

The Central Bank's Administrative Sanctions Procedure: Updated Guidelines pursuant to the Individual Accountability Framework now in Operation

January 2024

In our July 2023 [article](#), we discussed the publication by the Central Bank of Ireland ('CBI') of Consultation Paper 154 ('CP154') on proposed changes to its Administrative Sanctions Procedure ('ASP') in light of the introduction of The Central Bank (Individual Accountability Framework) Act 2023 ('IAF Act'). The consultation period has concluded and the CBI has published a [feedback statement](#) and [consolidated guidelines](#) relating to the ASP. These guidelines came into operation on 13 December 2023.

The ASP and Changes Introduced by the IAF

The ASP is the process by which the CBI investigates breaches of financial services obligations by firms and /

or individuals participating in those breaches. The CBI has the power to impose a sanction in respect of a prescribed contravention and to publicise its findings. The ASP process can include the following stages

- Investigation
- Investigation Report
- Decision on whether to hold an Inquiry
- Inquiry
- Appeal / court confirmation
- Settlement may be available at different stages of an ASP

While the fundamental structure of the ASP remains unchanged by the IAF Act, the legislation does enable the CBI to take direct enforcement action against individuals.





The investigation stage of the ASP is now on a statutory footing, while procedural safeguards have been introduced to ensure the independence of the inquiry decision making process. The IAF Act also allows for the earlier disclosure of documents. Where a settlement is agreed based on admissions, a High Court Order is required to confirm the sanctions imposed.

Consultation Paper 154 Feedback and Finalised Guidelines

The purpose of CP154 was to consult on the accompanying draft composite guidelines on the ASP ('**Draft Guidelines**'), which updated and consolidated the CBI's existing ASP Outline

2018, Inquiry Guidelines 2014 and ASP Sanctions Guidance 2019. Our July 2023 [article](#) detailed the proposed changes to the ASP as contained in the Draft Guidelines.

The feedback statement in response to submissions received on CP154 ('**Feedback Statement**') was published in December 2023 along with the finalised, and now operative, ASP guidelines ('**Guidelines**').

Changes to the Guidelines in response to Consultation Paper 154

The Guidelines contain a number of amendments to the Draft Guidelines and further clarify how the ASP will operate. These changes include;

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| <p>Role of Responsible Authorised Officer in ASP Investigations</p> | <p>The Guidelines now contain a section detailing the role and responsibilities of the Responsible Authorised Officer ('RAO'), a new role whose functions include issuing the Notice of Investigation, determining what materials should be included with the Notice of Investigation, keeping the subject of the investigation informed on progress, preparing a draft investigation report and finalising an investigation report.</p> |
| <p>Confidential Information in ASP Investigations</p> | <p>The IAF Act sets out that recipients of confidential information, in the context of investigations and inquiries, may disclose that information when required to do so by law or to their legal advisor. The Guidelines have been amended to confirm that the CBI will authorise requests for disclosure in other circumstances if it deems it reasonably necessary to do so.</p> |
| <p>Timeframe for Responses in ASP Investigations</p> | <p>The IAF Act prescribes a minimum 7-day period for submissions in response to a draft investigation report. The CBI, in the Feedback Statement, acknowledge that in many cases 7 days may be insufficient and the Guidelines now state that the period, which will not be less than 7 days, will be set by the RAO following consideration of matters such as the complexity of the issues, the contents of the draft investigation report, the period necessary to give the subject a fair opportunity to respond and the timely progression of the investigation report process.</p> |
| <p>Use of Information by the CBI</p> | <p>The Guidelines have been amended to provide clarification on how information gathered in the course of an ASP investigation can be used by the CBI, including in any CBI inquiry, whether or not related to the investigation in which the information was gathered or where it may be relevant to the CBI's authorisation, supervision and fitness and probity functions.</p> |

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| <p>Legal Professional Privilege in ASP Investigations</p> | <p>In response to concerns that the use of disclosure agreements will require the waiver of legal privilege, the Guidelines have been amended to clarify that entry into a disclosure agreement by the subject of an investigation is on an entirely voluntary basis.</p> <p>It was noted in the Feedback Statement that the CBI will be providing further guidance on how and in what format privileged information is to be provided to the CBI in response to an information request.</p> <p>In terms of the imposition of sanctions by the CBI, the decision by a subject not to provide privileged material will be considered by the CBI to be a neutral factor and will not impact on whether the subject of an investigation is otherwise given credit for cooperating with an investigation. However, the Guidelines include the provision of privileged material as an example of exemplary cooperation in this context.</p> |
| <p>Publication of Details of Notice of Inquiry</p> | <p>The CBI has reaffirmed its position that it will publish the identity of the subject of a notice of inquiry, including an individual, in advance of the commencement of an inquiry but the Guidelines have been amended to state that it is expected that a public notice will issue where an inquiry concludes that no prescribed contravention has been committed, with a view to achieving proportionality and balance by way of equal visibility where there is a finding of no contravention.</p> |
| <p>Appointment of Inquiry Members</p> | <p>The Guidelines have been amended to clarify that the identity of inquiry members will be named in correspondence to the inquiry participants following their appointment and in the notice on the CBI website confirming that an inquiry has commenced.</p> <p>In cases where a sole inquiry member is appointed, there is no requirement for that member to be legally qualified but where there is a committee of inquiry members, a legally qualified chairperson will be appointed.</p> |
| <p>Conflicts of Interest of Inquiry Members</p> | <p>The Guidelines contain additional detail on how conflicts of interest are managed in terms of the appointment of inquiry members, including the signing of a declaration confirming they are not aware of any actual or potential conflicts. The Guidelines further confirm that inquiry members are under a continuing obligation to notify the Regulatory Decisions Panel (a panel of decision makers established by the Minister for Finance) as soon as they become aware of any actual or perceived conflict arising during an inquiry.</p> |
| <p>Settlement Process</p> | <p>The Guidelines now outline that a settlement process will begin with the issue by the CBI of a settlement procedure letter. If a subject responds indicating a willingness to engage in settlement, the CBI will provide proposed terms of settlement, to include details of the prescribed contravention, facts to be admitted by the subject and the proposed sanction. The proposed terms will be on a without prejudice basis. The subject will be required to acknowledge the proposed publication of the contravention, agreed facts and sanction proposed. The subject will have the opportunity to engage with the CBI but the CBI will only consider amending the prescribed contravention, facts or sanction if the subject can satisfy it of a legal or evidential justification to do so.</p> |

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| Monetary Penalties | The Guidelines now clarify that firms and individuals will be provided with information on how any proposed monetary penalty has been calculated and they will have an opportunity to make submissions to the CBI on sanctions, including monetary penalties, as part of a settlement or inquiry process. In this regard, they will generally be provided with information on the starting point for the determination of monetary penalties, which will often, but not always, be relevant revenue in respect of firms or relevant income in respect of individuals. |
| Conditions as a Sanction | <p>The Guidelines contain a non-exhaustive list of potential conditions that may be imposed as a sanction on an individual, including that an individual be supervised or monitored in the performance of a controlled function or that an individual cannot perform one (or more) aspect(s) of a controlled function, but the CBI will generally determine details of any conditions on a case by case basis. The imposition of any sanction on an individual is relevant to a firm's assessment of that individual's fitness and probity.</p> <p>A condition is unlikely to be imposed by the CBI where a prescribed contravention is deemed serious, for example, where the contravention involves dishonesty. In such cases, the Guidelines state that it is more likely that the CBI will impose a direction disqualifying an individual.</p> |
| Appeal under the ASP | The only decision under the ASP that may be appealed to the Irish Financial Services Appeals Tribunal (' IFSAT ') is the inquiry decision, which comprises either or both of (i) the inquiry finding on whether a prescribed contravention has been committed and (ii) the determination of any sanction to be imposed and the grounds for same. |
| CBI Functions | In accordance with the IAF Act provisions on the exercise of functions with a view to ensuring the impartiality of the various stages of the ASP, the Guidelines now confirm that the person who decides whether to hold an inquiry cannot have been involved in carrying out the investigation. Further, the person who decides to hold an inquiry cannot be involved in carrying out the CBI functions of making submissions, leading evidence or examining witnesses on behalf of the CBI at the inquiry. |
| Legal Representation at Interviews | When attending interview, the subject of an investigation may be accompanied by an independent legal representative. Whether a representative other than a legal representative will be permitted to attend an interview will be determined by the CBI on a case-by-case basis. |

Operation of the Guidelines

The Guidelines came into operation on 13 December 2023 and will apply to investigations and inquiries commenced on or after 19 April 2023, even if the prescribed contravention took place before then. In addition, and subject to certain transitional provisions in the IAF Act, the Guidelines will apply to investigations commenced before 19 April 2023 that were ongoing on 13 December 2023.

Conclusion

As indicated by the CBI, the enhanced ASP is designed to underpin and support the introduction of the Individual

Accountability Framework pursuant to the IAF Act, and in particular the Senior Executive Accountability Regime ('**SEAR**') and the conduct standards for firms and individuals, further information on which can be found [here](#) and [here](#). The implementation of the Individual Accountability Framework regime is now well under way with the Guidelines in respect of the ASP effective from 13 December 2023 and the common conduct standards, additional conduct standards and revisions to the CBI fitness & probity regime in operation since 29 December 2023. SEAR will be applicable to in scope firms from 01 July 2024 and for (independent) non-executive directors of in scope firms from 01 July 2025.

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