



CLERKIN LYNCH LLP

Irish Fund Directors Association

Mark Browne



An Evolving Environment for Directors

- Regulatory Enforcement Environment
- Directors Duties
- Considerations around D&O



A Changing Landscape

- 13 October 2021, Director General Derville Rowland speech entitled **"The Central Bank's evolution of enforcement"**
- *some reflections from the past decade about the development and embedding of the credible threat of enforcement by the Central Bank to raise standards in the financial services sector.*
- *Look to the future: to how we see our enforcement strategy evolving further, ensuring targeted deployment of our enforcement powers, with transparent outcomes, to build on the established foundation of credible deterrence.*
- <https://www.centralbank.ie/news/article/speech-the-central-banks-evolution-of-enforcement-derville-rowland-13-october-2021>



Practical Examples:

Enforcement Action: Davy Stockbrokers

- J&E Davy fined €4,130,000 and reprimanded by the Central Bank of Ireland for regulatory breaches arising from personal account dealing
- 02 March 2021
- <https://www.centralbank.ie/news-media/press-releases/press-release-enforcement-action-davy-fined-4-130-000-and-reprimanded-by-central-bank-of-ireland-for-regulatory-breaches-arising-from-personal-account-dealing-02-march-2021>



Practical Examples:

Enforcement Action: Sarasin Funds

- Sarasin Funds Management (Ireland) Limited fined €385,000 and reprimanded by the Central Bank of Ireland
- 30 September 2021
- [https://www.centralbank.ie/news-media/press-releases/enforcement-action-sarasin-funds-management-\(ireland\)-limited-fined-385-000-and-reprimanded-by-the-central-bank-of-ireland-30-september-2021](https://www.centralbank.ie/news-media/press-releases/enforcement-action-sarasin-funds-management-(ireland)-limited-fined-385-000-and-reprimanded-by-the-central-bank-of-ireland-30-september-2021)



Practical Examples:

Enforcement Action: BNY Mellon

- BNY Mellon Fund Services (Ireland) DAC fined €10,780,000 and reprimanded by the Central Bank of Ireland for regulatory breaches relating to outsourcing.
- 22 March 2022
- [https://www.centralbank.ie/news-media/press-releases/press-release-bny-mellon-fund-services-\(ireland\)-dac-fined-reprimanded-for-regulatory-breaches-relating-to-outsourcing-24-march-2022](https://www.centralbank.ie/news-media/press-releases/press-release-bny-mellon-fund-services-(ireland)-dac-fined-reprimanded-for-regulatory-breaches-relating-to-outsourcing-24-march-2022)



A Changing Landscape...or Evolving ?

- *“Enforcement plays a fundamentally important role within the Central Bank’s new risk-based regulatory framework [PRISM], helping to achieve a regulatory regime that is credible and effective.”*
 - Central Bank Statement 2012
- *“Enforcement action combined with the resultant publicity has a powerful impact, promoting compliance and deterring other industry participants from similar non-compliance whilst educating stakeholders on the standards and behaviours expected of them”.*
 - Director of Enforcement, Peter Oakes
- During 2011 the Central Bank entered into enforcement settlements with 10 regulated financial service providers resulting in a range of sanctions including the disqualification of two directors and fines totalling €5,050,000, including the then largest fine of €3,350,000.

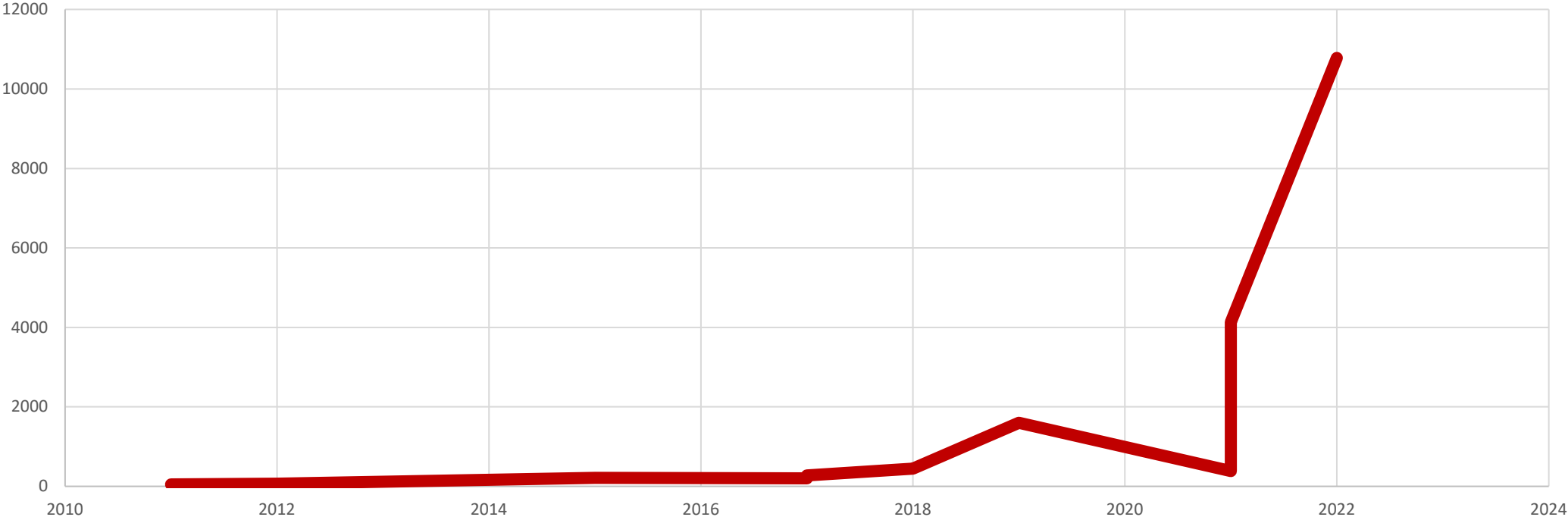


Older Enforcement Actions:

| Firm | Year | Fine |
|---|------|------------|
| J.P. Morgan Administration Services (Ireland) Ltd | 2019 | €1,600,000 |
| Appian Asset Management Limited | 2018 | €443,000 |
| Kinsale Capital Management Limited | 2017 | €275,000 |
| Merrion Stockbrokers | 2017 | €200,000 |
| B.C.P. Asset Management DAC | 2015 | €210,000 |
| Merrion Stockbrokers | 2012 | €65,000 |
| J&E Davy | 2011 | €50,000 |

Fines for the Asset Management Sector

Individual Fines



Enforcement Tools

Fines

- Fines imposed under Section 33AQ of Central Bank Act, 1942. The maximum penalty is the greater of €10,000,000, or an amount equal to 10% of annual turnover of a regulated financial service provider.
- 2019: detailed guidance on sanctions published to help understand the Administrative Sanctions Procedure.

<https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/enforcement/administrative-sanctions-procedure/asp-sanctions-guidance.pdf>



Overview:

- Central Bank has now reached 147 settlement under its Administrative Sanctions Procedure.
- Total fines imposed by the Central Bank exceed €200 million.
- Offenders have *ALSO* paid over €730 million in redress and compensation to affected customers (mortgages).
- Funds collected from penalties are included in the Central Bank's Surplus Income, which is payable directly to the Exchequer.

Enforcement Tools

- Administrative sanctions (under the Central Bank Act 1942 and Securities and Markets Regs)
- Fitness and Probity investigations
- Refusals and revocation of authorisations
- Cancellation and refusal of registrations
- Summary criminal prosecution
- Supervisory Warning
- Imposition of a condition
- Issuance of a direction
- Reports to other agencies (including Gardaí, Revenue, The Competition and Consumer Protection Commission).

Central Bank Correspondence

Dear CEO Letter – 22 April 2022

“In circumstances of non-compliance by any firm with any regulatory requirements relevant to the matters raised in this letter, the Central Bank may, in the course of future supervisory engagement, or when exercising its supervisory and/ or enforcement powers in respect of such non-compliance, have regard to the consideration given by a firm to the matters raised in this letter”

“Presenting this letter as a formal agenda item for discussion at the firm’s next Board meeting, and for the discussion to be recorded in the meeting minutes”

“All changed, changed utterly:
A terrible beauty is born.”

— William Butler Yeats, "Easter 1916"



Clerkin Lynch LLP

Mark Browne

Partner and Head of Asset Management and
Funds at Clerkin Lynch LLP

Email: markbrowne@clerkinlynch.com

Phone: +353 1 611 4400 / +353 86 0247099



Mark is a Partner and Head of Asset Management and Funds in Clerkin Lynch LLP. He has in excess of 15 years experience as a solicitor advising on the establishment, launch and ongoing operations of investment funds.

His experience covers both funds authorised as UCITS and under the AIFMD. In addition to Dublin, he has worked in some of the other key international fund domiciles including the Cayman Islands and Luxembourg. He also advises on a broad range of regulatory issues impacting the financial services sector.