



**PIBA submission on CP 57 : Inquiry Guidelines to be prescribed pursuant to
Section 33BD of the Central Bank Act 1942**

The Professional Insurance Brokers Association (PIBA) is the largest independent representative body for insurance and mortgage brokers with nearly 900 member firms throughout Ireland. This submission outlines a response to the consultation on the Inquiry Guidelines to be prescribed pursuant to Section 33BD of the Central Bank Act 1942 on behalf of our members.

PIBA notes that the consultation paper is expressly stated to concern the inquiry guidelines which may be prescribed pursuant to section 33BD of the Central Bank Act 1942 (as amended).

Section 33AR of Chapter 2 permits that the inquiry may be dispensed with and an alternative procedure adopted when the prescribed contravention is acknowledged. Section 33AV of Chapter 2 permits that an inquiry may be dispensed with or, if already commenced, stopped where an agreement is entered into between the Bank and the relevant party to resolve the matter. Neither section 33AR nor section 33AV are referred to in the consultation paper, save possibly by a passing reference to a “settlement” in paragraph 3.1.

PIBA feels that the opportunity to elaborate upon the alternative procedure of 33AR and the resolution mechanism in 33AV are missed in the consultation paper. We believe that the settlement procedure and mechanism are integrally linked to the inquiry process.

PIBA has concerns about the lack of detail surrounding the pre-inquiry/examination/settlement process. PIBA feels that there is a lack transparency in the Central Bank’s pre-inquiry investigation of suspected prescribed contraventions. The Central Bank needs to put in place a transparent and fair pre-inquiry alternative procedure in 33AR and a transparent and fair agreement mechanism in 33AV to remedy this.

PIBA is aware of respondent’s experiences where long and protracted delays have taken place during the pre-inquiry examination process. To ensure a fair process for the respondent, proper timelines and engagement timeframes should be outlined in the administrative sanction guidelines.

Outlined below is PIBA comments in relation to proposals contained in the consultation paper.

1. [Paragraph 3.1 of the Consultation Paper] **Guidelines for Alternative Procedure in Section 33AR:** PIBA feels that the Central Bank of Ireland should include clear guidelines on the potential operation of the alternative procedure of dispensing with the inquiry as prescribed in Section 33AR of Chapter 2 of Part IIIC. The guidelines should elaborate upon the facility for the service providers to acknowledge the commission of the prescribed contravention. These guidelines must clarify the parameters of the alternative procedure so that the procedure cannot be

protracted or abused by a lack of engagement by either the respondent or the Central Bank. These section 33AR guidelines should be referred to in the Examination Letter that is issued to respondents.

2. [Paragraph 3.1 of the Consultation Paper] **Guidelines for Resolution Mechanism in Section**

33AV: The Central Bank should include clear guidelines on the processes which the Central Bank follows to resolve suspected contraventions under the resolution mechanism in section 33AV. These guidelines should elaborate upon the facility for the parties to resolve the issue of the suspected prescribed contraventions. The guidelines must be clear about the parameters of the resolution mechanism, including the timelines for actions and responses by the Central Bank, so that the resolution mechanism cannot be protracted or abused by a lack of engagement by the Central Bank in a manner which would interfere with the service provider's right to benefit from the proper application of the principles of fairness, due process and, where relevant, natural justice. The section 33AV guidelines should be referred to in the Examination Letter that is issued to respondents.

3. [Paragraph 3.1 of the Consultation Paper] **Abolition of the Use of Without-Prejudice,**

Settlement Agreement Letters: If, as is submitted, guidelines for the resolution mechanism in section 33AV are included in the Inquiry Guidelines and are referred to in the Examination Letters that are issued to respondents, this would allow the existing practice of issuing without-prejudice, settlement agreement letters contemporaneously with an Examination Letter to be abolished. The use of without-prejudice, settlement agreement letters unavoidably creates the perception of pre-judgement by the Central Bank, particularly as they are issued before an examination of the suspected contravention has properly commenced. The practice of issuing such without-prejudice, settlement agreement letters taints the procedures of fairness that the Central Bank should be attempting to put in place and should be abolished entirely.

Appendix 1: Draft Inquiry Guidelines

4. {Paragraph 1.2} **Referral to Inquiry**

PIBA believes that a provisional letter should be sent to the respondent to give them an opportunity to respond to the issues raised prior to the examination letter being issued to the regulated financial service provider. The reason for this is that we are aware of cases where mistakes have been made by inspection teams whereby information was overlooked during the inspection. An initial letter would give the opportunity to address any such issues.

5. [Paragraph 1.6] **Appointment of Inquiry Panel:**

PIBA believes that the inquiry panel should always include one external member, preferably a person from the same peer group as the respondent subject to examination.

6. [Paragraph 2.2] **Pre-Inquiry Procedures**

PIBA notes that the Inquiry may be held in private where a person's reputation would be unfairly prejudiced. We believe that for smaller entities such as intermediaries, a public inquiry will always lead to the reputation of the concerned individual being unfairly prejudiced compared to larger institutions with branch networks.

7. [Paragraph 3.5] **Form and order of proceedings**

PIBA notes that "the respondent may choose to be represented at the Inquiry by counsel and/or a solicitor or, with the leave of the Panel, any other person." PIBA believes that the respondent should have an automatic right to bring in a third party such as a delegate from their representative body.