cases which are settled, such as the AIB one, are a voluntarily agreed outcome – both parties shake hands on the deal, so to speak. We never see the actual settlement agreement; instead we see a publicity statement agreed by the regulator and the firm.

Compared to the long and detailed enforcement notices of the British Financial Conduct Agency, the Central Bank's publicity statement on AIB is essentially just five pages. It could have done a lot more justice to the work of the enforcement team if it had provided better coverage of the facts as well as the analytical thinking and reasoning of the regulator in reaching its conclusions.

The regulator actively promotes settlements on its website, saying that it achieves an "early resolution of the matter" which "results in the avoidance of additional costs". However, as the Central Bank does not say when its enforcement investigation into AIB commenced (which many international regulators state in equivalent announcements), we cannot gauge how long the pointy part of the regulatory process took.

We do know that the Central Bank first suspected non-compliance with the money laundering law sometime during 2013. We don't know whether it was 2013 or later when "an investigation into the suspected breaches of the CJA 2010 commenced". Even taking

into account the separate, yet very important, politically exposed person finance procedure documentation failures, the overall facts of the AIB case are very straightforward.

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A fair inference to draw is that the enforcement investigation commenced in 2013, meaning that AIB was 'in enforcement' for more than three years, which seems quite excessive. If the correct inference is that the enforcement work commenced somewhere in 2014 or later, then the question is why did it take such a long time to assess the need to refer AIB to the specialist enforcement investigation team?

AIB didn't help its relationship with the Central Bank by failing to have adequate resources to deal with a backlog of investigations into what is known as potential suspicious activity 'alerts'. The knock-on effect was that there were delays in reporting more than 210 suspicious transactions to both Garda and Revenue Commissioners.

There is an implication in the case that had senior management received information about the backlog, that took 18 months to close and reached as high as 4,200 alerts more than a month old, AIB could have improved the rate of its external reporting.

Another area where the regulator was critical of AIB was its failure to identify and verify the identity of 573,000 persons who became customers prior to 1995, as well as not having procedures in place that should have helped ensure that such customers were vetted from the date when AIB became obliged to do so.

The eagle-eyed may have spotted two lines in the enforcement statement about banks not being able to apply a risk-based approach when performing due diligence where there is no identifying documentation or information in existence on the customers. I expect that this will cause quite some anxiety in senior managers at banks, insurers and investment managers.

The money laundering and terrorist financing obligations of Irish-regulated institutions have been supervisory and enforcement priorities for many years. The Central Bank has warned on a number of occasions that it will take enforcement action.

It labelled the Ulster Bank and AIB money laundering cases as demonstrating "unacceptable weaknesses", adding that banks being gatekeepers to the financial system must "have in place exemplary anti-money laundering systems and controls". In the AIB case, the regulator said that delays in reporting suspicious transactions have the potential to undermine the investigation of money-laundering and terrorist financing offences.

Turning back to our three common questions:

1. Yes, the fine looks very much on the light side and not calibrated to do Central Bank's view of the serious nature of the breaches and the extended period of time over which the breaches occurred.



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2. The breaches in the AIB and Ulster Bank cases are rudimentary requirements of laws which have been in existence for years, but which don't appear to have been given sufficient priority by the banks. Ireland is currently being evaluated by the Financial Action Task Force – an international anti-money laundering body – whose work would include assessing the effectiveness of the Central Bank's financial crime duties. It stands to reason that we should expect to see more enforcement cases against banks and other gatekeepers;

3. As to why there has been no announcement of any criminal investigation for the failure to report "without delay" suspicious transactions – well, we are left to ponder.

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