Judgments

Judgment Title: Director of Corporate Enforcement -v- Boner

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THE HIGH COURT

2005 No. 267 COS

IN THE MATTER OF THE NATIONAL IRISH BANK LIMITED AND
IN THE MATTER OF THE NATIONAL IRISH BANK FINANCIAL SERVICES LIMITED AND
IN THE MATTER OF THE COMPANIES ACT 1963 – 2003 AND
IN THE MATTER OF AN APPLICATION BY THE DIRECTOR OF CORPORATE ENFORCEMENT PURSUANT TO S. 160(2) OF THE COMPANIES ACT 1990

BETWEEN

THE DIRECTOR OF CORPORATE ENFORCEMENT

APPLICANT

AND

DERMOTT BONER

RESPONDENT

JUDGMENT delivered by Mr. Justice Roderick Murphy on the 26th day of May, 2008

1. The respondent, Mr. Boner, was appointed regional manager of National Irish Bank Limited (the Bank) with effect from the 1st June, 1988. He was given responsibility for nineteen branches. He reported to Mr. Brennan, General Manager, Retail Banking. On the 1st October, 1990, he was appointed Head of Retail reporting directly to the Chief Executive. In July 1991, he reported to Basil Noone, General Manager – Banking. Three regional managers, Mr. Curran, Mr. MacMenamin and Mr. O'Rourke reported to him. On 3rd May, 1993, he became Chief Manager – Retail, reporting to the newly appointed General Manager – Banking, Mr. Michael Keane. Mr. MacMenamin and Mr. Grogan reported to him.
In February, 1994, he was seconded to the College Green branch. From the beginning of January 1995, the retail business of the Bank was divided into three regions, one of which was headed by Mr. Boner. The regional managers reported to Mr. Keane. Mr. Boner retired in February 1996.
He had joined the Bank in 1962 when he was eighteen and had served as Branch Manager in Cork.

2. Pleadings

By notice of motion dated the 20th July, 2005, the Director of Corporate Enforcement (the Director) sought an order pursuant to s. 160(2) (b), (d) and (e) of the Companies Act 1990, declaring Mr. Boner to be disqualified from being appointed or acting as an auditor, Director, or other officer, liquidator, receiver or examiner or being in any way, whether directly or indirectly, concerned to taking part in the promotion, formation or management of any company or any society registered under the Industrial and Provident Societies Acts 1893 – 1978, for such period as the court might think fit.
The ground upon which the relief was sought by the findings made by inspectors appointed by the court to investigate the affairs of National Irish Bank Limited and National Financial Services Limited (the Bank) on the 30th March, 1998. The report was published by order of the court on 23rd July, 2004, and

made certain findings in relation to Mr. Boner in relation to a bogus non-resident accounts, special savings accounts, the sale of certain policies including CMI policies, improper charging of interest and improper charging of fees as detailed in the notice of motion.
In summary, the grounds upon which relief is sought are the findings of inspectors that over a prolonged period the Bank, *inter alia*:-

> Unlawfully and improperly opened and maintained bogus non-resident accounts on a widespread basis in the branch network which served to encourage evasion of revenue obligations by its customers, both from the funds deposited and on interest earned, and failed, contrary to the Finance Acts:
>
> > To account to the Revenue Commissioners for the DIRT properly payable on the interest paid or credited on bogus non-resident accounts and on those non-resident accounts which the Bank did not hold or properly complete declaration in a form prescribed or authorised by the Revenue Commissioners;
> > To deduct the DIRT at the standard rate from interest paid or credited on accounts designated as special savings accounts for which the Bank did not hold properly completed declarations in a form prescribed or authorised by the Revenue Commissioners or why there had been a breach of the statutory requirements relating to withdrawals, despite the fact that senior management were aware or ought to have been aware of these practices.
>
> Promoted to its customers CMI policies as a secure investment for funds which had not been declared to the Revenue Commissioners, thereby engaging in a practice which served to facilitate the evasion of revenue obligations by its customers, and,
> Improperly charged its customers interest and fees and failed to return any of these funds prior to the commencement of the Inspectors' investigation, despite senior management being regularly forewarned by internal audit reports of these practices.

Insofar as Mr. Boner is concerned, the pleadings state that it is evidence from the Inspectors' report that:-

> Mr. Boner was aware of various and proper practices which prevailed in the Bank;
> Mr. Boner was responsible (with others) for the continuation of these practices, for the failure to address the Bank's retrospective liabilities arising from these improper practices and for the Bank's associated legal and professional failure.

In all the circumstances, it is pleaded that it is clear that by his actions and omissions, Mr. Boner, while acting as an officer of the Bank over a period of almost eight years –

> Breached his duty as such an officer by failing to ensure that the company's legal requirements were complied with and in failing to carry out his common law duties with due care, skill and diligence, and
> engaged in conduct which makes him unfit to be concerned in the management of a company.

3. <u>Evidence of Director</u>
3.1 Mr. O'Rafferty, an officer of the Director of Corporate Enforcement, referred to the appointment of the Inspectors and to a copy of their report. He cited to the functions and powers set out in s. 12 of the Company Law Enforcement Act 2001, and deposed to the role of the director being to encourage compliance with the Companies Act and to bring to account those who disregard the law. The director was satisfied from the conclusions of the Inspectors' Report that the findings are improper practices at the Bank raised serious questions about compliance by Mr. Boner with whose duties and obligations under company law.
3.2 Mr. O'Rafferty averred that during the period from June 1998 to February 1996, Mr. Boner was a

very senior executive in National Irish Bank. The Director was of the opinion that company officers had a collective responsibility to ensure that the company complies with its legal obligations in all material respects. Mr. Boner, in discharging his management role, and in particular, responsibility to establish and maintain an appropriate corporate ethos and communicate and entrench its values throughout the company. An institution licensed by the Central Bank of Ireland was expected to undertake its business in a legal, ethical and professional manner as it occupied a privilege position of trust in being permitted to take customers deposits and manage them on their behalf and in their interest. Mr. Boner acted in breach of duty and failed to uphold and implement proper standards of corporate and banking behaviour in the Bank for the duration of his tenure.

3.3 Throughout the period when Mr. Boner held the position of regional manager (or later a superior position), from June 1988 to 19th January, 1996, Mr. Boner was made aware through internal audit reports circulated to him of the deficiencies or irregularities which existed in the operation of DIRT exempt non-resident accounts at branches. The majority of such reports referred to the failure of branches to hold properly completed declarations where all accounts classified as DIRT exempt non-resident accounts.

Certain audit reports copied to Mr. Boner referred to instances where lending to resident customers were secured by letters of lien over deposit accounts with non-resident status. Reports copied to him also referred to instances where the residential status stated on non-resident declarations were at variance with other branch records.

In the opinion of the inspectors, the audit reports pointed to the likelihood that the non-resident accounts referred to therein were, in fact, bogus. In addition, in the opinion of the Inspectors, reported documentary non-compliance was on such a scale as to constitute a further indication that a substantial proportion of the non-resident accounts could be bogus.

Mr. Boner attended a meeting of senior management held on the 9th February, 1995, to discuss the results of a DIRT theme audit report and the DIRT compliance issues arising therefrom.

In his evidence when interviewed by the Inspectors, Mr. Boner acknowledged that he had suspicions that bogus non-resident accounts existed in the branch network. The Inspectors believe that the inevitable inference from the above is that Mr. Boner was not only aware of the failure of the branches to hold properly completed non-resident account declarations but ought also to have been aware of the widespread existence of the bogus non-resident accounts in the branch network.

He had a responsibility in respect of branches in his region to ensure that all accounts classified as DIRT exempt non-resident accounts were correctly classified as such. In this regard, particularly in the light of the deficiencies disclosed in the audit reports circulated to him, Mr. Boner had a responsibility to make reasonable enquiries to the branches for which he was responsible to satisfy himself that all such account holders were genuinely non-resident and that properly completed declarations were in place for all accounts so classified. He had a responsibility to ensure that DIRT at the standard rate was deducted from interest paid or credited where the conditions of the operation of accounts as DIRT exempt non-resident accounts were breached.

Mr. Boner failed to discharge these responsibilities.

3.4 In the area of special savings accounts, Mr. Boner had been made aware through the circulation of branch internal audit reports that widespread documentary non-compliance in the area was also dealt with in the meeting of 9th February, 1995, which he attended.

The Inspectors believe that Mr. Boner was aware that DIRT at the standard rate was not being deducted as it ought to have been from interest paid or credited where the conditions of the operation of the SSA accounts were being breached. He had the responsibility to ensure that all accounts classified as SSAs were correctly classified and had a responsibility to make reasonable enquiry in the branches for which he was responsible to satisfy himself that properly completed declarations were in place for all such accounts. He had a responsibility to ensure that DIRT at the standard rate was deducted from interest paid where the conditions were breached. He failed to discharge these responsibilities.

3.5 The third area arose from the findings of the Inspectors in relation to the Bank's sale of CMI and other policies. Mr. Boner, during his period as head of retail, was aware that funds coming from deposits in the branches, when invested in CMI to the FASD Department of the Bank, was reinvested by CMI on behalf of the Bank. He was aware, from his knowledge of the retail sector of the Bank, and in particular from his knowledge of an investment made in CMI in 1993 by a customer of the Bank, that an investment with approximately £600,000 in CMI had not been declared to the Revenue Commissioners and that FASD were promoting CMI policies as a secure investment for funds which had not been so declared. He shared responsibility for this practice and for the Bank's failure to take steps to ensure that the promotion of CMI policies in this manner was stopped.

3.6 With respect to the practice of improper charging of interest, Mr. Boner was an addressee of a memorandum of Mr. Brennan dated 5th June, 1990, and also received a copy of the internal audit report on the Carndonagh branch for August 1990. For the six years prior to being appointed Regional Manager, Mr. Boner had been Manager of the Bank's Cork branch and had considered the practice of interest loading on customers accounts as acceptable in order to remunerate the Bank for management time. Mr. O'Rafferty believed that his actions in respect to Mr. Brennan's memorandum of the 5th of

June, 1990, was appropriate in that he gave instructions that the practice of loading interest should cease. However, he did not revert to Mr. Brennan as requested by him to report on how widespread the problem was. It remained unclear whether he took sufficient steps to establish this. He shared responsibility for the failure to refund customers whose interest charges had been loaded. No instruction issued to the branches. The focus of attention was in the future only.
In the area of practice of improper charging of fees, Mr. Boner knew, or ought to have known, that the Bank procedures manual did not contain any guidance on the nature of the work or services to customers which should give rise to an administration or management time charge. He was aware that there was not at any time any system in operation for recording branch management administration time which was charged to customers.
He was on the circulation list for internal audit reports for branches under his supervision which expressed dissatisfaction with the lack of explanation for fee increase recorded in the fees to be applied report. He was even also aware from internal audit reports that the failure of the Consumer Action Pad introduced by him in 1992 and must bear some of the responsibility for the failure to put in place an appropriate system for recording management and administration time to be charged to customers.
3.7 Mr. O'Rafferty concluded that it was evident from the Inspectors' Report that Mr. Boner was aware of the improper practices which prevailed within the Bank and was responsible, with others, for the continuation of these practices, for the failure to address the Bank retrospective liabilities arising from these improper practices and for the Bank associated legal and professional failures. In the circumstances, it was clear that by his actions and admissions, Mr. Boner, while acting as an officer of the Bank over a period eight years breached his duty as an officer to ensure that the company's legal requirements were complied with, failed to carry out his common law duties with due care, skill and diligence and engaged in conduct which makes him unfit to be concerned in the management of a company.
Mr. O'Rafferty referred to Mr. Boner's representations dated 22nd April, 2005, made in response to the Director's notice of 15th March, 2005.
Mr. Boner denied that he was a member of senior management. He claimed that he had never any responsibility for corporate governance or compliance issues within the Bank. He said he always took steps as were within in his power to ensure that any such irregularities as were bought to his attention were eliminated.
Mr. O'Rafferty says that the Inspectors' Report records, *inter alia*, that he had suspicion regarding bogus non-resident accounts, that he had responsibility to make reasonable enquiries, that he was aware of widespread documentary non-compliance in the area of the SSAs, that he had responsibility to make reasonable enquiries in relation thereto, that he was aware that FASD were promoting CMI products as a secure investment for funds which had not been declared to the Revenue Commissioners and shared responsibility for the Bank's failure to take steps to ensure that the promotion of these policies were stopped.
Mr. O'Rafferty says that Mr. Boner acted properly in instructing that the practice of interest loading cease but failed to revert, as requested by Mr. Brennan, with a report of how widespread the practice was.
Mr. O'Rafferty avers that he was aware of the circulation of branch audit reports of a constant theme of dissatisfaction with a lack of explanation for fee increases and a failure of the Customer Action Pad. He must, accordingly, bear some of the responsibilities for the failure to put in place an appropriate system for recording time to be charged to customers.

4. Evidence of Mr. Boner

4.1 General

Mr. Boner disputed the conclusions of the Inspectors' Report insofar as they made adverse findings against him. He did not accept that his conduct made him unfit to be concerned in the management of the company. He did not accept that he had been guilty of any breach of duty. He believed that he carried out his duties as an employee of NIB properly and lawfully.
He had said he had been advised that such evidence as was before the Inspectors in relation to his conduct did not warrant the making of the disqualification order.
He did not, at the time of the swearing of the affidavit, have a copy of any internal audit documentation which he required including all internal audit reports from July 1988 to January 1996, management letters from the external auditors to members of the board, copies of meetings, copies of internal audit reports from the Cork branch of 1982 to 1988, all suspense accounts, internal adjustment pads, responses from regional managers and branch managers, responses to regional managers.
He also required copies of the minutes of the regional managers' meetings of the same period, of Central Bank approval for fee increase, memos regarding the signing off of circulars being restricted to general managers or the Chief Executive, copies of regional managers' jobs specifications and copies of the transcript of all interviews conducted by the Inspectors with all branch managers in the course of their investigations.
In relation to the last item of documentation required, Mr. Boner suspected that some of the Inspectors' findings, as related to his personal responsibility, may have been based on evidence given to them

during the interviews with branch managers.
His solicitors sought a range of documentation some of which he believed was retained by PriceWaterhouse Coopers pursuant to an order of the court dated 23rd July, 2004.
His affidavit was a preliminary response and a grounding affidavit for an order for documentation to be furnished to him.
The Bank's solicitors had informed him that working papers for a branch audit were destroyed once papers for a subsequent audit were produced. He did not believe that this was correct. Further information was located by the Bank's solicitors. Five lever arch files containing sixty categories of documents, fifty eight of which consisted of internal audit documents, were received. It was unclear whether the documentation was available to the Inspectors. He was concerned that certain relevant documents were not available to or accessed by the Inspectors. Some of these might not now be available because of the Bank's waste management policy or because they could not be located.
4.2 He did not accept his part of senior management. He referred to his positions and title during the period. He was appointed head of retail reporting directly to Mr. Jim Lacy, Chief Executive, and reporting on certain specified matters to Mr. Frank Brennan, General Manager, Administration. The matters on which he reported to Mr. Brennan related to compliance. From May 1991, he reported to the General Manager, Banking and three Regional Managers reported to him. He was appointed Chief Manager of Retail in May 1993, reporting to the new General of Banking. Two Regional Managers reported to him. He was seconded to the College Green branch in February 1994 until April 1995, where he was charged specifically with improving the lending book. Responsibility for that region during that time rested with the Regional Managers and with the general manager Banking. He was subsequently appointed Regional Manager, East, until his retirement.
Whatever job title he held, his responsibility did not amount to any more than that of a Regional Manager reporting initially to the General Manager, Banking, then to the Chief Executive for a period of approximately five to six months and thereafter reporting to the General Manager, Bank and General Manager, Administration. There were no Regional Managers on the Executive Committee. He was never a member of that committee.
His role at all times related to sales for all of the Bank's products and coaching of Bank managers and staff in sales performance achievement. The rationale for this by senior management was to ensure a total focus on sales and service and lending controls with compliance issued as being dealt with by internal audit, the General Manager, Administration, the General Manager, Banking and the Chief Executive. There was only one noticeable exception and that was the responsibility to follow up audit irregularities. Not only was he not a member of the Executive Committee nor of the Audit Committee nor a Director of the Bank and he was never awarded an option for the purchase of shares which was available to senior management only.
He referred to a document entitled 'Management Survey January 1994' and the response from Mr. Lacy, Chief Executive, dated 25th January, 1994, regarding a clear divide between regional managers and senior managers. Whilst Mr. Lacy said he was disappointed that he and the regional area management did not regard themselves as part of senior management, this was the position. Mr. Lacy did not take any action to change that situation.
He did not receive a caution, warning or threat of disciplinary action as a result of any issue involving compliance. He believed that the reason for this was that, with the exception of his role in following up internal audit reports, it was not within his specific area of responsibility.

4.3 <u>Bogus non-residents accounts</u>
Mr. Boner disputed the findings of the Inspectors and said that he carried out his responsibilities arising from his involvement in the internal audit procedure in the proper manner. He explained the internal audit procedure and the role of the regional managers in flowing up irregularities or deficiencies and the amount of care which he took.
He believed that in his role as regional manager he raised all deficiencies and irregularities in the branch audit report follow-up. He only signed off on the same when he had clear confirmation that the assurance from the branch managers that all matters had been rectified. He gave instances of unsatisfactory audits. He was anxious to obtain copies of documentation relating to his involvement. He believed that the documentation made available constituted only a small fraction of relevant documents which were originally in existence and that this documentation was not available to the Inspectors either. Such documentation as was available bore our his assertion that he acted properly and he referred to twenty eight copies of internal audit documentation, some of which were stamped "copy document produced with the use of the Company Act Inspector". None of the documents had been taken to end the relevant exhibit were so stamped. The Inspectors made no reference to the documentation "following up" on an internal audit. He referred to a specific memorandum dated 5th January, 1993, from him as Head of Retail to Ken Curran, Regional Manager, following up on a concern regarding the mismatch between residential status and exact names of borrowers. That document was not included in any documentation disclosed by the Banks solicitors. He had instructed his solicitors to seek clarification and whether all documents which had been furnished were available to the Inspectors and why the documentation referred to in relation to Castlebar was not included in the

documents which were disclosed. At the interview with the Inspectors, he made it clear to them the exact procedures that were in place by way of follow up on the audits and the efforts that were made to ensure that irregularities were addressed. He referred to copies of the transcripts. He was surprised that various problems of different kinds presented themselves. At this stage, Mr. Brennan had taken over the problem and Mr. Boner was involved in the College Green branch until April, 1995. He was not, accordingly, in a position to address the problems even if he had the power to do so. While the court has some reservations about the matter for audit and for more senior management, it accepts the reality of limitation of function in a hierarchical management structure. The position after the DIRT theme audit report and the meeting of 7th February, 1995, may not have been as critical in Mr. Boner's case, given that his evidence of non-involvement in the theme audit and his duties in College Green until April, 1995 is significant.

Reference was made to the audit reports in 1994 in relation to Baggot Street, Malahide, Blanchardstown, College Green, Ennis and Killarney. Mr. Boner accepted that by the end of 1993, he was aware of persistent problems in relation to non-resident accounts. He disagreed that there was an onus on him by virtue of his position, job description and obligations of anyone working in a bank to do something about the situation as Mr. Brennan had taken ownership of this matter following memos sent by both of them. He was very happy that clarification would have solved the problem. He said he was not absolving himself from all responsibility. He thought, and was optimistic, that Mr. Brennan's initiative would have improved matters. Mr. Brennan attended all meetings with the Central Bank and with the Revenue and was the driving force with regard to non-resident accounts. When he had arranged for audits in Blanchardstown, he had no recollection of saying to anyone in senior management that there was a serious systemic problem with potential tax evasion. The steps he took were to ask regional managers to revert to him to confirm that the branches had responded to them.

Although the minutes said that he was in attendance at the meeting of 7th February, 1995, in relation to the DIRT theme audit report, he could not remember anything about it other than appreciate that the matter was serious. Efforts had been made by him and senior management to eliminate bogus non-resident accounts. He had no discussion with senior officials. He did not recall Mr. Brennan expressing concern about the elimination of tax evasion. There was concern about documentary compliance regarding non-residence. Mr. Boner said that those at the meeting were given a certain allocation of duties to perform. There was a minimum input by the regional managers. The rollout of the sales training programme meant that his input was put on hold. Had he been given authority he would have proceeded to take steps to have the problem eliminated.

4.4 <u>Special Savings Accounts</u>

He had expressed a concern regarding the branches finding it difficult to enforce DIRT rules with regard to keeping business. This concern also related to Special Savings Accounts. He agreed that it was not just a documentary problem, that there was a problem with actually complying with requirements. There was general confusion regarding DIRT for non-residents. He agreed that the findings of the DIRT theme audit was that notice requirements were not being complied with in branches who were having difficulties enforcing the notice requirements and keeping business. Contrary to what appeared in his affidavit, he said he had no knowledge at the time that there were actually breaches of the Special Savings Accounts. The difficulty was eased somewhat with the Money Laundering Act. Mr. Boner said that, when he reviewed the 25, 8 and 9 audit reports for 1992, 1993 and 1994, which referred to DIRT difficulties in different branches, he accepted that there were widespread difficulties and problems. He said he was not aware of widespread abuses at the time.

Mr. Boner's evidence was that he was not aware of irregularities at the time. However, in reviewing the 25, 8 and 9 audit reports for 1992, 1993 and 1994, which referred to DIRT difficulties in separate branches, he acknowledged that there were widespread difficulties and problems. He was of the view that a person occupying the position of Head of Retail had responsibility to maintain an overview in relation to reference to persistent problems within the branches over those years and should have also been acutely alert to the findings of the DIRT theme audit.

A number of branch audits from 1993 onwards referred to problems with Special Savings Accounts showing weaknesses, where declarations were not cited for a significant number of accounts or where incorrect forms were used or were not fully completed. He agreed that this had become important. Though he was in College Green in 1994, he was still receiving the audit reports but did not have responsibility for following them up at that stage as he had been given instructions at the time to concentrate on the book at College Green. The regional manager was to take charge of the region. He agreed that he still had responsibility for the area. In relation to one of the branches, he had cautioned the manager, who had opened an account for "tax reasons". He would have received confirmation that the follow-up to the audits were completed. He believed that the word 'monitor' used in his job description related to business matters. As far as his job specification was concerned, he said he had no specific responsibility for compliance apart from the follow-up procedures of audits which were similar to regional managers. Compliance in general was handled by the internal audit department. If irregularities came to his attention like fraud or defaultation, he would certainly have raised the matter with the audit department. He said it was not his responsibility to make sure that there were no

irregularities apart from the audit reports.

4.5 CMI Products

Mr. Boner in taking issue with the findings of the Inspectors said that he was not aware that money undisclosed to the Revenue Commissioners were being targeted for investment by CMI or that assurances were given to the effect that such investments would be confidential from the Revenue Commissioners. In hindsight, he conceded that this would appear to have been the case. He was not so aware and he had no involvement in the practice or in the sale of those products. He recalled attending a meeting on the launch of the products and was given clear assurances as to the legitimacy and approval of this product by the regulatory authority.

He was informed by the manager of Mullingar branch on the 28th April, 1994, of a difficulty which had arisen in relation to a customer who had invested in CMI and wished to exit same without incurring penalties. In addressing the issue, he entered into correspondence and discussions with the manager and with Mr. Keane, General Manager, Banking, and the customer. From a reading of the branch manager's correspondence, the customer had not previously advised the Bank of the status of the money. The manager had asked him for guidance and support. In his correspondence to Michael Keane, he strongly expressed criticism of the product based on the un-cooperative attitude of CMI, the product's inflexibility and the poor return to customers. His criticism provoked a severe written rebuke from the head of FASD, Mr. Michael D'Arcy, on 19th August, two days after his memorandum to Mr. Keane.

His letter to Mr. Keane had referred to lessons to be learned from "this debacle" and continued as follows:-

> "That a respectable financial institution such as ourselves should entrust high quality customers to an external investment company which is not prepared to show any worthwhile degree of flexibility is not prudent business practice. If CMI, for example, had invested the funds in equities or gilts, then their reluctance to a large refund would be quite understandable. As it was, the monies were placed on deposit account in NIB. With the best will in the world, and notwithstanding the fact that terms and conditions of such investments can be painstakingly spelt out to any customer wishing to invest, if the necessity arises to break the deposit term, then they will, in all probability, seek a refund using the value of their businesses as leverage to extract the best possible deal from the Bank. I know that we have a sum in the order of £30 million in investments with CMI and I can foresee similar difficulties as this one in the years ahead."

Mr. D'Arcy, in his memorandum to Michael Keane, took great exception to many of the side comments contained in Mr. Boner's note and the whole tone of the note. He said:-

> "In particular, the general comments relating to CMI in the last paragraph are totally unwarranted and will not come to pass."

He agreed that, as he said to the Inspectors, he had directed the branches to support the Financial Services Division and directed the branches to refer their six best customers to that division as was instructed by senior management. He attended the launch of the CMI product and assurances were given that it was approved by the Regulator. The only aspect of the *bona fide* of the produce was whether it complied with exchange control. It possibly came to his attention at a later stage that a grant of probate was not necessary to pass on the funds in the event of death. He was involved with one customer who had a problem exiting from CMI in 1994 to avail of the tax amnesty. He believed the problem to be a simple one of commission. He said he found out a lot about the CMI product and about the charges involved. He did not know it was a confidential product. He did not think too highly of it. It did not occur to him that the whole arrangement may have actually been in place to facilitate people who wished to conceal money from the Revenue Commissioners. Had it occurred to him at the time, he would certainly not have condoned the Bank facilitating it. The monies in CMI were quite legitimate as far as he was concerned. Only later was it confirmed to him that the customer had not disclosed the money to the Revenue.

On 17th August, 1994, Mr. Boner, as Chief Manager, Retail, in College Green, wrote to Michael Keane, General Manager, Banking, regarding the matter and said that he could foresee similar difficulties as this one in the years ahead. He said in evidence to the court that those difficulties related to customers actually wanting to break the terms of their contract with CMI and putting pressure on the branches and the Bank to refund them. The memo concluded that there must be lessons to be learned from the debacle.

4.6 Improper charging of fees

Mr. Boner then dealt with issue of management charges calculated when he was dealing with customers in Cork. He had not realised that the Inspectors were going to question him about the Cork branch as the Inspectors' brief was to look at the affairs of the Bank from 1988 to 1998. He agreed that the branch customers were charged fees that they may never have known they were being charged, as part of interest. He accepted that it should have been charged as fees and was wrong as there was no scientific method in place and no procedure. He took it as his problem that his was the only branch that had so many difficulties. When he became Regional Manager, the issue of fees charged was now within his responsibility. In 1990, the auditors made a comment with regard to Carndonagh that the charges were not legitimate. No adverse comments had been made in relation to Cork. Mr. Boner said that he wrote to the manager involved telling him to stop the practice and that was confirmed to him. He wrote to all the managers in his region and instructed them to cease the practice but he did not make any arrangements to ensure that the branches checked out the amounts that they had improperly loaded interest onto to make sure that the charges had been properly incurred. He agreed that that should have been done.

A number of other instances in other branches were regarded by him as very serious matters and he wrote to say that the practice had to be discontinued. He could not say whether the customers were compensated. He had no authority to refund interest on those cases. He did not remember any occasion where he took steps to have customers compensated. This related to customers who were issuing cheques without authority. He had asked that they be advised that they were being charged. He accepted that he had a responsibility as Head of Retail in relation to fees being charged and to ensure that there was a proper method in place. He agreed that, irrespective of the Consumer Credit Act, customers should be advised before they incurred fees. He did not say whose decision it was whether accounts were troublesome or time-consuming, other than to say that a return above the norm was given by staff would fall into that category. He had written to Mr. McCormack of the Central Bank in May, 1991, seeking approval for cheque and Euro cheque cards and fees for services provided to customers which would be advised to customers prior to their implementation.

For competitive reasons, the guidelines were not specifically advised to customers but he certainly would expect managers to tell their customers in any subsequent challenge to fees. He said that the Bank had no legal basis for doing so at the time. Charges were then advised to customers in the national press. He was aware that the Customer Action Pad was viewed by managers as being difficult to use and was not used, although he believed that it was not unworkable. Branches found difficulty because of shortness of staff. It took time for a new procedure to be put into place. He was not aware of the wide range of neglect of such procedure. He did not have overall responsibility for the network.

4.7 Improper charging of interest

Mr. Boner sought to explain the interest accruing on customers' cheques where there was inadequate credit funds or lack of sufficient overdraft facilities. The Bank, in common with other Banks, did not want to "refer to drawer" and consequently introduced an internal Bank account known as an "unpaid suspense account" to hold cheques that could not be paid by reason of inadequate funds. In the absence of a computerised system to capture interest, the Bank had to suffer the loss of the interest. The branches were instructed to use the account as infrequently as possible.

Mr. Boner referred to criticism in the audit reports for certain branches including the Cork branch for which he was responsible at the time. Comments were made to the effect that he was making excessive use of the unpaid suspense account. In 1985 or 1986, the then Chief Executive stated that there was an onus on him to recover such losses by way of a management time charge. He arranged for the branch account personnel to record the amount of interest losses to the suspension of cheques. The interest adjustment pads in relation thereto were requested from the Bank's solicitors but were not available. Without sight of these or the branch audit reports for the period he was at a distinct disadvantage in defending his actions. To the best of his knowledge, the Bank's internal Inspectors had not made any comments in relation thereto.

He confirmed that he did receive a communication from Frank Brennan, General Manager, around 1990, and immediately advised the branches reporting to him not to engage in or to discontinue the practice forthwith. That was acknowledged by the Inspectors. When questioned by the Inspectors regarding the memo from Mr. Brennan, he said he could not recall replying to it but believed that the contents were discussed at a meeting in Head Office at which Mr. Brennan and Mr. Curran and himself were present. He did not accept that branch regional managers were expected to remit the refunds of interest. To the best of his recollection no directive was issued by senior management in relation thereto.

4.8 Authority and compliance

Mr. Boner agreed that he got information through the audit reports and had the power and authority to take action or tell others what action had to be taken. He knew that regular internal audit reports were

identifying improper use of the non-resident facility. In November, 1992, he wrote to branches to say that the external auditor was very concerned. He agreed that this was followed up with a request for certification. While that had been a year later, there had been regular contact between himself and the regional managers in the meantime. However, the problem was not resolved. He said he followed up and took corrective action when it was necessary but did not have overall responsibility for the policy and procedures of the Bank which lay with senior management and the Executive Committee. He agreed that it took two years before any overall systemic review of the problem was undertaken. Mr. Brennan, General Manager, Retail Banking, took it upon himself a year later to introduce certification.
Mr. Boner said that he had very limited authority. The policy of the Bank was dictated by the Executive Committee, as could be seen from the theme audit. He was Regional Manager at the time of the meeting of 7th February, 1995, but did not know why he was invited to the review meeting as the responsibilities given to him were of a minimal nature. He was a middle management person and was given a directive to liaise with the General Manager and highlight the difficulties and to have new systems implemented.
He had never received any training in regulatory or compliance matters, nor was it suggested that there was a specific matter identified in any audit report which he had failed to follow up. He had never been disciplined in any area within the Bank, nor did anybody suggest that he ought to have been doing more in respect of any deficiencies.
Mr. Boner believed that the documentation as was available bore out his assertion that he acted properly in relation to deficiencies in non-resident account records which were brought to his attention. He referred to copies of internal
audit documentation made available by the solicitors for the Bank on 22nd March, 2006. In relation to the audit report for Blanchardstown dated May, 1993, details were supplied in relation to non-resident accounts being at variance with other bank records. By letter of 5th October, 1993, he requested from the branch confirmation that this issue had been addressed and received a reply to this on 17th November, 1993, where it was stated:

> "All are genuine; some forms had been incorrectly filed and now located; new forms have been sent out and most are back now; branch has completed a review."

By letter dated 17th November, 1993, the branch manager assured him that:-

> "To the best of my knowledge forms are held for all non-resident accounts at branch."

It was submitted on his behalf that a similar pattern was evident from the documentation relevant to the Limerick branch. He accepted that this was not sufficient to eradicate the existence of bogus non-resident accounts within the branch network but submitted that the fault for this could not be laid at his door, particularly when his responsibilities in this regard were limited and where there were other organs or persons within the Bank who had overall responsibility for this issue.

5. Decision of the Court

5.1 The Director seeks the disqualification order against Mr. Boner on the basis of s. 160(2) (b), (d) and (e) of the Companies Act, 1990. The first basis arises where the court is satisfied that a person has been guilty while an officer, among other roles, of any breach of his duty.
The second arises where the court is satisfied that the conduct of any person as, *inter alia*, officer, makes him unfit to be concerned in the management of a company. The third basis is where the court is satisfied in consequence of a report of inspectors appointed by the court (or the Minister) under the Companies Act, the conduct of any person that makes him unfit to be concerned in the management of a company.
The present proceedings accordingly arise in respect of breach of duty or conduct making Mr. Boner unfit to be concerned in the management of a company.
While the first and second bases (b) and (d) refer to an officer, the third (e) refers to "any person". "Officer" is defined in the Companies Act, 1963, in relation to a body corporate as including a director or secretary and, accordingly, leaves the category open. Section 159 of the Companies Act, 1990 defines "officer" as including any director, shadow director or secretary of the company. The category of persons who constitute officers is, accordingly, not exhaustive.
In *Director of Corporate Enforcement v. D'Arcy,* the issue was not determined.
There is English authority for the proposition that a person in a senior management position is an officer. In *Re a Company* [1980] Ch. 138, the Court of Appeal considered the meaning of the word "officer" in relation to the inspection of books or papers for the purpose of investigating or obtaining evidence for a criminal offence committed by a person "while an officer of the company … in

connection with the management of the company's affairs" (s. 441 of the Companies Act 1948). *R. v. Boal* [1992] Q.B. 591 made analogous references to the term "manager". It is clear that the term "management", as employed in the Articles of Association (see article 80 of table A: "The business of the company shall be managed by the directors …".
In *Re a Company,* the Court of Appeal noted that the section was dealing with crime and not with the contextual framework of the Act and that the words "officer of a company" included a director, manager or secretary by virtue of s. 455. The court held that the words were not to be narrowly construed and included anyone performing a superior administrative function in the company. Denning M.R. held, at 143, that:

> "The word 'officer' in relation to a body corporate is defined in section 455 of the Act. Not really 'defined': for it only 'includes a director, manager or secretary'. Its meaning may depend on the context in which it is used and in this case on the whole phase '… while an officer of a company, committed an offence in connection with the management of the company's affairs …'. The officer here referred to is a person in a managerial situation in regard to the company's affairs. I would not restrict these words too closely. The general object of the Act is to enable the important officers of the State to get at the books of the company where there has been a fraud or wrongdoing. It seems to me that whenever anyone in a superior position in a company encourages, directs or acquiesces in defrauding creditors, customers, shareholders or the like, then there is an offence being committed by an officer of the company in connection with the company's affairs."

While this decision of the English Court of Appeal refers to criminal proceedings, there seems to be no logical reason why it should be restricted and not include investigations by inspectors appointed by the court. It may be somewhat tautological to say that the management of the company is entrusted to the directors when, in reality there are those in a superior position in a company who may encourage, direct or acquiesce in defrauding creditors, customers, shareholders or the like. The court has to recognise the reality of the power and responsibility of senior management in large public or private companies who have particular expertise and authority, as distinct from the division between directors of companies formed under the Joint Stock Companies Act in the 19th Century who employed administrators to implement their bidding.
This begs the question whether Mr. Boner was in such a superior position. There is no evidence that he encouraged or directed in the defrauding of creditors, customers, shareholders or the like. The question arises whether he was in a superior position and acquiesced in such practices and, as such, was in breach of his duty or conducted himself in a way that made him unfit to be concerned in the management of a company.
Indeed, in relation to the conduct, it is clear that the court need not make any finding as to whether he was an officer or not as the sub-paragraph refers to "any person".
Shaw L.J., giving the second judgment of the Court of Appeal, held, at 144, that:

> "the expression "manager" should not be too narrowly construed. It should not be equated with a managing or other director or a general manager. As I see it, any person who in the affairs of the company exercises a supervisory control which reflects the general policy of the company for the time being or which is related to the general administration of the company, is in the sphere of management. He need not be a member of the board of directors. He need not be subject to specific instructions from the board. If he fulfils a function which touches the general administration of the company, that is sufficient in my view to constitute him an "officer" or "manager" of the company for the purposes of s. 441 of the Act."

Templeman L.J., agreeing with Denning M.R. and Shaw L.J., held, at 145, that:

> "So far as the definition of 'manager' is concerned, I agree that the functions performed by the gentleman named in the present application are quite sufficient to constitute him a manager; and in any event on the evidence which we have seen it seems to me that there is reasonable cause at least to fear and believe that some of his activities must have been known to the directors."

Of course, the section does not refer to “manager” but to “officer” in connection with the management of a company’s affairs. Moreover, Templeman L.J. went further in saying that there was reasonable cause to believe that some of the officer’s activities must have been known to the directors.
What is perhaps significant is that, even if it were known to the directors, the definition would include the officer and not be restricted to the director or directors.
It seems to me that, notwithstanding that the Court of Appeal decision relates to a criminal procedure can be extended to an application for disqualification.
It is clear, in any event, that Mr. Boner is a person in respect of which sub-paragraph (e) applies.
In relation to the Inspectors’ report, s. 22 of the 1990 Act, provides that such report shall be admissible in any civil proceedings as evidence of the facts set out therein without further proof unless the contrary is shown and of the opinion of the Inspectors in relation to any matter contained in the report. The scope of s. 22 is considered in *Countyglen plc v. Carway* [1998] 2 I.R. 540 where Laffoy J. held that the report encompassed the entire Inspectors’ report as received by the court but did not include any transcripts of evidence or interviews taken by the Inspector. All findings of primary fact clearly expressed as such had the status of proven fact unless disproved.
5.2 Section 60 of the Companies Act 1990, is one of the innovative provisions of what has been termed a new generation of company law. The twin objectives of protecting the public and of raising standards of corporate governance require directors, officers and managers of limited liability companies to adhere to compliance of their duties under the Companies Acts and other legislation and also in relation to their equitable duties. The fiduciary duties and duties of care and skill of directors can, it seems, be extended to officers and managers who have responsibility for the company’s affairs and fulfil a function which touches the central administration of the company. It seems to this Court that, in considering the propositions referred to by the Court of Appeal in the *Barings* case, and the remarks by Kelly J. in *Director of Corporate Enforcement v. D’Arcy* in relation to the senior management of banks, that the nature and the degree of trust to customers, shareholders and creditors is relevant.
The conduct of a respondent will, accordingly, be judged more seriously where the business in question is founded on fiduciary relationships or trust where protection of the public is paramount. While there is no defined legal test for measuring confidence, it is related to acceptable standards.
While the primary purpose of disqualification may be stated to be the protection of the public as was referred to in *Re: Lo-Line Ltd.* [1988] Ch., there are other considerations such as deterrents and standards of probity.
5.3 The court has had the benefit of extensive cross-examination and re-examination in relation to the documents that were made available by the applicant and respondent in relation to which Mr. Boner gave evidence.
The court has considered this evidence and come to certain conclusions in relation to the findings of the Inspectors in relation to bogus non-resident accounts, CMI policies and the improper charging of fees and interest.
He was aware of persistent problems in relation to non-resident accounts.
Mr. Boner’s role in following up internal audit reports acknowledged by him as an integral part of his role from 1988 to 1996 was distinguished by him from compliance issues which he said, were dealt with by internal audit and retail and general management.
However, he does acknowledge that he had a role in compliance at least in relation to the follow up of internal audit reports.
The court also expresses a concern that the Inspectors may not have had access to all of the documentation. Mr. Boner did not have, at the time of his examination by the Inspectors, the documentation that he now had in these proceedings. This extra documentation does not exculpate the persistence of non compliance but does give evidence of his response to the audit reports.
Moreover, the court accepts that Mr. Boner’s responsibility for verification had been taken over by Mr. Brennan’s intervention.
The court believes that Mr. Boner’s understanding of his responsibilities was questionable. He believed he did not have a duty to make sure that there were no irregularities apart from those appearing in the audit reports. It appears a somewhat formulistic understanding of someone in the position of Head of Retail within a licensed bank. It may very well be that the job specification and description did indeed compartmentalise responsibility to an extent that even heads of function adhered to their strict duties and worked to rule.
The court accepts the evidence of Mr. Boner that he was never a member of the Bank nor of the Executive Committee nor a member of the Audit Committee. While he was not at the most senior level of the Bank, he was Head of Retail and as such was at a senior manager in the Bank with direct responsibility for a substantial part of the Bank network.
5.4 While he was Head of Retail from 1st October, 1990 until 1st January, 1995 (excluding the period he was seconded to the College Green branch), he had a responsibility which was wider in relation to the internal audit reports and in a unique position to acquire a widespread understanding of compliance.
5.5 Mr. Boner was copied with audit reports in 1992, 1993 and 1994, many of which pointed to persistent breaches in relation to non-resident accounts, Special Savings Accounts and improper

charging of fees and interest.
While he maintains that he dealt with these in follow-up audits and that Mr. Brennan had taken over this responsibility from him, he nonetheless was aware that problems persisted.
Because of his secondment to the College Green branch in 1994 and early 1995, he may not have been in a position to oversee the audit reports he continued to receive. Throughout, he regarded the problems as documentary and not as evasion of tax. He neither gave instructions nor sought advice in relation to retrospective tax or payment of improperly charged fees or interest.
There is no doubt that cumulatively the number of audit reports in which there was reference to non compliance were significant and ought to have put him on notice of the widespread existence of bogus non-resident accounts. Mr. Boner agreed that the number of reports may seem significant but the comments in the reports were more in the nature of indicators of risk rather than positive statements of the existence of such accounts. The cumulative information contained might, with the benefit of hindsight, appear significant when reviewed cumulatively. The Court accepts that notwithstanding the seniority of his position that there were other more senior members. At the time of the DIRT Theme Audit Meeting in February, 1995, he had been seconded to the College Green Branch and was not in a central position. Notwithstanding the funding of the Inspectors, the Court is not satisfied that that Mr. Boner should have been aware of the widespread existence of bogus non-resident accounts.
Mr. Boner introduced the consumer action pad to deal with the improper charging of interest and fees. The failure of that pad was not brought to his attention. In 1995 he revised the pad which has been used since then.
When the document of 4th November, 1992 was drawn to Mr. Boner's attention in his capacity of Head of Retail, he did what he was asked and contacted the regional managers.
Mr. Boner says that for all the audits in relation to which he was circulated, he addressed each and every matter of concern immediately and instructed the branches to take immediate and appropriate action. This documentation does not now appear to be available.
The Court accepts Mr. Boner's evidence that there was no onus on a regional manager to carry out any further branch investigation after an audit. The audit committee had the responsibility to require the audit department to follow up. While Mr. Boner was Regional Manager from 1988 to 1990, he had been promoted to Head of Retail in 1990 and, accordingly, had greater overall responsibility. The Court accepts that from 1988 to 1996 he did not receive any communication from the audit committee directly or indirectly regarding the standards employed by him in following up internal audit procedures.
Mr. Boner said that he had examined in excess of eighty internal reports over the period and identified twelve instances where the internal audit referred to one or more accounts at a branch where the address on a deposit account was at variance with branch records. He believed that he followed up on such irregularities in an appropriate manner.
Reported documentary non-compliance was an indicator of poor housekeeping at branches where forms for the most part were misfiled or misplaced. These deficiencies were addressed by way of follow up of an internal audit in the manner outlined. Such non-compliance was classified as report points where the internal auditor was concerned or weakness of a lesser significance when a serious view was taken. It did not affect the overall branch rating in a lot of cases.
He said he had no recollection of, but did not deny being in attendance at the meeting to discuss the DIRT theme audit on the 9th February, 1995. The meeting highlighted the concern with which the Bank viewed the whole issue. Its purpose was to set out a process and a number of procedures to have all shortcomings dealt with in a timely fashion. He said that it was clear from the minutes of the meeting that there was a distinction on the level of authority with senior management, mainly general managers/heads of function, assuming the responsibility with a modest input required from him. Indeed, in relation to the bogus non-resident accounts, he may have been lulled into a false sense of assurance that verification was being dealt with by Mr. Brennan, General Manager, Retail Banking to whom he responded.
5.6 Mr. Boner accepted he had a responsibility in following these up. He failed to do so. It does not seem to the court that Mr. Brennan's intervention excused his omission to follow up the small but significantly persistent irregularities.
The court is not satisfied with regard to the explanations given in relation to the meeting of 7th February, 1995. It was clear that he was included at the meeting because of his seniority as Chief Manager, Retail. Despite his insistence that he did not know why he was at that meeting and had little or no involvement, he made an intervention as Head of Retail regarding the difficulties that bank managers had and he was assigned responsibility in relation to the tasks allocated. To say that he was so involved in the College Green branch from February 1994 to May 1995, while not relieving him of his responsibilities, is significant.
The court accepts the findings of the Inspectors. It is clear that, had Mr. Boner been more assiduous with regard to the follow-up of the internal audit reports, had he overseen the pattern emerging during 1992 to 1994, he would have realised the seriousness of the DIRT theme audit and been more proactive in relation to the elimination of this area of non-compliance. He should have been aware that the duty imposed on the Bank by the Finance Act 1986 in respect of non-resident accounts were clear and went beyond the necessity of ensuring that all necessary declarations were in place and properly

completed. His failure to make inquiries, to obtain advice and to address his mind to the retrospective element of DIRT were further indicators of his failure to supervise, to monitor and to control.

5.7 Counsel for Mr. Boner urged on the court that it was significant to note that the Inspectors made the exact same findings in respect of Mr. Boner's knowledge and responsibility as they made in respect of Mr. Curran's responsibility for such practices. The Court is not satisfied that each occupied, at all material times, the same general category of management within the Bank. The parallel positions held by Mr. Boner and Mr. Curran has been considered by the court. Mr. Curran did not attend the critical meeting of 7th February, 1995, nor was circulated with DIRT Theme Audit. He did not deal with the Central Bank.

5.8 Mr. Boner, in his memo of 25th January, 1994, to Mr. Lacey, did not see himself as a senior manager. This was not accepted by Mr. Lacey, the then Chief Executive. Seniority is a matter of relativity. While there may have been some movement sideways, he continued to be in a senior position and had regional managers reporting to him. The Court accepts that his secondment to the College Green Branch in February 1994 to May 1995, to improve the lending book, increased his responsibilities. There is no documentary or corroborating evidence that he had been told by the Chief Executive that he need not be involved in retail. Notwithstanding, the Court accepts that he necessarily had more limited involvement as Head of Retail during that period.

5.9 The Court is satisfied from Mr. Boner's own evidence and the documentary evidence before the court that when information suggesting the existence of bogus non-resident accounts came to his attention by way of internal audit, he attempted to deal with the problem. He accepted that this was not sufficient to eradicate the existence of bogus non-resident accounts within the branch network but submitted that the fault for this could not be laid at his door, particularly when his responsibilities in this regard were limited and where there were other organs or persons within the Bank who had overall responsibility for this issue.

The Court notes that he did upgrade the consumer action paid in 1995, and his evidence is uncontroverted that this upgraded system which is more challenging, continues to operate satisfactorily within the Bank. The Court is not satisfied that his conduct in relation to fees charged as interest is such as justifies an order under the section.

5.10 Mr. Boner said that with the benefit of hindsight he accepted that, despite the efforts of regional management and of senior management, bogus non-resident accounts were opened and maintained in the branch network during the period of the Inspectors' investigation. This was an industry-wide problem and was so acknowledged by the Inspectors who found that up to May, 1995, senior Bank management failed to inform Bank staff of the relevant provisions of the Finance Act 1986. The criteria regarding eligibility for non-residency were somewhat complex.

He referred to the General Manager, Administration/Risk, being responsible for all matters relating to DIRT and the meetings held at the Central Bank and the Revenue Commissioners.

He said he was aware during the period of June 1988 to January 1986, of deficiencies existing in the operation of DIRT-exempt non-resident accounts at some branches. The irregularities/deficiencies for the most substantial part related to a non-sighting of the internal auditors of non-resident declaration forms but this did not mean that they had never been held. As Regional Manager he said he followed up such internal irregularities as part of the internal audit procedure and, in such follow up, it was discovered for the most part that non-sighting by the internal auditors was due to misplacement, misfiling of the forms at a branch. In his view, once documentation had been put in order, this was sufficient to achieve compliance. It was not possible to pay any penalties for DIRT in respect of the period when the paperwork was not in order. He was certainly never advised that penalties for DIRT should be paid in respect of this period.

He said that when the issue was raised in four audit reports that lending to residential customers was secured by letters of lien over deposit accounts with non-resident status that this had been followed up by him.

He said he had examined in excess of 80 internal audit reports over the period from June 1988 to January 1996, on which his name appeared on circulation lists in various capacities and identified twelve instances where an internal audit referred to one or more accounts at a branch with an address on a deposit account at variance with branch records. He says he believed that he followed up such irregularities and referred to the documentation exhibited. Documentary non-compliance was an indicator of poor housekeeping and was addressed by way of follow up of an internal audit. It was classified in the reports as weaknesses of a lesser significance and did not affect the overall branch rating in a lot of cases.

While the court is satisfied that, while not a director or member of the Executive Committee, Mr. Boner was a senior manager who should have been more assiduous in relation to his suspicions regarding bogus non-resident accounts. The court accepts that he did attempt to address the issues arising from the Audit Reports.

With further documentation now available, the court is satisfied that the relative number of persistent reports of non-compliance was small; Mr. Boner may have been unwise to assume that audit would follow up these matters. He was, however, entitled to rely on Mr. Brennan's assumption of responsibility for verification.

The court is satisfied that while seconded to the College Green branch from February 1994 to May 1995, he could not have had time to deal with overall compliance. This was a significant period in the Bank's awareness of the extent of non-compliance as disclosed in the DIRT Theme Audit Report.
The court concludes that, in the circumstances, it is not appropriate to make an order in the terms of the director's application on this basis.
The court has considered his involvement with CMI as being more limited. He was assured that it was a legitimate product and that documentation was compliant. Following the investigation of a particular customer's difficulties in exiting from CMI, he did have suspicions and was not happy with the product. He assumed that the product was, notwithstanding, legitimate.
The court is not satisfied that his conduct in relation to CMI was such as to justify a consideration of disqualification.
Mr. Boner was aware that, as branch manager in Cork, there was improper charging of fees under the heading of interest, which was not proper and in respect of which no consideration, let alone instruction, was given regarding the repayment of such fees.
It seems to this Court that the criticism of Mr. O'Rafferty in relation to the improper charging of interest includes an acknowledgment that Mr. Boner did give appropriate instructions that the practice should cease but that Mr. Boner did not revert to Mr. Brennan. The court accepts the difficulties with regard to lack of documentation in this regard but, on balance, accepts that Mr. Boner did bring the matter up with the meeting of regional managers and believed that he had reverted to Mr. Brennan.
The court has to balance the averments of Mr. Boner in the light of the evidence given to the Inspectors where he acknowledged that the vast majority of customers would not have been aware of the increased interest charged and that he had advised possibly 4 – 6 of the 70 troublesome customers out of the 3,000 customers he had in the Cork branch.
The court notes the evidence given fairly by Mr. Boner regarding the period when he was branch manager in Cork and of his subsequent dealings with the Central Bank and in devising the customer action pad. The court is also conscious that the Director does not seek, as the court understands it, to deal with matters before Mr. Boner became Regional Manager. In any event, no findings had been made against branch managers and it would seem to be unfair to make any finding of responsibility with regard to Mr. Boner's period in Cork.
Notwithstanding he was aware, as he acknowledged, of the practices and accepted that it was his responsibility as Regional Manager to deal with the issue. While, in hindsight, the problems persisted, it seems to the court, on balance that, he did attempt to address the matter.
The Court is not satisfied that his conduct in relation to fees and interest justifies the court making an order under this section.

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