



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Feedback Statement on Consultation Paper 154

Consolidated Guidelines in respect of the
Central Bank Administrative Sanctions
Procedure

Amended in connection with the Central Bank
(Individual Accountability Framework) Act 2023

December 2023

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Part 1: Introduction

The Central Bank (Individual Accountability Framework) Act 2023 (the **Act**) was signed into law on 9 March 2023 and was partially commenced on 19 April 2023. The provisions in relation to the Central Bank’s enforcement procedures under the Administrative Sanctions Procedure (the **ASP**) commenced on 19 April 2023.

On 22 June 2023, the Central Bank issued Consultation Paper 154 titled “*Consolidated Guidelines in respect of the Central Bank Administrative Sanctions Procedure (Amended in connection with the Central Bank (Individual Accountability Framework) Act 2023)*” (the **ASP Consultation**), which is the subject of this feedback statement.

The purpose of the ASP Consultation was to consult on our draft composite guidelines (the **draft ASP Guidelines**), which updated and consolidated the Central Bank’s existing published ASP Outline 2018, Inquiry Guidelines 2014 and ASP Sanctions Guidance 2019. The draft ASP Guidelines sought to set out our proposed approach to important changes introduced by the Act to enhance the ASP and to reflect our evolving experience of utilising the ASP.

The public consultation was open for 12 weeks until 14 September 2023. Stakeholders’ views were sought on our proposed approach with respect to the ASP and the policies and proposals set out in the ASP Consultation and the accompanying draft ASP Guidelines.

Separately on 13 March 2023, the Central Bank issued its related Consultation Paper 153 titled “*Enhanced governance, performance and accountability in financial services - Regulation and Guidance under the Central Bank (Individual Accountability Framework) Act 2023*” (**CP 153**). The purpose of that consultation paper was to set out how the Central Bank proposed to implement the new Individual Accountability Framework (**IAF**). The associated CP 153 feedback statement and the related draft regulations and guidance on the IAF were published by the Central Bank on 16 November 2023.

The purpose of this feedback statement on the ASP Consultation is to:

- Respond to submissions received on the ASP Consultation

- Provide an update on the outcome of the ASP Consultation in terms of resulting changes to our proposed approach
- Note that the final ASP Guidelines were issued by the Central Bank, and published on the Central Bank's website, on 13 December 2023.

As noted in the ASP Consultation, the Central Bank takes a holistic approach to the assessment of the most appropriate regulatory response and prior to the taking of any formal enforcement action would usually consider how our regulatory objectives could be met in other ways, such as through the use of our supervisory powers and supervisory interventions.

Where targeted and proportionate enforcement action is deployed to effectively deliver on our mandate to protect the stability of the financial system and the users of it, we consider that the final ASP Guidelines will be of benefit to all involved. The ASP Guidelines seek to provide increased transparency, clarity and consistency on what to expect throughout the process whilst continuing to underline to stakeholders the Central Bank's guiding principles of proportionality and fairness when dealing with individuals and firms.

This feedback statement should be read in conjunction with the ASP Consultation and the final ASP Guidelines which are available on our website.

Part 2: Central Bank Approach to the Feedback Statement

The Central Bank is grateful to its stakeholders for their interest and engagement in the ASP Consultation and for providing broad and considered submissions. A total of 13 submissions were received from representative bodies, industry and a legal firm. All submissions received have been published on the Central Bank's website.¹

The Central Bank has carefully reviewed, analysed and considered each of the points made in the submissions. We have considered them in the overall context of the ASP from a legal, policy and practical perspective and from the particular perspective of individuals as well as firms. In doing this, we have sought to balance the clear requirements of the applicable legislation, the Central Bank's regulatory objectives and the legitimate concerns raised by stakeholders. We have listened to the concerns and practical challenges raised by stakeholders and have amended various parts of the ASP Guidelines accordingly. In addition to the amendments to the ASP Guidelines made as a result of the submissions received, we have made amendments to further clarify the descriptions of our processes.

In this feedback statement we have not addressed submissions which question a position in the ASP Guidelines that is prescribed by and set out in legislation. The Central Bank is not in a position to change any aspect of the ASP Guidelines if to do so would conflict with the ASP as set out in statute.

Our approach has been to draw together and address broad themes raised in the submissions rather than to respond to each submission individually. This feedback statement responds to the most substantial and consistently raised matters as well as certain other more isolated but notable issues raised in submissions.

We also received a number of submissions from stakeholders cross-referring to CP 153. The majority of the points raised by reference to CP 153 have been responded to in the Central Bank's CP 153 feedback statement referred to above and are not repeated here.

¹ See [here](#).

Where submissions raised matters which have resulted in amendment or clarification of the ASP Guidelines, those changes are discussed in this feedback statement and reflected in the final ASP Guidelines in Appendix 1. Where submissions raised matters, which have not resulted in a change in our approach, we have set out our rationale for maintaining our position.

This feedback statement is not provided in the procedural context of the ASP alone but also in the broader context of the Central Bank's overall financial regulation mandate. All submissions have accordingly been viewed in this context also. The fundamental principles of fairness and proportionality inform all aspects of our approach to the ASP and its related processes and procedures and the Central Bank takes these obligations very seriously in the discharge of its financial regulation mandate.

The Central Bank remains open and engaged and committed to keeping our ASP under review. The ASP Guidelines will continue to evolve as they become more informed by our experience and that of our stakeholders in connection with the ASP following full commencement of the Act and implementation of the IAF.

Part 3: Summary of Feedback Received

The submissions show that stakeholders generally welcomed the publication of the ASP Consultation and appreciated the opportunity to engage with the Central Bank and submit views on the draft ASP Guidelines. The submissions were considered, with valid points raised and practical insights provided in many cases. The submissions and insights have been helpful in articulating stakeholder concerns and highlighting areas in the ASP Guidelines where some adjustment to our approach or greater clarity would assist stakeholders. As the ASP Guidelines are largely procedural in nature, the majority of the points raised in submissions on the ASP Guidelines related less to a reconsideration or change in key policy matters and more to the provision of additional clarification in the ASP Guidelines.

The area of most focus in the submissions was the investigations stage of the ASP. In particular, submissions sought clarification on the role of the responsible authorised officer, the confidentiality obligations, timeframes for responding to the Central Bank and the use of information by the Central Bank.

The submissions also sought further clarification in relation to the inquiry stage of the ASP. For example, submissions were made in respect of the management of conflicts of interest related to inquiry members, the vulnerability of witnesses, the role of third party firms and the question of whether inquiries relating to individuals could be held in private.

The most consistently recurring theme in the submissions regarding our settlement processes was a request for confirmation that there would be an opportunity for subjects to engage with the Central Bank and make submissions at appropriate points of the process.

The focus of most of the submissions received with respect to sanctions sought further information on how the Central Bank determines monetary penalties, sanctioning factors and the imposition of conditions and disqualifications as sanctions.

As an overarching observation on the ASP, stakeholders raised certain concerns around the differing considerations which arise in

respect of the treatment of individuals as distinct from firms at various stages of the ASP. The ASP has to date been utilised in respect of both firms and individuals in line with the Central Bank's proportionate and targeted approach to enforcement. However, we have sought to address some of these concerns in this feedback statement and through appropriate clarifications to the ASP Guidelines. The Central Bank considers that the final ASP Guidelines demonstrate our continuing commitment to proportionality, fairness and transparency with respect to the ASP in its application to both firms and individuals.

The ASP is a longstanding mechanism for the investigation of regulatory contraventions and the imposition of administrative sanctions, where appropriate, and is required to ensure effective financial regulation of domestic and EU financial services law. As noted in the ASP Consultation, the introduction of the IAF, together with additional safeguards incorporated under the Act, further fortifies the ASP from a legal and constitutional perspective. These additional safeguards are important in light of the expanded population of individuals to whom the ASP applies following commencement of the Act.

In the following parts of this feedback statement, we respond to the key issues raised in the submissions as well as certain other more isolated but notable issues and, where appropriate, we have made related amendments to the ASP Guidelines.

Part 4: Key Issues Raised in Submissions

1. ASP Investigations

The Role of the Responsible Authorised Officer

A number of responses sought further detail on the role of the responsible authorised officer including how they will be appointed, their independence, responsibilities and powers, and what decisions they can make. Further clarification was also sought on how the responsible authorised officer will exercise their discretion, whether reasons will be given, and whether the exercise of such discretion can be challenged.

Central Bank Response

The Central Bank appreciates that further detail on the role of the responsible authorised officer would be helpful and accordingly we have amended the ASP Guidelines to include a new section describing the role and its responsibilities.

The role of responsible authorised officer has an express statutory basis and carries a number of statutory responsibilities in connection with the conduct of an investigation. The responsible authorised officer has a duty to perform their role fairly and proportionately in line with the Central Bank's overall approach, having regard to the particular circumstances of the investigation, and in accordance with the Act. In this regard, the subject of the investigation will be given sufficient opportunities to engage with the responsible authorised officer at each stage of the investigation.

Confidential Information

Respondents sought clarification on the new confidentiality provisions introduced by the Act and set out in the draft ASP Guidelines. Certain responses provided examples of circumstances in which a subject of an investigation may want to share confidential information with other persons such as professional advisors, other group companies, insurers, current or former employers or other

regulators. The point was also made that any Central Bank consent to the sharing of confidential information with another person should be granted on a timely basis.

It was submitted that a subject of an investigation may be required by law to disclose confidential information. Examples were given of a director's duties to a company, market abuse rules, fitness and probity obligations, securities law and other regulatory requirements.

It was also queried whether the fact of an investigation is still considered to be confidential information when an investigation has ceased and the details of the notice of inquiry have been published.

Central Bank Response

Prior to the commencement of the Act, confidentiality requirements were set out and operated by the Central Bank in practice when carrying out investigations and inquiries. The Act has now further codified how confidential information is handled in this regard. Confidentiality obligations are essential to protect the integrity of the ASP, the rights of third parties and the rights of the subject of an investigation.

The Act itself acknowledges that recipients of confidential information may disclose it where required to do so by law or to their legal advisor. It is clear from the responses received to the ASP Consultation, that there are other circumstances where a recipient will legitimately need to disclose confidential information to another person. The Central Bank will authorise such disclosure where it is considered reasonably necessary to do so. Any requests from a recipient for such disclosure will be considered by the Central Bank in a timely manner. We have amended the ASP Guidelines to reflect this.

As stated above, where a recipient of confidential information is required by law to disclose that information, this is not prohibited by the Act. As such, the Central Bank's authorisation is not required in such circumstances. The Central Bank is not in a position to determine such matters for firms or individuals. It would be for the recipient to seek legal advice on what obligations

they may have and satisfy themselves as to whether a disclosure of information is required by law.

Once the details of the notice of inquiry are published, the fact that the subject of the investigation has been under investigation will become public. However, any confidential information that was provided to the subject or any other person during the course of an investigation, or for the purposes of an investigation report, remains confidential information and must not be disclosed outside the inquiry process without the authorisation of the Central Bank.

Information Sharing

The importance of the Central Bank sharing information with the subject of the investigation, including, in order to allow the subject to respond to the Central Bank or to decide on the merits of settling the case, was raised in a number of responses. In particular, some responses requested that, in circumstances where information is not shared by the responsible authorised officer, the reasons for it being withheld be provided.

Central Bank Response

The Central Bank is aware that the subject of an investigation is entitled to sufficient information to enable them to engage with the Central Bank at each stage of the ASP. In this regard, the Act provides for the early sharing of information (at the discretion of the responsible authorised officer) relating to the prescribed contravention and the conduct of the subject with the notice of investigation and any amended notice of investigation. The responsible authorised officer will exercise this discretion fairly and proportionately having regard to the particular circumstances of the investigation.

The Central Bank is also aware of its statutory obligation to provide material with the draft and final investigation report which, in the opinion of the responsible authorised officer, is relevant to the consideration of the final investigation report by the Central Bank decision maker appointed to decide whether to hold an inquiry. The responsible authorised officer will, in deciding

whether material is relevant, bear in mind that material may be relevant either because it supports or because it undermines that a prescribed contravention has been committed. In the interests of transparency, the investigation report will outline how the responsible authorised officer identified the relevant material for inclusion.

Access to Information

Clarification was sought in respect of what rights an individual has, whether they are the subject of the investigation or a witness, to access information held by a firm, in particular where the firm is a former employer. Clarification was also sought in respect of what obligation the firm has to provide such information.

Central Bank Response

The Central Bank cannot give legal advice on what right of access to information an individual may have in respect of a specific firm or the obligations that a firm may have to disclose information to an individual in the context of an ASP. However, the Central Bank expects firms to reasonably assist individuals who are the subject of an investigation by providing them with access to information that will help them to engage with the investigation. The Central Bank also expects firms to reasonably facilitate witnesses by providing them with access to information necessary to respond to the Central Bank.

Such assistance is understandably very important to individuals who are current or former employees of a firm. This is particularly the case given the distinguishing circumstances that apply to individuals where ownership of information lies with the firm rather than the individual.

In addition to the fair treatment of individuals, there is also a public interest in effective cooperation within the regulated financial services sector and timely resolution of regulatory investigations, and firms have a role to play in this also.

Timeframe for Responses

A number of the responses made submissions in respect of the timeframes for the subject of the investigation to respond to the Central Bank. Of particular concern was the reference in the draft ASP Guidelines that submissions in respect of the draft investigation report be made within 7 days of receipt of the draft investigation report or such longer period as the responsible authorised officer considers necessary.

Some responses sought further clarification in respect of the timeframes for responding to a notice of investigation or an information request, or collating information where an individual is called as a witness. There was a particular concern in respect of the application of timeframes to individuals in the context of their ability to access information and assess that information.

Central Bank Response

The timely progression of Central Bank investigations is in the interests of all relevant parties.

To enable the Central Bank to carry out an investigation in an effective and timely manner, the subject of the investigation or other relevant parties must provide timely responses to the Central Bank. However, the Central Bank is aware that added complexities may arise for individuals in this regard particularly in terms of access to information and resources. Therefore, the ASP Guidelines set out the procedures for seeking extension requests.

The 7 day time period for making submissions on the draft investigation report referenced in the draft ASP Guidelines is the minimum period prescribed by the Act. However, the Central Bank appreciates that in many cases a period of 7 days for making submissions in respect of a draft investigation report would be insufficient to allow the subject of the investigation to consider the report and, if necessary, collate information and take advice before making submissions. The period will be set by the responsible authorised officer 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. We have amended the ASP Guidelines to clarify this.

Use of Information by the Central Bank

Clarification was sought on how information gathered in the course of an ASP can be used by the Central Bank.

Central Bank Response

Information gathered in the course of an investigation can be used by the Central Bank in the performance of any of its statutory functions. This includes uses in relation to any Central Bank investigation (such as interviewing witnesses, who may include past or present employees of a relevant firm); the preparation of an investigation report; and uses in other contexts such as at any inquiry, and in any appeal to the Irish Financial Services Appeals Tribunal or any application to the High Court. Information gathered in an ASP may also be used where the information is relevant to a future regulatory approval. Information will only be used by the Central Bank to the extent that it is relevant and fair to do so. We have amended the ASP Guidelines to provide further clarification on such uses.

Legal Professional Privilege

A number of responses expressed concerns that the Central Bank is requiring the waiver of legal privilege through the use of disclosure agreements and that this would have various impacts, including the ability of a firm's legal counsel to have open dialogue with executives and the board of a firm.

In terms of how the Central Bank intends to use disclosure agreements, there were a number of queries. It was suggested that the ASP Guidelines set out the Central Bank's procedure as to how the subject of the investigation should process and deliver legally privileged information to the Central Bank. It was queried whether privileged material disclosed under a disclosure agreement would be used for the purpose of Central Bank interviews with past or current

staff of the firm and, if so, would the disclosure agreements cover this.

Central Bank Response

The assertion of privilege is a legal right and the subjects of investigations are entitled to assert privilege where it lawfully applies. There is nothing in the Act (including in the provisions relating to conduct standards and disclosure agreements) that compels a subject of an investigation to disclose legally privileged information to the Central Bank. We have amended the ASP Guidelines to clarify that entry into a disclosure agreement by the subject of an investigation is done entirely on a voluntary basis.

The subject of an investigation may wish to disclose privileged documents to the Central Bank on a limited basis in a manner that preserves that privilege outside of that limited context. The Act has codified the legal protections already afforded to disclosure agreements to provide clarity and certainty to subjects and to the Central Bank. The option of such a voluntary mechanism under the Act would not impact the ability for comprehensive legal advice to be provided as there is no requirement for a privilege owner to waive privilege even on a limited basis.

In terms of a procedure for the delivery of privileged information, the Central Bank acknowledges the importance of having processes and procedures in place to increase efficiencies. The Central Bank will provide guidance on how and in what format to provide information to the Central Bank in response to an information request. We do not consider it necessary to amend the ASP Guidelines to reflect this practice as it may be subject to change and may need to be adapted on a case-by-case basis.

Under a disclosure agreement, the privilege owner agrees to a limited waiver of legal professional privilege to the Central Bank and any other person specified in the disclosure agreement only. The purpose of any further or subsequent disclosure of the privileged information would have to be specified in the disclosure agreement. In practice, a disclosure agreement will include a provision confirming that the Central Bank can utilise the disclosed material for the performance of any of its statutory functions and any other purpose specified in the agreement. This would include

interviewing witnesses, who may include, for example, past or current employees of a relevant firm. We have amended the ASP Guidelines to clarify this.

Status/Effect of a Discontinued Investigation into an Individual

A number of responses sought clarification on the status and effect of a discontinued investigation into an individual. In particular, clarity was sought on the effect of the discontinuance on any future regulatory approval or application for a pre-approval controlled function.

Further clarity was also sought on whether any revival of an investigation will be considered to be a continuation of a previous investigation.

Central Bank Response

The Central Bank may decide to discontinue an investigation for the reasons set out in the Act. These reasons will vary from case to case and the Central Bank will confirm the reason for the discontinuance in each such case. For example, the Central Bank may discontinue any investigation because it no longer has reasonable grounds to suspect the subject's commission of a prescribed contravention but an investigation could also be discontinued for policy or resourcing reasons or any other reason.

The Central Bank may use information gathered over the course of an investigation (including a discontinued investigation) for any of its statutory functions including in the context of a future regulatory approval such as any applications to the Central Bank for approval to perform a pre-approval controlled function. This information will only be used to the extent that it is relevant and fair to do so.

Where an investigation has been discontinued and relevant information becomes available to the Central Bank at a later date, the Central Bank may commence a new investigation into the same matter. The previous investigation will not be continued. A new notice of investigation will be issued to the subject of the investigation.

Publication of the Details of the Notice of Inquiry

A number of responses raised concerns, for individuals in particular, in respect of the Central Bank's intention to publish the identity of the subject as part of the details of the notice of inquiry in advance of the commencement of an inquiry.

Central Bank Response

There is a significant public interest in the effective enforcement of financial regulation and enforcement plays an important role in deterring misconduct, promoting public trust and confidence, investor and consumer protection and market integrity. The Central Bank is committed to exercising its enforcement processes in a transparent and open manner. Publication is an important tool in promoting the transparency of the Central Bank's enforcement processes. It informs the general public as well as the market, and helps to maximise the deterrent and educational effect of enforcement action. All of these factors inform our approach as to what information is included in the publication related to the notice of inquiry and why it is our practice to include the identity of the subject.

There is a statutory presumption that all inquiry hearings are to be held in public. Only in the exceptional circumstance set out in the applicable legislation will inquiry hearings be held in private. Therefore, it is consistent with the legislative aims and the Central Bank's commitment to an open and transparent process that the identity of the subject of the inquiry be published, where appropriate, at an early stage. However, we are conscious of the need for proportionality and balance given the potential for harm to a firm or an individual's reputation in circumstances where the matter does not result in an inquiry subject having been found to have committed a prescribed contravention. Therefore, as set out below, we have amended the ASP Guidelines to state that it is expected that the inquiry members will issue a public notice where an inquiry concludes and inquiry members have made a finding that no prescribed contravention has been committed. In this way, equal public visibility of an inquiry finding of no contravention will be achieved.

2. ASP Inquiries

Appointments to the Regulatory Decisions Panel

A number of responses sought clarification on the operation of the panel of decision makers established by the Minister for Finance from which inquiry members must be appointed (the **Regulatory Decisions Panel**). A question was asked as to how individuals are appointed to the Regulatory Decisions Panel. A further response queried whether unions could nominate individuals for appointment.

Central Bank Response

The Regulatory Decisions Panel comprises internal (i.e. Central Bank) and external panel members. The Central Bank website² outlines the process for appointing individuals to the Regulatory Decisions Panel and lists the current membership of the Regulatory Decisions Panel. The Regulatory Decisions Panel was initially established in 2021. The internal panel members appointed comprised Central Bank staff who held a qualifying role, being the role of Director or Head of Division in all directorates with the exception of the Enforcement and Anti-Money Laundering Directorate and the Strategy and Governance Directorate. Externally recruited appointed panel members were appointed following a public competition seeking a mix of expertise across a variety of relevant areas including legal, accounting, consumer protection and financial services. Shortly prior to the commencement of the Act in April 2023, the Minister for Finance designated the existing Regulatory Decisions Panel under the Act to be treated as a panel established by the Minister following commencement of the Act. Similarly, the Minister designated the appointments that had been made to the Regulatory Decisions Panel to be treated as appointments made by the Minister.

Appointment of Inquiry Members

A query was raised on whether a sole inquiry member who is acting as inquiry chair is required to be legally qualified. Clarity was also

² See [here](#).

sought on when a subject is notified of the identity of the inquiry members.

Central Bank Response

There is no requirement that a sole inquiry member be legally qualified and this has been clarified by way of an amendment to the ASP Guidelines. Depending on the nature of the case, it may be necessary to appoint a sole member with specific expertise such as, for example, accountancy expertise. Inquiry members can seek legal advice from their legal advisors on any matter coming before them, as necessary.

With regard to the identification of inquiry members, the ASP Guidelines state that following the appointment of inquiry members, the Central Bank's Regulatory Decisions Unit (RDU) will write to the inquiry participants to confirm such appointment, and the ASP Guidelines have been amended to clarify that the inquiry members will also be named in that communication. A further amendment has been made to the ASP Guidelines to state that the notice appearing on the Central Bank's website confirming that an inquiry has commenced will also identify the inquiry members who have been appointed to that inquiry.

Management of Conflicts of Interest

Further clarity was sought in a number of responses as to how independence and conflict of interests are managed in respect of appointments from the Regulatory Decisions Panel to the role of inquiry member. These respondents queried how conflicts of interest are managed and objectivity protected where Central Bank staff are members of the Regulatory Decisions Panel and may be appointed as inquiry members. One response sought confirmation that external panel members appointed as inquiry members will not be active in the same sector as the subject of an inquiry.

Central Bank Response

As outlined in the ASP Guidelines, the Central Bank will select suitable members of the panel for appointment as inquiry members having carefully considered their experience and expertise, availability and any conflicts or potential conflicts of interest. We

have amended the ASP Guidelines to provide additional detail on how conflicts are managed at the appointment stage and throughout the inquiry process. Prior to either internal (i.e. Central Bank) or external members of the panel being appointed as an inquiry member, the member will be required to review relevant inquiry information and sign a declaration confirming that they are not aware of any actual or potential conflicts. Inquiry members are under a continuing obligation to notify RDU as soon as they become aware of any actual, potential or perceived conflict arising during an inquiry. In light of this conflicts management process, panel members are not precluded from being appointed as inquiry members by virtue of the fact that they work in the same sector as a subject of an inquiry. The ability to appoint relevant sectoral specialists is important in order to ensure the most appropriate decision makers are available for appointment where the circumstances of the case require it.

Inquiries to be held in public

A number of responses were made in respect of the statutory presumption that all inquiries would be held in public. It was suggested that inquiries relating to individuals should always be held in private.

Central Bank Response

The legislation provides that inquiries are to be held in public other than where the inquiry members are satisfied that certain legislative exceptions apply. Therefore, the ASP Guidelines provide for a default position that all hearings will be held in public unless a relevant exception applies. Inquiry members will consider any request for a private hearing on a case-by-case basis in the context of the relevant statutory provisions.

Witnesses

A number of responses were received on the role of witnesses at inquiries and in particular focused on their vulnerability, given that there is no provision to discharge their legal costs. It was also noted that witnesses may have limited access to relevant documentation.

In addition, there were a number of queries as to whether a witness could apply to have their testimony or the hearing take place in private. Separately, there was a query as to whether witnesses can refer a question of law to the High Court.

Central Bank Response

Neither the Central Bank nor the inquiry members have a statutory power to discharge a witness's legal costs. Similarly, there is no statutory power to discharge any legal costs or expenses relating to the inquiry incurred by the subject of an inquiry. As outlined in the ASP Guidelines, the inquiry members may decide to provide witnesses, who have been summonsed to attend and give evidence, with a flat rate payment for expenses (i.e. a viaticum).

As noted above in respect of access to information more generally, the Central Bank appreciates the challenges that may arise for witnesses in this regard and the Central Bank would expect inquiry participants to reasonably facilitate witnesses by disclosing relevant documents. It is expected that the inquiry participants (namely the subject and the enforcement division of the Central Bank) will provide a witness with relevant documentation to assist with the witness's preparation for giving evidence, subject to seeking the relevant authorisation from the inquiry members.

With regard to the hearing of witness testimony in private, a witness may apply to have an inquiry held in private (or part in private) if the witness believes that their reputation would be unfairly prejudiced unless the inquiry is held wholly or partly in private. Inquiry members have discretion as to whether or not to allow such applications.

With regard to the referral of a question of law to the High Court, the applicable legislation only makes provision for such applications to be made by the Central Bank to the High Court, which powers may be exercised by the inquiry members.

Third Party Firms

A number of responses addressed the role of third party firms at inquiries. Some responses sought clarity as to whether a firm is

obliged to attend at an inquiry relating to an employee of that firm. Other responses suggested that firms should be afforded the right to have a role at inquiries where the subject of the inquiry is an individual who is or was performing a controlled function in that firm. There was also a query as to whether an individual could request a role at inquiry, where the subject of the inquiry is a firm in which they have performed a controlled function or pre-approval controlled function.

Some responses sought further detail on the role of third party firms at inquiries including the factors leading to a role being granted, the nature of the role that would be granted and whether reasons would be given for any decision refusing an application for a role at inquiry.

Central Bank Response

The Central Bank Act 1942 does not expressly provide for any third parties to have a role at inquiry. The ASP Guidelines give guidance on the procedure to be followed by inquiry members in determining whether or not to allow a third party firm to have a role at inquiry in circumstances where that firm believes that it has an interest in the subject matter of an inquiry involving an individual who is or was performing a controlled function in that firm. The nature of the role of a third party at inquiry will be determined by inquiry members on a case-by-case basis. Whether a firm will be afforded any role at an inquiry in which they are not the subject of the inquiry is at the discretion of the inquiry members, noting that the legislation does not provide for any such third party involvement.

In accordance with principles of fair procedures, it would be expected that inquiry members would provide reasons for any decision as to whether or not to allow an application by a third party firm for a role at inquiry.

Inquiry Procedure

A few responses raised queries in relation to the inquiry management questionnaire which issues shortly after the inquiry commences. In particular, there was a query as to how long the subject of the inquiry would be given to respond to the inquiry management questionnaire, and who would receive the completed

questionnaire. Another response sought examples of what the enforcement division of the Central Bank might consider to be “preliminary matters” as provided for in the questionnaire.

Clarity was sought as to whether evidence obtained in oral hearing would be recorded by a stenographer. Another response sought clarity on how an inquiry participant would be notified of new correspondence issued electronically by RDU.

Central Bank Response

As outlined in the ASP Guidelines, the timeframe for responding to the inquiry management questionnaire will be set by the inquiry members depending on the circumstances of a particular case. The inquiry members will set reasonable timeframes in this regard which would provide a fair and realistic opportunity for the subject to respond in respect of the matters outlined in the questionnaire.

In line with the sharing of correspondence outlined in the ASP Guidelines, responses to the inquiry management questionnaire will be made available by RDU to all inquiry participants. The ASP Guidelines set out the process around the inquiry management questionnaire, and how the inquiry members set time for replies in the context of the case, and that the inquiry management questionnaire enables the inquiry members to establish whether an inquiry management meeting is needed. With regard to examples of “preliminary matters”, these are outlined in the ASP Guidelines.

RDU will share correspondence electronically with inquiry participants either via email or through a document-sharing platform. As outlined in the ASP Guidelines, a stenographer will be in attendance at all hearings (including inquiry management meetings) and a copy of the transcript will be made available to the inquiry members and the inquiry participants as soon as practicable.

Inquiry Publication Notice

A number of responses submitted that information regarding an inquiry decision should not be published on the website prior to the High Court confirmation of the decision and any sanction imposed.

Central Bank Response

Where inquiry members make a finding that a prescribed contravention has been committed, they are required to notify the subject of that finding and then to publish the finding and certain other particulars, subject to certain limited exceptions. The applicable legislation does not require the inquiry decision to have been confirmed by the High Court prior to publication. This is in line with the statutory presumption that an inquiry will be held in public. The ASP Guidelines provide that the draft inquiry publication notice³ will be shared with the subject prior to publication and submissions may be sought. When published, the inquiry publication notice will note that the inquiry decision is subject to confirmation by the High Court, or appeal, as the case may be, and it will be updated with the outcome of the confirmation or appeal procedure.

A Finding of No Prescribed Contravention

There were a number of responses in respect of the conclusion of an inquiry where the inquiry members have made a finding that no prescribed contravention has been committed. In particular, it was suggested that there should be a requirement to publish a notice at the conclusion of an inquiry in respect of such a finding. The question of a subject's costs and expenses in these circumstances was also raised.

Central Bank Response

The Central Bank accepts that it is appropriate for a notice to be published where an inquiry concludes and inquiry members have made a finding that no prescribed contravention has been committed. We have amended the ASP Guidelines to state that it is expected that the inquiry members will issue a public notice in all such cases.

In respect of the subject of the inquiry's costs and expenses in such a case, neither the Central Bank nor the inquiry members have the power to discharge a subject's legal costs or expenses irrespective

³ A notice to be published by the inquiry members following the issue of an inquiry decision, which will include certain details of the inquiry finding and sanction to be imposed, if any. See section 33BC of the Central Bank Act 1942.

of whether or not there is a finding that a prescribed contravention has been committed.

3. ASP Settlement

The Process in Undisputed Facts Settlements and Investigation Report Settlements

In relation to the undisputed facts settlement process, a number of responses sought clarification on whether the subject of the investigation will be given an opportunity to input into or make submissions in respect of the statement of undisputed facts. In addition, clarification was sought on when, in the settlement process, the Central Bank would provide the subject with the statement of undisputed facts, the proposed sanction and public statement.

Some of the responses also sought clarity on how the subject of the investigation or inquiry indicates a “willingness to engage” in settlement.

Central Bank Response

Having considered the requests for further clarification around the settlement process, the Central Bank has made certain amendments to the ASP Guidelines to clarify how the new settlement processes will operate. A settlement process will begin with the issue by the Central Bank of a settlement procedure letter intended to gauge a subject’s willingness to engage in settlement. When a subject has responded to the settlement procedure letter indicating a willingness to engage in the settlement, the Central Bank will provide the subject with the proposed terms of settlement. The proposed terms of settlement provided will set out the details of the prescribed contravention, the facts to be agreed with, and admitted by, the subject, and the proposed sanction. The subject, as part of the settlement, will be required to acknowledge the proposed publication of details of the admitted prescribed contravention, the agreed facts and the sanction proposed. Settlement must be concluded within a stipulated timeframe.

The subject of an investigation will not be asked to consent to any settlement terms (including the prescribed contravention, facts,

sanction or public statement) without having the opportunity to engage with the Central Bank. However, the Central Bank wishes to emphasise that a regulatory settlement is not akin to a commercial negotiation and the Central Bank will only be minded to amend the prescribed contravention, facts or sanction as set out in the proposed settlement terms where the subject can satisfy the Central Bank of a legal or evidential justification to do so. We have amended the ASP Guidelines to clarify this.

No Admissions Settlement

We note the interest of some respondents in having further clarity on the circumstances in which the Central Bank will use the no admissions settlement process and the suggestion that the list of factors set out in the draft ASP Guidelines indicating a lack of suitability for the no admissions settlement process is too broad. Clarity was also sought as to whether the no admissions settlement process will only be an option when none of the factors listed in the ASP Guidelines are present.

Central Bank Response

The underlying rationale for the Central Bank's policy position of seeking admissions before settlement was set out in detail in the ASP Consultation. As it is intended to continue this policy, it is not proposed to seek to define or foresee circumstances where a no admissions settlement might constitute an acceptable regulatory outcome. It is anticipated that such circumstances will seldom arise in practice and will depend very much on the particular facts of the case.

The list of factors set out in the ASP Guidelines to which the Central Bank may have regard and which would indicate a lack of suitability of a case for a no admissions settlement is non-exhaustive. The greater the degree to which such factors are present, the greater the likelihood that a no admissions settlement would not be appropriate. Notwithstanding our general policy of requiring admissions, we have included this list of factors in our ASP Guidelines to provide some insight into the relevant factors

that would be considered by the Central Bank should a case arise where such a matter was being determined.

Public Statements

Queries that were received in respect of the publication by the Central Bank of a public statement following settlement centred primarily on the content of such a public statement and the manner by which it would be finalised.

Respondents also sought clarification on the Central Bank's ability to issue market commentary and further information was sought as to what constitutes market aspects of a case.

Central Bank Response

While the Central Bank has full discretion regarding the timing and manner of the release of a public statement following settlement, the subject will have had an opportunity to engage on the public statement prior to the conclusion of settlement.

Separately, the ability of the Central Bank to provide appropriate commentary is an important tool in our supervisory and enforcement messaging and for the purposes of maximising deterrence, awareness and educational effect. In terms of enforcement specifically, such commentary can be important in connecting the outcome of an enforcement action, in a holistic way as is appropriate, to our mission statement, statutory objectives and priorities to inform and educate key stakeholders. The Central Bank needs to be in a position to signal to the public, consumers and wider markets what we are seeing and our views in terms of trends, systemic issues, material incidents and behaviours. We have clarified in the ASP Guidelines that such commentary is not limited to the market aspects of a case and is relevant to the wider public.

Settlement Scheme

A few respondents made observations about the discount levels under the settlement scheme. The potential challenge in agreeing

whether to enter settlement where there are diverging interests within a firm was also noted.

Central Bank Response

As set out in the ASP Consultation, the settlement scheme is offered on a discretionary basis by the Central Bank and there is no requirement for discounts to be offered under the applicable legislation.

In offering the possibility of settlement discounts and setting the appropriate levels, the Central Bank is informed by its regulatory objectives and the effective use of time and resources in the public interest.

From the subject's perspective, settlement processes are entirely voluntary and a subject can decide whether it considers that engaging in such a process is in its best interests or not.

4. ASP Sanctions

Monetary Penalties for Individuals

There were concerns raised in the responses in relation to the level of the maximum monetary penalty for individuals. It was submitted that in order to ensure a proportionate and fair approach to the imposition of multiple sanctions, there is a need to ensure that the cumulative impact of the sanctions imposed does not exceed the maximum monetary penalty.

Central Bank Response

The maximum monetary penalty as stated in the ASP Guidelines is set by legislation. The Central Bank's approach to sanctioning as set out in the ASP Guidelines ensures that the sanctions it seeks to impose are proportionate in the particular circumstances and that where there is more than one type of sanction being imposed the cumulative effect of those sanctions is considered.

Determination of Monetary Penalties for Individuals

A number of responses sought further details on the determination of monetary penalties including further information on the starting

point (particularly where that starting point is related to assets rather than income) and how the sanctioning factors set out in the ASP Guidelines are used in the determination.

Central Bank Response

The Central Bank considers that the methodology for the determination of monetary penalties strikes the right balance between offering sufficient guidance to assist transparency and consistency and being flexible enough for us to apply across a broad range of cases. The starting point for the determination of monetary penalties will be determined based on the specifics of the case. Whilst the starting point will usually be relevant revenue with respect to firms and relevant income with respect to individuals, there may be circumstances based on the facts of the case in which an alternative starting point would be more appropriate. In those cases, the Central Bank will explain the starting point to the subject of the investigation or inquiry. We have amended the ASP Guidelines to clarify that firms and individuals will be provided with information on how any proposed monetary penalty has been calculated (which would generally include the basis for the starting point) and will have an opportunity to engage with the Central Bank on sanctions as part of a settlement or inquiry process.

Monetary Penalties for Firms

A concern was raised that where the starting point is revenue, the monetary penalty methodology suggests that a higher earning firm may always have a larger monetary penalty than a smaller firm even where the prescribed contravention committed by the smaller firm is more serious and there is less mitigation.

Central Bank Response

The Central Bank view is that from the perspective of both fairness and deterrence monetary penalties should be proportionate to the earnings of a firm or individual. This means that typically monetary penalties imposed against higher earning firms will be higher than those imposed against lower earning firms. Such monetary penalties will however be determined based on the seriousness of the prescribed contravention and whether there are aggravating,

mitigating or other relevant factors. When monetary penalties are being imposed, the Central Bank will provide subjects with information on how it determines any monetary penalty and ultimately, as with all sanctions, any monetary penalty (save those imposed in the context of a no admissions settlement) will be subject to High Court confirmation.

Submissions on Sanction

Concerns were raised in the responses that a subject of an investigation or inquiry did not appear to be entitled to make submissions on sanction as part of the settlement process.

Central Bank Response

The ASP Guidelines have been amended to clarify that a subject of an investigation or inquiry will be entitled to make submissions on sanction as part of the settlement process.

Directions Imposing Conditions or Disqualification as a Sanction

A number of responses sought further detail on the imposition of directions imposing conditions or disqualification as a sanction. Examples were sought of the types of conditions that might be imposed in practice and what periods of disqualification might apply to different prescribed contraventions.

Some responses queried how firms should consider and incorporate conditions or a disqualification as part of any fitness and probity assessment of an individual post-sanction.

Central Bank Response

The ASP Guidelines have been amended to provide further information on the imposition of directions imposing conditions or disqualification as a sanction. The Central Bank will generally determine the details of any conditions, or the duration and scope of a disqualification on a case-by-case basis depending on the facts of the case, the circumstances of the individual, any relevant sanctioning factors and any other factor which the Central Bank considers to be relevant.

The ASP Guidelines now include examples of potential conditions. The examples set out in the ASP Guidelines are not exhaustive.

The direction imposing the conditions or disqualification will clearly set out the terms of the conditions or disqualification so that individuals and the firms that employ them understand the terms.

The imposition of any sanction on an individual is relevant to a firm's assessment of that individual's fitness and probity.

Sanctioning Factors

A number of responses sought more detailed explanations on the sanctioning factors set out in the ASP Guidelines or sought the addition of further sanctioning factors.

Central Bank Response

The Central Bank considers that the sanctioning factors as set out in the ASP Guidelines are sufficiently detailed to provide guidance to the subject of an investigation or inquiry while also allowing for enough flexibility to allow the Central Bank to apply the sanctioning factors to the circumstances of a wide range of diverse cases. Further information on the particular factors that apply to the subject of an investigation or an inquiry will be provided as part of a settlement or inquiry process. Furthermore, the sanctioning factors set out in the ASP Guidelines are not intended to be exhaustive and should the circumstances of a case require it the Central Bank may seek to apply such other suitable factors as are relevant.

Providing Legally Privileged Material as an Example of Exemplary Cooperation

Some responses queried the inclusion of the provision of privileged material by a firm or individual to the Central Bank as an example of exemplary cooperation. In particular, it was noted that the assertion of privilege is a legal right and concern was raised that by not waiving that right it would be treated as an aggravating factor or that if the subject of an investigation did not provide privileged material that

they would not be entitled to any mitigation for other forms of cooperation with the investigation.

Central Bank Response

The Central Bank accepts that the assertion of privilege is a legal right and that the subjects of investigations are entitled to assert it and may wish to do so. The decision not to provide privileged material will be considered by the Central Bank to be a neutral factor and will not impact on whether the subject of an investigation is otherwise given credit for cooperating with the investigation. However, we are retaining the provision of privileged material as an example of exemplary cooperation. Where the subject of an investigation chooses to waive their right to assert privilege and in so doing provides the Central Bank with access to information that might not otherwise be available to it, the Central Bank considers that it is correct to recognise this as exemplary cooperation.

5. ASP Court Confirmation and Appeals

High Court Confirmation

A number of responses suggested that publication relating to an enforcement action should not occur until after the inquiry decision or the sanction agreed by settlement has been confirmed by the High Court. Clarity was also sought as to whether the Central Bank, in the context of its settlement processes, will include details of the sanction (and the relevant sanctioning factors) in the public statement that it will issue before the sanction has been confirmed by the High Court.

Central Bank Response

There is a strong public interest in the timely publication of enforcement actions both to ensure that the general public and the market are properly informed of findings of wrongdoing and to maximise the deterrent and educational effect of enforcement action.

The Central Bank expects that a public statement will be issued in all cases following a concluded inquiry or settlement. As a matter of law, the public statement may be published before the inquiry

decision or the sanction agreed by settlement has been confirmed by the High Court. In these circumstances, the public statement will contain a statement that the inquiry decision or the sanction agreed by settlement is subject to confirmation by the High Court.

In the context of the settlement process, the public statement will generally include details of the agreed sanction and any sanctioning factors taken into account in determining the agreed sanction. Following the conclusion of an inquiry, the inquiry members will determine the contents of the inquiry publication notice. This will include certain details of the sanction to be imposed, if any.

Appealable Decisions

Some responses sought clarification on the type of Central Bank decisions that can be challenged including what appeal options are available if the Central Bank took supervisory action as an alternative to enforcement action.

Central Bank Response

Decisions that are declared by a provision of the applicable legislation to be an “appealable decision” may be appealed to the Irish Financial Services Appeals Tribunal (IFSAT). As set out in the applicable legislation, certain decisions including particular supervisory actions, are appealable decisions and, therefore, may be appealed to IFSAT.

The inquiry decision is the only decision under the ASP that is an “appealable decision” and may be appealed to IFSAT. We have amended the ASP Guidelines to clarify this.

Part 5: Other Notable Matters

The ASP and the Individual

An overarching observation that arises in many of the responses relates to the fact that respondents consider that the ASP Guidelines do not sufficiently distinguish between individuals and firms in the application of the ASP. In this regard, a number of the responses submit that reputational damage is a more significant issue for an individual than it is for a firm.

Linked to this was a concern in respect of the resource and power imbalance between the Central Bank and individuals. Some responses suggested that additional protections be afforded to individuals who may have reduced financial means, be less experienced in dealing with investigations and regulators, have less access to legal/expert advice than firms and be potentially susceptible to undue influence from the firm itself and more senior individuals within the firm.

Central Bank Response

The Central Bank notes the concerns that have been raised around the differing considerations which apply to individuals as distinct from firms in respect of certain aspects of the ASP.

The Central Bank is committed to applying the ASP to individuals, as well as firms, in a fair and proportionate manner and operating its enforcement processes in an open and transparent way. This will be done in a way which takes account of the challenges which an individual may face as distinct from a firm. The Central Bank is aware of these challenges and recognises the natural and constitutional rights of an individual to due process and fair procedures.

There is a significant public interest in the effective enforcement of financial regulation and enforcement plays an important role in deterring misconduct, promoting public trust and confidence, investor and consumer protection and market integrity. The ASP is a longstanding mechanism for the investigation of regulatory breach and the imposition of administrative sanctions, where appropriate, and publication is an important tool in promoting the transparency of the Central Bank's enforcement processes. It

informs the general public, as well as the market, and helps to maximise the deterrent and educational effect of enforcement action.

However, in terms of addressing respondents' concerns, the ASP has been further fortified from a legal and constitutional perspective with the introduction of the IAF and through the incorporation of additional safeguards under the Act. These amendments make changes to the operation of the ASP to clarify the processes involved and to ensure it continues to conform to the required standards of fairness in its procedures, particularly having regard to its application to individuals following the introduction of the IAF.

Further, the Central Bank has made every effort to provide comprehensive guidance on the obligations of individuals under the IAF in order to assist individuals in complying with their obligations.

The Central Bank has also set out detailed ASP Guidelines to give clarity and certainty as to our enforcement processes and procedures.

Additionally, in this feedback statement we have sought to provide reassurance around some of the concerns raised relating to individuals by expanding on our intended approach in practice to matters such as timeframes, publication of a finding of no contravention and disclosure of confidential information, and clarifying these matters in the ASP Guidelines, as appropriate.

Temporal Application of the ASP Guidelines

A number of responses sought further clarification in respect of the temporal application of the ASP Guidelines, in particular, when they take effect and how they apply to a prescribed contravention that occurred before the date on which the relevant provisions of the Act commenced (19 April 2023).

Central Bank Response

The ASP Guidelines will apply to investigations and inquiries commenced after 19 April 2023 even if the prescribed

contravention took place before then. The ASP Guidelines in Part 1 Section 2 set out an explanation of when the ASP Guidelines come into effect and what cases they apply to.

Further detailed guidance on the transitional provisions of the Act is set out in Appendix 2 to the ASP Consultation and as Appendix 2 of this feedback statement for ease of reference.

Interaction between Fitness and Probity and ASP

A number of responses queried how the ASP and fitness and probity regimes will interact in cases involving individuals. Among the issues raised were the following:

- Whether the statutory time limit of six years that is applicable in fitness and probity investigations has any application to ASP investigations.
- Whether ASP investigations and fitness and probity investigations into the same individual can occur concurrently.
- What effect a settlement agreement, disqualification (including those where the disqualification period has ended), the imposition of a condition or the commencement of an inquiry will have on future assessments of the individual's fitness and probity including any application to the Central Bank for approval to perform a pre-approval controlled function.

Central Bank Response

ASP investigations are carried out under the Central Bank Act 1942. Fitness and probity investigations are carried out under a distinct statutory framework, the Central Bank Reform Act 2010. Part 3 of the Central Bank Reform Act 2010, which established the Central Bank's fitness and probity regime, was amended by the Act to provide for a statutory look back period of six years for the investigation of the fitness and probity of persons who formerly performed a controlled function. This means that the Central Bank may investigate a former controlled function role holder in respect of their fitness and probity up to six years after they have left the role. There is no corresponding provision in the legislation applicable to the ASP.

The Central Bank does not anticipate taking concurrent ASP and fitness and probity investigations. However, there is no prohibition on the Central Bank taking concurrent investigations if the circumstances require it.

The Central Bank may use any information gathered as part of an ASP to perform its statutory functions including in relation to fitness and probity assessments under the Central Bank Reform Act 2010.

Data Protection Obligations

A number of responses address the Central Bank’s data protection obligations, including data retention periods, use of personal data, sharing of personal data, and publishing personal data within public notices.

Central Bank Response

The ASP may entail the collection and processing of various levels of personal data. The Central Bank processes this personal data in accordance with the obligations contained in the General Data Protection Regulation. Personal data is processed in a manner that is necessary and proportionate in accordance with the Central Bank functions conducted in the public interest. This includes the publication of personal data within enforcement notices upon the conclusion of an ASP. Further information on the processing of personal data under the ASP is available in the Data Protection Privacy Notice published on the Central Bank’s website.⁴

Jurisdiction of the ASP

Some responses sought clarification in respect of the application of the ASP to entities passporting into Ireland on a freedom of establishment and a freedom of services basis and to individuals in controlled functions located outside of Ireland.

⁴ See [here](#).

Central Bank Response

The jurisdiction of the ASP is determined by reference to Part IIIC of the Central Bank Act 1942 and the applicable financial services legislation which is contravened. Whether or not a set of circumstances comes within the ambit of the ASP is determined on a case-by-case basis in accordance with these legal provisions.

Central Bank Functions

A number of responses sought clarification in relation to the role of the Central Bank decision maker who decides whether an inquiry should be held.

Further clarification was also sought in respect of the role of the Central Bank's enforcement division at an inquiry and it was requested that the ASP Guidelines be augmented to describe the organisational structure in place within and outside the enforcement division to safeguard the objectivity of the process.

Central Bank Response

The Act provides for restrictions on who can exercise the functions of the Central Bank to ensure the impartiality of the various stages of the ASP including the commencement of an investigation, the investigation, the decision to hold an inquiry and the inquiry itself.

In accordance with the Act, the person who decides whether to hold an inquiry cannot have been involved in carrying out the investigation. We have amended the ASP Guidelines to clarify this.

Furthermore, in accordance with the Act, the person who decides to hold an inquiry or an inquiry member cannot be involved in carrying out the Central Bank's functions of making submissions, leading evidence or examining witness on behalf of the Central Bank at inquiry.

The enforcement division in the Central Bank is best placed to carry out the Central Bank's functions of leading evidence, examining witnesses, making submissions and presenting the results of the investigation to the inquiry. The inquiry members who are independent in the exercise of their functions will make a

finding as to whether a prescribed contravention has been committed and what sanction, if any, to impose.

Departure from the ASP Guidelines

Clarification was sought on the internal governance around and the grounds on which the Central Bank or inquiry members may depart from the ASP Guidelines.

Central Bank Response

The ASP is prescribed by legislation and the Central Bank and the inquiry members must comply with the legislation. The ASP Guidelines provide guidance on the operation of the ASP. In the event of a conflict between the ASP Guidelines and the legislation, the legislation will prevail. The Central Bank or the inquiry members may depart from the procedures set out in the ASP Guidelines where they are not appropriate in the circumstances of a particular case.

It is not possible for the Central Bank to speculate on what circumstances may arise in particular cases warranting a departure from the ASP Guidelines. The ASP Guidelines represent the Central Bank's procedures in ordinary course in relation to investigations, inquiries and administrative sanctions. However, it is important that decision makers retain the discretion to depart from these procedures where there appears to them a rationale to do so in the context of a particular case.

Where the Central Bank or the inquiry members decide to depart from the ASP Guidelines, the subject of the investigation or the inquiry will be notified of any such departure.

Subjects being accompanied at any stage of the ASP

Clarification was sought as to whether trade union members working in financial services could be accompanied by a trade union representative at any stage of the ASP.

Central Bank Response

The subject of an inquiry may choose to be represented at the

inquiry by a legal practitioner, or with the leave of the inquiry members, by any other person.

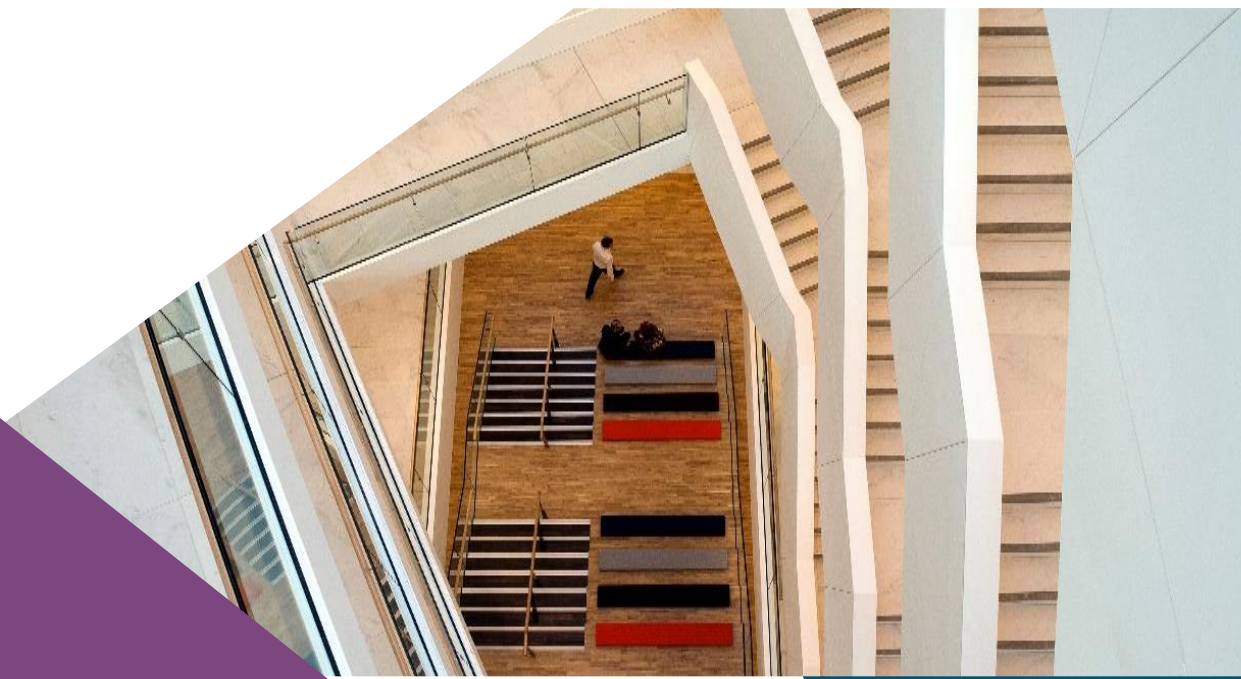
We have also amended the ASP Guidelines to clarify that when attending interview, the subject of an investigation may be accompanied by an independent legal representative. Whether a representative other than a legal representative will be permitted to attend an interview will be determined by the Central Bank on a case-by-case basis.

Appendix 1: Administrative Sanctions Procedure Guidelines

Appendix 1 to the feedback statement – The ASP Guidelines are located in a separate file.

Appendix 2: Administrative Sanctions Procedure – Guide to Transitional Arrangements Arising from the Central Bank (Individual Accountability Framework) Act 2023

Appendix 2 to the feedback statement – Guide to Transitional Arrangements Arising from the Central Bank (Individual Accountability Framework) Act 2023 is located in a separate file.



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