IRISH FINANCIAL SERVICES APPEALS TRIBUNAL

REGISTER NUMBER: 023/2016

IN THE MATTER OF THE CENTRAL BANK ACT 1942

BETWEEN:-

ST COLMCILLE'S (KELLS) CREDIT UNION LIMITED

APPELLANT

AND

CENTRAL BANK OF IRELAND

RESPONDENT

APPEALS TRIBUNAL:

The Hon. John D. Cooke, Chairperson

Inge Clissmann SC, Deputy Chairperson

Teresa Pilkington SC,

DECISION

1. By Notice of Appeal dated 8 November 2016 the above appeal has been brought by the Appellant against a number of purported decisions of the Respondent said to have been made under the legislation regulating credit unions as set out below.

2. By its Response dated 28 November 2016 the Respondent took issue with the matters raised in that Notice and in particular disputed that the matters there identified constituted *"appealable decisions*" or even decisions as such.

3. By letter dated 13 January 2017 the parties were notified that the Tribunal intended to convene under Rule 4 (11) of the Irish Financial Services Appeals Tribunal Rules 2008 to determine how the appeal should proceed and required them to attend. The meeting, at which both parties were represented, duly took place on 15th February 2017.

4. The subject matter of this appeal is defined to in the Notice of Appeal as three decisions by the Registry of Credit Unions as follows:

   - Decision …*that debit cards are not an exempt service which* [the Appellant] *believes is in breach of S.I. No. 1 of 2016 (Credit Union Act 1997 (Regulatory Requirements) Regulations 2016;*
   - *Decision …that [the Appellant] is required to formally notify the Central Bank before entering into an outsourcing arrangement for the provision of a debit card service (exempt service) which … is not in compliance with Section 76 (11) (a) of the Credit Union and Co-Operation with Overseas Regulators Act 2012;*
   - *Decision … that the [Appellant's] non-interest bearing deposit account does not satisfy the requirement of a payment account to operate a debit card service … which is a breach of the European Communities (Payment Services) Regulations 2009 and Section 27 of the Credit Union Act 1997.*

5. The legislation providing for the regulation of credit unions and the supervisory and decision making powers of the Central Bank is contained in the Credit Union Acts 1997 to 2012. (The functions of the Registrar of Friendly Societies under the Act of 1997 were transferred to the Central Bank by the Central Bank and Financial Services Authority of Ireland Act 2003.)

6. Section 57L of the Central Bank Act 1942 (as amended) provides that "*An affected person may appeal to the Appeals Tribunal in accordance with this section against an appealable decision of the Regulatory Authority".* The term "*appealable decision"* is defined in section 57A of that Act as meaning "*a decision of the Regulatory Authority that is declared by a provision of this Act, or of a designated enactment or designated statutory instrument, to be an appealable decision for the purposes of this Part;".*

7. It is to be noted that the 1997 Act as amended by the 2012 Act contains a list of particular decisions which are designated as "*appealable decisions*" for the purpose of the 1942 Act. In the original 1997 Act s. 48 provided that a credit union might provide "additional services" if approved by the Registrar of Friendly Societies. That approval

requirement did not apply to services for which provision was already made in Part III of the 1997 Act or to services involving no risk as prescribed by the Minister in regulations.

8. Under ss. 49 and 50 the Registrar had powers to grant or refuse approval or to impose and later vary conditions on such approvals. Section 52 provided that a person aggrieved by certain decisions of the Registrar might apply to have the decisions reviewed by the High Court.

9. The 2012 Act inserts a new s.52 in the Principal Act which expressly lists as "*appealable decisions*" (and thus within the Tribunal jurisdiction), *inter alia,* particular decisions by the Bank under ss. 49(3)(b) and 50(3)(a) and (b) to refuse to grant approval of an additional service, to withdraw such an approval and to vary a condition attached to an approval decision.

10. Accordingly, if the Appellant had applied to the Bank to approve its provision of a debit card service under s. 48 of the 1997 Act and been refused pursuant to section 49, the Appellant would have an "*appealable decision*" and an admissible appeal. The Appellant's case, as confirmed to the Tribunal at the Rule 4(11) hearing however, has been that it has not applied for approval to provide an additional service but had merely sought confirmation from the Bank that it did not need to make such an application.

11. While the substantive disagreement between the Appellant and the Respondent concerns the issue as to whether the Appellant's proposed provision of a particular debit card service is exempted from the need to obtain approval of the Respondent, that is not the question raised by this appeal. The present issue is whether, in effect, the alleged decisions cited in paragraph 4 above, or any one of them, is a designated *"appealable decision"* for the purposes of S. 57L of the Act of 1942. The Respondent also asserts that, as a matter of fact, it has not actually made any decision in the exchanges that took place with the Appellant and its representatives. It is appropriate to consider first the former question.

12. Clearly, the *"appealable decisions"* designated by section 52 are confined (so far as relevant here) to the exercise of specific powers of the Respondent in respect of the refusal to grant, the withdrawal of grant, or the imposition or variation of a condition on a grant of approval of provision of an additional service.

13. The Act does not provide for the Bank to receive and decide applications for declaratory decisions as to whether particular proposals are exempt from the need for approval. A credit union must either must apply for approval and, if refused, appeal to the Tribunal; or, have it declined as exempt and unnecessary, in which case the credit union has no complaint. Declaratory relief on the basis that no application is necessary for a service claimed to be exempt can only be sought from the High Court.

14. It follows that the present appeal is inadmissible because the alleged decisions cited in paragraph 4 above are not designated *appealable decisions* for the purposes of s. 57L of the Act of 1942 and are therefore outside the jurisdiction of the Tribunal. It is accordingly unnecessary to address the further ground raised as to whether, as a matter of fact, the Respondent had, as such, made any of the decisions alleged.

15. The appeal is dismissed.

Date: 15 February 2017

Signed:

The Hon. John D. Cooke
Chairperson.

Inge Clissmann Teresa Pilkington

Deputy Chairperson Member