



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

2011

## Consultation Paper 57:

**Inquiry Guidelines to be prescribed  
pursuant to section 33BD of the Central  
Bank Act 1942 (as amended)**



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## Section 1: Making submissions

- 1.1 Please make your submissions in writing, and if possible, electronically as a Word document or a .pdf document by email on or before **13 January 2012**.
- 1.2 Submissions should be marked “**Inquiry Guidelines CP57**” and sent by email to: [ASPConsultationPaper@centralbank.ie](mailto:ASPConsultationPaper@centralbank.ie)
- 1.3 In the event that you are unable to send your response electronically, please forward it by post, marked “**Inquiry Guidelines CP57**”, on or before **13 January 2012** to:  
  
Enforcement 1 Division  
Central Bank of Ireland  
Block D Iveagh Court  
Harcourt Road  
Dublin 2
- 1.4 We invite comments on all aspects of this Consultation Paper (“**the Paper**”). If you are raising an issue that we have not referred to in the Paper, please indicate this in your submission.
- 1.5 We intend to make all submissions available on our website after the deadline for receiving submissions has passed. We shall not publish any information which we deem potentially libellous or defamatory.
- 1.6 The Central Bank of Ireland (“**the Central Bank**”) accepts no liability whatsoever in respect of any information provided which is subsequently released or in respect of any consequential damage suffered as a result.



## Section 2: Introduction

- 2.1 Under Part IIIC of the Central Bank Act 1942 (“**the Act**”)<sup>1</sup>, the Central Bank has the power to impose sanctions in respect of breaches of regulatory requirements<sup>2</sup> by regulated financial service providers and persons concerned in their management and to publicise the findings and sanctions imposed. This is known as the “**Administrative Sanctions Procedure**”. The Administrative Sanctions Procedure includes, in appropriate cases, the convening of an Inquiry by the Central Bank to determine whether or not a prescribed contravention has been or is being committed and to determine sanctions.
- 2.2 In 2004/2005, the Central Bank consulted on the Administrative Sanctions Procedure. Following that consultation, the Central Bank prescribed Guidelines on the Inquiry process (known as “the Administrative Sanctions Guidelines”). The Central Bank is now reviewing its approach to certain aspects of the Administrative Sanctions Procedure to accommodate changes made to Part IIIC since 2004, and in light of the Central Bank (Supervision and Enforcement) Bill 2011 and the Central Bank’s new risk-based model of regulation underpinned by a credible threat of enforcement (as outlined below). As part of that review, the Central Bank is proposing to prescribe new Inquiry Guidelines pursuant to section 33BD of the Act. The purpose of this Paper is to seek comments on the draft Inquiry Guidelines proposed<sup>3</sup>.
- 2.3 The Central Bank’s new model of regulation is an assertive risk-based regulatory framework<sup>4</sup> underpinned by a credible threat of enforcement with resources being allocated to areas where the Central Bank believes the greatest risks lie. As outlined in the *Enforcement Strategy 2011–2012*, our approach will see a vigorous application of existing enforcement powers, such as the Administrative Sanctions Procedure, to deliver on the credible threat of enforcement<sup>5</sup>.

<sup>1</sup> Part IIIC of the Act was introduced by the Central Bank and Financial Services Authority of Ireland Act 2004. The Act has been further amended by the Central Bank Reform Act 2010.

<sup>2</sup> Breaches of regulatory requirements are referred to in the Act as “*prescribed contraventions*”.

<sup>3</sup> As set out in further detail in Section 3 of the Paper.

<sup>4</sup> As set out in more detail in the *Central Bank of Ireland Strategic Plan 2010-2012*, available at: <http://www.centralbank.ie/publications/Documents/Central%20Bank%20of%20Ireland%20Strategic%20Plan%20Eng.pdf>

<sup>5</sup> See the *Central Bank of Ireland Enforcement Strategy 2011-2012*, available at: <http://www.centralbank.ie/regulation/processes/administrative-sanctions/documents/enforcement%20strategy%202011-2012.pdf>

- 2.4 The financial crisis has highlighted many challenges necessary for the restoration of credibility in banks, financial institutions and financial markets and senior management of banks and financial institutions. The Central Bank's statutory objectives, set out in section 6A of the Act, are focussed on this challenge. The objective most relevant to the Enforcement Directorate of the Central Bank is: *"the proper and effective regulation of financial service providers and markets, while ensuring that the best interests of consumers of financial services are protected"*. The proposed Inquiry Guidelines have been drafted with this new model of regulation in mind.

### Section 3: Inquiry Guidelines

- 3.1 Inquiry constitutes an integral part of the Administrative Sanctions Procedure. If there are reasonable grounds to suspect that a prescribed contravention is being or has been committed, and if settlement has not been agreed between the Central Bank and the regulated financial service provider and/or persons concerned in its management, the case may be referred to Inquiry<sup>6</sup>. If the contravention(s) is found proved, then sanctions may be imposed at Inquiry.
- 3.2 Section 33BD(1) of the Act provides that the Central Bank may prescribe guidelines for the conduct of Inquiries. Accordingly, draft Inquiry Guidelines are included in this Paper at Appendix 1. The Inquiry Guidelines, once finalised, will replace the Administrative Sanctions Guidelines published by the Central Bank in 2005. A copy of the finalised Inquiry Guidelines will be made available on the Central Bank's website.
- 3.3 The draft Inquiry Guidelines provide significant detail in terms of the practice and procedure to be adopted during an Inquiry. The draft Inquiry Guidelines are divided into four sections:
1. Referral
  2. Pre-Inquiry Procedures
  3. Hearing
  4. Decision
- 3.4 The draft Inquiry Guidelines include references to the "*Regulatory Decisions Unit*" ("**the RDU**") of the Central Bank. The RDU, which is separate from the Enforcement Directorate, will have responsibility for the proper conduct of an Inquiry. The RDU will have no role in deciding matters before an Inquiry and will have no prior involvement in the subject of an Inquiry or the supervision of the regulated financial service provider involved.
- 3.5 The Central Bank will exercise its powers in respect of the Inquiry process in accordance with the finalised Inquiry Guidelines. However, it may be necessary to depart from the finalised Inquiry Guidelines in certain instances where the circumstances of the individual case demand. The finalised Inquiry Guidelines may be amended or revoked by the Central Bank at any time<sup>7</sup>. Any such

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<sup>6</sup> Section 33AO of the Act.

<sup>7</sup> Section 33BD(2) of the Act.

amendments will be in writing and published in a manner determined by the Central Bank<sup>8</sup>.

- 3.6 Comment is invited on all aspects of the draft Inquiry Guidelines<sup>9</sup>. Following the conclusion of the consultation process, the Central Bank will consider all representations received and issue finalised Inquiry Guidelines.

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<sup>8</sup> Section 33BD(3) of the Act.

<sup>9</sup> In preparing the draft Inquiry Guidelines (at Appendix 1), we have had regard to the Central Bank (Supervision and Enforcement) Bill 2011 as published. We will continue to have regard to developments in that respect when finalising our position.

## Appendix 1: Draft Inquiry Guidelines

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**Note:** These Inquiry Guidelines are published pursuant to section 33BD of the Central Bank Act 1942, as amended and are not intended to be legally binding. Whilst the Inquiry Guidelines put in place the procedure which the Central Bank of Ireland ordinarily proposes to follow, it may be necessary to depart from the Inquiry Guidelines in certain instances where compliance with the Inquiry Guidelines is not appropriate in the circumstances of the individual case. The Inquiry Guidelines repeal and replace the guidelines published by the Central Bank of Ireland in 2005.



## 1. Referral

### *Referral to Inquiry*

- 1.1. Where the Central Bank of Ireland (“**the Central Bank**”) suspects on reasonable grounds that a prescribed contravention is being, or has been committed, it may decide to hold an Inquiry.
- 1.2. Prior to reaching a decision on whether to hold an Inquiry, the Central Bank shall send an **Examination Letter**<sup>1</sup> to the regulated financial service provider and/or person(s) concerned in the management of the regulated financial service provider. The Examination Letter will place the regulated financial service provider and/or person(s) concerned in the management (“**the respondent**”) on notice that the matter may be referred to Inquiry and will indicate that any response thereto may be considered in making the decision to refer the matter to Inquiry.
- 1.3. If the Central Bank determines that there is sufficient evidence to support the suspected prescribed contravention(s) (i.e. that there is reasonable cause to suspect that a prescribed contravention(s) has been or is being committed), the suspected prescribed contravention(s) will be referred to Inquiry. In doing so, the Central Bank will consider all relevant materials, including, *inter alia*, the Examination Letter(s) and the respondent’s response(s) thereto.
- 1.4. Alternatively, the Central Bank may consider that the matter warrants further examination prior to any decision being made on whether to refer the matter to Inquiry. In such a case, the Central Bank may undertake further investigative steps before a decision is reached.
- 1.5. The Central Bank will inform the Regulatory Decisions Unit (the “**RDU**”) within the Central Bank of its decision to refer the matter to Inquiry, and will provide the RDU with copies of the documentation upon which the decision was based. The work and role of the RDU is outlined in further detail at paragraph 1.10 below.

### *Appointment of Inquiry Panel*

- 1.6. Following the notification to the RDU of the decision to refer the matter to Inquiry, the RDU will appoint an Inquiry Panel (“**the Panel**”) and nominate the presiding person on that Panel, who shall be known as the Chairperson. The

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<sup>1</sup> See Outline of the Administrative Sanctions Procedure on the Central Bank website.

Panel shall be comprised of three persons (including the Chairperson) nominated from an existing panel of internal (officers or employees of the Central Bank) and external individuals<sup>2</sup> possessed of legal and/or financial services expertise.

- 1.7. Prior to confirmation of his or her appointment, each nominated person shall confirm in writing that he or she is not prevented from participating in the Inquiry by virtue of any actual or apparent conflict of interest. The Central Bank's powers in relation to the operation of Inquiries will then be delegated to these individuals to the extent necessary to hear and determine the suspected prescribed contravention(s).
- 1.8. All decisions of the Inquiry shall be determined by a simple majority of the Panel, with each member having one vote.
- 1.9. Once appointed, the Panel will not meet with or discuss matters relating to the Inquiry with Central Bank staff responsible for the case without the respondent(s) being present.

#### ***Administrative support***

- 1.10. The RDU will take responsibility for the proper conduct of the Inquiry and will provide administrative support to the Panel. The RDU will act as registrar to the Inquiry and will be the point of contact within the Central Bank for the respondent in relation to all Inquiry matters. The RDU will not be able to give the respondent legal advice but can provide assistance on procedural matters. Employees in the RDU will have no role in deciding matters before the Inquiry and will have had no prior involvement in the subject matter of the Inquiry or the supervision or authorisation of the respondent.

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<sup>2</sup> Section 33BE(2) of the Central Bank Act 1942, as amended ("**the Act**") provides that: "*the Bank may for the purposes of that subsection designate a person who is not an officer or employee of the Bank. A person so designated is an agent of the Bank for performing and exercising the functions and powers of the Bank under this Part or the part of those functions and powers for which the Bank designated him or her*".

## 2. Pre-Inquiry Procedures

### *Notice of Inquiry*

2.1. The RDU will prepare a written **Notice of Inquiry**, which will be sent to the parties by registered post at least 28 days in advance of an Inquiry being held. The Notice of Inquiry shall:

- a) set out the suspected contravention(s);
- b) specify the grounds upon which the suspicions are based;
- c) specify the date, time and place of the Inquiry;
- d) invite the respondent to attend the Inquiry and/or to make written submissions; and
- e) set out the procedure that is envisaged.

The Notice of Inquiry will be accompanied by a copy of all documentation provided to the RDU at the time of the referral.

2.2. Inquiries will usually be held in public.<sup>3</sup> Notwithstanding this position, an Inquiry may be held in private in the following circumstances:<sup>4</sup>

- *by Agreement*: the Panel and the respondent agree that the Inquiry should be held in private; or
- *by Decision of the Panel*: the Panel decides that the Inquiry shall be held in private being satisfied that:
  - (a) evidence may be given, or a matter may arise during the Inquiry that is of a confidential nature or relates to the commission, or the alleged or suspected commission, of an offence against a law of the State, or
  - (b) a person's reputation would be unfairly prejudiced.

The Panel may at any time vary or revoke a decision on this issue.

### *Case management*

2.3. Appended to the Notice of Inquiry shall be a Case Management Questionnaire ("**the Questionnaire**") which must be completed and returned to the RDU within the time specified in the Questionnaire. If either party fails to respond

<sup>3</sup> Section 33AZ(1) of the Act provides that except as provided by section 33AZ(2), the Central Bank shall hold its inquiries in public.

<sup>4</sup> See section 33AZ(2) of the Act.

within the time specified, the RDU will notify the Panel and will proceed to confirm the date and arrangements for the hearing without further consultation with that party.

- 2.4. The purpose of the Questionnaire is to enable the Panel to establish whether a case management meeting is required for the purpose of issuing directions prior to the Inquiry. The Questionnaire will seek responses from the parties on the following topics:

- Inquiry arrangements (confirmation of suggested hearing date, estimated length of hearing, legal representation);
- confirmation of agreement to public hearing;
- whether the parties intend to deliver written submissions;
- matters of evidence;
- estimate of costs; and
- any other matters of relevance.

- 2.5. Once the responses have been received, the Panel will decide whether a case management meeting is required. Generally, it is envisaged that the Panel will be in a position to issue directions having received the completed Questionnaires from the parties and that a case management meeting will be required only in a minority of cases.

- 2.6. Where the Panel decides that a case management meeting is required, both parties will be invited to attend (either in person or by telephone) and may make submissions to the Panel who will then issue directions to the parties, together with a timeframe for compliance.

- 2.7. It should be emphasised that the purpose of a case management meeting is to assist in the timely and efficient disposal of the case. It ensures that the issues between the parties are narrowed to the greatest extent possible, leaving the Panel to adjudicate upon only those matters which are properly in dispute between the parties. Effective case management meetings enable, for example:

- the issues in dispute between the parties to be identified at an early stage;
- arrangements to be put in place to ensure that evidence, whether disputed or not, is presented clearly and effectively;
- the needs of any witnesses to be taken into account; and
- an effective programme and timetable to be established for the

conduct of the proceedings.

- 2.8. The Panel will request the RDU to prepare an agreed Book of Documents at least 15 working days in advance of the Inquiry hearing date (unless otherwise directed by the Panel). The RDU will deliver indexed copies to the Panel and each of the parties at least 5 working days prior to the Inquiry.
- 2.9. The agreed Book of Documents shall comprise a copy of the Notice of Inquiry together with all accompanying materials and any further documents, such as expert reports or witness statements, upon which the parties intend to rely.
- 2.10. In exceptional circumstances, where a Book of Documents cannot be agreed between the parties in the appropriate timeframe, each party may submit their own documents and written evidence to the Panel.
- 2.11. In addition, the parties will have the opportunity to provide written legal submissions in accordance with the timetable laid down in the directions. All submissions must be accompanied by a copy of the case law to be relied upon in the course of legal submissions.
- 2.12. If a party fails to comply with a direction made by the Panel and the Panel is satisfied of adequate notification, it may proceed to Inquiry on the date set out in the Notice of Inquiry.
- 2.13. A sample running order for Pre-Inquiry Procedures is set out at **Appendix 1**.

### 3. The Inquiry

#### *Form and order of proceedings*

- 3.1. The Inquiry shall be conducted with as little formality and technicality, and with as much expedition as a proper consideration of the matters before it will allow.<sup>5</sup> The Inquiry is not a court of law, and the procedure at the hearing will be kept as informal as possible. However, an Inquiry into suspected prescribed contravention(s) is a serious matter and the procedure at Inquiry must reflect this fact.
- 3.2. The Inquiry shall be held in public, subject to certain exceptions (see paragraph 2.2).<sup>6</sup> If the Inquiry is held in public, a notice will appear on the Central Bank website advising of the time and location of the Inquiry. The public and media will be able to watch and listen to the proceedings in a public gallery located within the Inquiry Room or adjacent to it. No notice will appear if the Inquiry is to be held in private.
- 3.3. The Central Bank is not proposing to adopt the approach of a full oral hearing adducing live evidence (i.e. witness testimony) unless the circumstances of the case require it. In exercising its discretion whether to hold an oral hearing, the Panel will consider whether that process is necessary for a fair determination of the suspected prescribed contravention(s), taking into account the respondent's views on the matter.
- 3.4. Whether a full oral hearing is to be held or not, the respondent may, before the date of the Inquiry, lodge with the RDU any written submissions or other materials that the respondent wishes the Panel to take into account when considering the matter to which the Inquiry relates, in the manner outlined in section 2.
- 3.5. The respondent(s) may choose to be represented at the Inquiry by counsel and/or a solicitor or, with the leave of the Panel, any other person.<sup>7</sup> The Central Bank may be similarly represented.

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<sup>5</sup> Section 33AY(1) of the Act.

<sup>6</sup> Section 33AZ(1) of the Act states the general rule, subject to the exceptions contained in s.33AZ(2) of the Act.

<sup>7</sup> Section 33AY(4) of the Act.



***Oral hearing without live evidence***

- 3.6. In circumstances where the matter is suited to resolution by way of oral hearing without live evidence, the Panel will conduct its review based on the agreed Book of Documents and the oral and written submissions, if any, of the Central Bank and the respondent(s). No witnesses shall be called at this form of Inquiry, but it may still be held in public.
- 3.7. A sample running order for this type of Inquiry is set out at **Appendix 2**.

***Oral hearing with live evidence***

- 3.8. At the beginning of the hearing, the Chairperson shall welcome the parties and state the purpose of the hearing. He or she shall introduce the Panel and explain the manner and order of proceedings. **Appendix 3** outlines a sample running order but this format is flexible and as the Panel adopts its own procedure, it may vary.
- 3.9. Following this introduction, the parties shall enter appearances. Counsel acting on behalf of the Central Bank may begin by outlining the Central Bank's case, setting out the main facts, dates and persons involved. He or she may also set out the suspected prescribed contravention(s) as per the Notice of Inquiry. If amendments are to be made to the Notice of Inquiry, they must be raised at this stage and agreed by the Panel.
- 3.10. A stenographer will be in attendance at all Inquiries. A copy of the transcript will be made available to the Panel and each of the parties as soon as practicable.

***Burden and standard of proof***

- 3.11. The burden of proof rests with the Central Bank to establish the case against the respondent(s).
- 3.12. The Panel shall determine on the balance of probabilities whether a prescribed contravention has occurred.

***Applications prior to and in the course of an oral hearing***

- 3.13. The Panel must act fairly and must consider and deliberate upon such applications as may be made to them in the course of the Inquiry.
- 3.14. The Panel may be required to deal with a number of preliminary applications and issues, including *inter alia*:

1. A decision to proceed in the absence of a party

The Panel may proceed with the Inquiry in the absence of the respondent provided that the respondent has been given an opportunity to attend the Inquiry or to make written submissions to it.<sup>8</sup>

2. A request for an adjournment

The Panel may adjourn the Inquiry but in so doing shall ensure that the parties are notified of the date, time and place at which the Inquiry is to be resumed.<sup>9</sup>

The Panel has the discretion to grant or refuse an application by one of the parties for an adjournment. That discretion shall be exercised fairly, taking due account of fair procedures and affording both parties the opportunity to be heard.

***Procedures for the taking of evidence***

3.15. The Panel shall observe the rules of procedural fairness but are not bound by the strict rules of evidence.<sup>10</sup> Once the Central Bank has set out its case and the respondent has been invited to make preliminary submissions, the witnesses for the Central Bank will be called.

3.16. During the course of an Inquiry, at any time from appointment of the Panel to the conclusion of the hearing, the Panel may, in writing:

- summons a person to appear before the Inquiry to give evidence and/or produce specified documents; and
- require the person to attend each day of the hearing unless excused or released from attendance.<sup>11</sup>

3.17. The Chairperson may require the oral testimony of a witness to be given on oath. He or she may also:

- require a witness at the Inquiry to answer a question put to the witness; and

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<sup>8</sup> Section 33AP(5) of the Act.

<sup>9</sup> Section 33AP(4) of the Act.

<sup>10</sup> Section 33AY(2) of the Act.

<sup>11</sup> Section 33BA(1) of the Act.

- require a person appearing at the Inquiry pursuant to a summons to produce any document specified in the summons.<sup>12</sup>
- 3.18. The Chairperson may also allow a witness at the Inquiry to give evidence by tendering a written statement, which must be verified by oath.<sup>13</sup> The witness will be required to attend the Inquiry for the purposes of cross-examination.
- 3.19. An answer to a question put to a person, or information provided by a person, in response to a requirement shall not be admissible as evidence against the person in criminal proceedings, other than proceedings for perjury.<sup>14</sup>
- 3.20. A person may be held to have committed an offence where they:
- obstruct the Panel in the exercise of a power conferred under Part IIIC of the Act;
  - without reasonable excuse, fail to comply with a requirement or request made by the Panel under Part IIIC of the Act;
  - in purported compliance with such a requirement or request, give information that the person knows to be false or misleading; or
  - refuse to comply with a summons to attend before, or to be examined on oath by, the Panel.<sup>15</sup>
- 3.21. The Panel shall have the same powers with respect to the examination of witnesses (including witnesses who are outside the State) that a judge of the High Court has when hearing civil proceedings that are before the High Court. A person who is summoned to appear before the Panel shall be entitled to the same rights and privileges as a witness appearing in civil proceedings before the High Court.<sup>16</sup>

### ***Legal submissions***

- 3.22. As outlined at paragraph 2.11, the parties will have the opportunity to provide written legal submissions prior to the hearing date and in accordance with the directions of the Panel. In the context of an oral hearing with or without live evidence, the parties will also be afforded the opportunity of making oral legal submissions.

<sup>12</sup> Section 33BA(2)-(4) of the Act specifically reserves these powers to the person presiding at the Inquiry.

<sup>13</sup> Section 33BA(5) of the Act also specifically reserves this power to the person presiding at the Inquiry.

<sup>14</sup> Section 33BA(8) of the Act [s.51 Central Bank (Supervision and Enforcement) Bill 2011].

<sup>15</sup> Section 33BA(9) of the Act [s.51 Central Bank (Supervision and Enforcement) Bill 2011].

<sup>16</sup> Section 33BA(6)&(7) of the Act [s.51 Central Bank (Supervision and Enforcement) Bill 2011].

***Referral to the High Court on a point of law***

- 3.23. The Panel may, on its own initiative or at the request of either party, refer a question of law arising at the Inquiry to the High Court for decision.<sup>17</sup> This procedure constitutes a consultative case-stated procedure, the main purpose of which is to seek clarification on a point of law.
- 3.24. The Panel is not obliged to state a case upon being requested to do so by either party. Where a question of law is referred to the High Court, the Inquiry will be temporarily stayed pending a decision by the High Court.
- 3.25. The question of law shall be drafted by the Panel taking into account the submissions of both parties to the Inquiry. It shall be submitted by the RDU to the Central Office of the High Court, accompanied by all documents before the Panel that are relevant to the matter in question.<sup>18</sup>

***Applications for an adjournment to pursue settlement***

- 3.26. The Central Bank has authority and discretion to settle the matter at any stage before completion of the Inquiry.
- 3.27. Where the respondent wishes to settle the matter immediately prior to or during the course of the Inquiry, the respondent or its legal adviser should approach the Central Bank's representatives. The Panel may grant an adjournment in order to facilitate settlement between the parties but shall have no other role in relation to settlement. The settlement discussions shall be carried out by the parties in private. Under no circumstances should the details of any settlement discussions be disclosed to the Panel. Where the parties successfully reach settlement, they shall return to the Inquiry and inform the Panel of the fact of settlement. Where settlement negotiations are unsuccessful, the hearing shall be resumed.
- 3.28. Settlement agreements shall be concluded only where the basis for settlement is consistent with the general approach to regulation adopted by the Central Bank, is fair having regard to all the facts known and will contribute to the efficient, effective and economic use of resources.

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<sup>17</sup> Section 33BB(1) of the Act.

<sup>18</sup> Section 33BB(3) of the Act.

#### 4. The Decision

##### *Written decision of the Panel*

- 4.1. Following the closing submissions of the parties and a review of all the evidence, the Panel shall make a finding as to whether the respondent is committing or has committed the prescribed contravention(s) to which the Inquiry relates.<sup>19</sup> The Panel will deliver its decision on the matter at the conclusion of the hearing or, having retired to consider the case, at a later date.
- 4.2. Where the Panel decides that the suspected prescribed contravention(s) is supported by the evidence and has informed the parties of its decision, it will hear representations from the parties regarding sanctions, to include the issue of costs.
- 4.3. If the Panel requires more time to make its decision, it will notify the parties by post (or email, if agreed in advance with the parties) of its decision as soon as practicable and will invite the parties to attend before it on a specified date for a sanctions and costs hearing.
- 4.4. In all circumstances, the Panel shall produce a final written decision, which shall set out in writing:
  - its finding as to whether or not the respondent:
    - (a) is committing or has committed a prescribed contravention, or
    - (b) is participating or has participated in the commission of the prescribed contravention to which the Inquiry relates;
  - the grounds on which its finding is based; and
  - if the Panel finds that the contravention is being or has been committed, the sanctions, if any, imposed and the reasons for same.<sup>20</sup>
- 4.5. The written decision will be delivered to the parties by registered post as soon as it is available. If the written decision is not ready to be delivered within one month, the Panel will write to the parties informing them of that fact. The parties will be kept informed of any delays in the preparation of the written decision.

<sup>19</sup> Section 33AQ(1) and (2) of the Act.

<sup>20</sup> Section 33AQ(7) & (8) of the Act.

## ***Sanctions***

4.6. If the Panel finds that a respondent is committing or has committed a prescribed contravention, or is participating or has participated in the commission of such a contravention, the Panel may impose one or more of the following sanctions:

- a caution or reprimand;
- a direction to refund or withhold all or part of an amount of money charged or paid, or to be charged or paid, for the provision of a financial service by the regulated financial service provider;
- a direction to pay to the Central Bank a monetary penalty (not exceeding the prescribed maximum amount, see paragraph 4.8 below);
- suspension of the regulated financial service provider's authorisation in respect of any one or more of its activities, for such period, not exceeding 12 months, as the Central Bank considers appropriate<sup>21</sup>;
- revocation of the regulated financial service provider's authorisation<sup>22</sup>;
- a direction disqualifying a person from being concerned in the management of a regulated financial service provider for such period as is specified in the order;
- if the contravention is found to be ongoing, a direction ordering the contravention to cease;
- a direction to pay the Central Bank all or a specified part of the costs incurred by it in holding the Inquiry and investigating the matter.<sup>23</sup>

4.7. All the circumstances of the case will be taken into account in determining sanctions, with particular regard being given to the following factors:

### 1. The Nature and Seriousness of the Contravention

- (a) Whether the contravention was deliberate, dishonest or reckless.
- (b) Duration and frequency of the contravention.
- (c) The amount of any benefit gained or loss avoided due to the contravention.

<sup>21</sup> Section 33AQ of the Act [s.49(a) Central Bank (Supervision and Enforcement) Bill 2011].

<sup>22</sup> Section 33AQ of the Act [s.49(a) Central Bank (Supervision and Enforcement) Bill 2011].

<sup>23</sup> See sections 33AQ(3) and (5) of the Act.



- (d) Whether the contravention reveals serious or systemic weaknesses of the management systems or internal controls relating to all or part of the business.
- (e) The extent to which the contravention departs from the required standard.
- (f) The impact of the contravention on the orderliness of the financial markets, including whether public confidence in those markets has been damaged.
- (g) The loss or risk of loss caused to consumers or other market users.
- (h) The effect, if any, of the contravention on vulnerable consumers.
- (i) The nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention.
- (j) Whether there are a number of smaller issues which individually may not justify administrative sanction, but which do so when taken collectively.
- (k) Any potential or pending criminal proceedings in respect of the contravention which will be prejudiced or barred if a monetary penalty is imposed pursuant to the Administrative Sanctions Procedure.

## 2. The Conduct of the Respondent after the Contravention

- (l) How quickly, effectively and completely the regulated financial service provider or person concerned in its management brought the contravention to the attention of the Central Bank or any other relevant regulatory authority.
- (m) The degree of co-operation with the Central Bank or other agency provided during the investigation of the contravention.
- (n) Any remedial steps taken since the contravention was identified, including: identifying whether consumers have suffered loss and compensating them; taking disciplinary action against staff involved (where appropriate); addressing any systemic failures; and taking action designed to ensure that similar problems do not arise in the future.
- (o) The likelihood that the same type of contravention will reoccur if no administrative sanction is imposed.
- (p) Whether the contravention was admitted or denied.

## 3. The Previous Record of the Respondent

- (q) Whether the Central Bank has taken any previous action resulting in

a settlement or sanctions or whether there are relevant previous criminal convictions.

- (r) Whether the respondent has previously been requested to take remedial action.
- (s) General compliance history.

#### 4. Other General Considerations

- (t) Prevalence of the contravention.
- (u) The appropriate deterrent impact of any sanction on the regulated financial service provider and on other regulated financial service providers (and persons concerned in their management).
- (v) Action taken by the Central Bank in previous similar cases.
- (w) The level of turnover of the regulated financial service provider in its last complete financial year prior to the commission of the contravention.
- (x) The likelihood of detection of such a contravention.
- (y) Any other relevant consideration.

#### 4.8. Where a monetary penalty is imposed, the amount shall not exceed:<sup>24</sup>

- in the case of a body corporate or an unincorporated body, the greater of:
  - (i) €10,000,000 and
  - (ii) an amount equal to 10% of the turnover of the body for its last complete financial year before the finding is made;
- in the case of a natural person, €1,000,000; or
- such other amount as may be prescribed by regulations.

The monetary penalty shall not be of an amount that would be likely to cause the regulated financial service provider to cease business, or would be likely to cause the person concerned to be adjudicated bankrupt.<sup>25</sup> If more than one contravention is found in respect of the same conduct, only one monetary penalty may be imposed.<sup>26</sup>

#### 4.9. If a monetary penalty is imposed in respect of a contravention which is also an offence under the law of the State, the respondent is not liable to be otherwise prosecuted or punished for the offence.<sup>27</sup> Where a respondent has already

<sup>24</sup> Section 33AQ of the Act [s.49(b) Central Bank (Supervision and Enforcement) Bill 2011].

<sup>25</sup> See sections 33AS(1) and (2) of the Act.

<sup>26</sup> Section 33AS(3) of the Act.

<sup>27</sup> Section 33AT(1) of the Act.

been tried for an offence and found either guilty or not guilty, and the offence involved a prescribed contravention, a monetary penalty may not be imposed.<sup>28</sup>

### ***Appeal to the Irish Financial Services Appeals Tribunal***

- 4.10. A final decision of the Inquiry may be appealed by the respondent to the Irish Financial Services Appeals Tribunal (“**IFSAT**”) within 28 days of being notified of that decision, or within such time as agreed with the Registrar and Chairperson of IFSAT.<sup>29</sup> IFSAT may confirm, alter, amend or set aside the decision of the Inquiry, or remit the matter back to the Inquiry for reconsideration, together with any recommendation or direction as to the matters to be reconsidered.

### ***Appeal to the High Court***

- 4.11. Either party may appeal the decision of IFSAT to the High Court within 28 days of being notified of the decision, or within such time as the High Court may allow.<sup>30</sup> An appeal to the High Court does not affect the operation of the IFSAT decision appealed against, or prevent the taking of action to implement the decision, unless the High Court otherwise orders.<sup>31</sup>
- 4.12. The High Court may make such order as it sees fit in light of its decision, including, but not limited to, affirming or setting aside the decision of IFSAT, or remitting the matter to IFSAT with such directions as it sees fit. The decision of the High Court is final, except that an appeal may be brought to the Supreme Court on a point of law only, with leave of either Court.<sup>32</sup>

### ***When a decision of the Inquiry takes effect***

- 4.13. A decision by the Panel to impose a **caution or reprimand** will take effect:
- if no appeal is lodged with IFSAT within the period allowed, at the end of that period (28 days after the affected person is notified of the decision or such extended period as the Registrar allows after consulting with the Chairperson)<sup>33</sup>; or
  - if an appeal is lodged with IFSAT and the decision is confirmed by IFSAT, at the

<sup>28</sup> Section 33AT(2) of the Act.

<sup>29</sup> Section 57L(1) of the Act.

<sup>30</sup> Section 57AK of the Act.

<sup>31</sup> Section 57AM of the Act.

<sup>32</sup> Section 57AL(3) of the Act.

<sup>33</sup> Section 57L(2)(b) of the Act.

time when period allowed for lodging an appeal with the High Court has ended, no appeal having been lodged within that period (28 days after the affected person is notified of the decision or such extended period as that Court allows)<sup>34</sup>; or

- where an appeal is lodged with IFSAT and withdrawn, at the time of withdrawal; or
- where an appeal is subsequently made to the High Court and the IFSAT determination is confirmed, at the time of confirmation; or
- where an appeal is subsequently made to the High Court and withdrawn, at the time of withdrawal.<sup>35</sup>

4.14. A decision by the Panel directing payment of a **monetary penalty**, a refund of money or costs will take effect:

- if the amount is not paid to the Central Bank within the period allowed for appeals against such a decision (28 days after the affected person is notified of the decision or such extended period as the Registrar allows after consulting with the Chairperson), and no appeal is lodged (or having been lodged, is withdrawn), at the time when the decision is confirmed by an order of a court of competent jurisdiction<sup>36</sup>; or
- where an appeal is lodged with IFSAT and the decision is confirmed by that Tribunal, at the time when the period allowed for lodging an appeal with the High Court has ended (28 days after the affected person is notified of the decision or such extended period as that Court allows), no appeal having been lodged within that period; or
- where an appeal is lodged with IFSAT and withdrawn, at the time of withdrawal; or
- where an appeal is lodged with the High Court and the determination is confirmed, at the time of confirmation; or
- where an appeal is lodged with the High Court and withdrawn, at the time of

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<sup>34</sup> Section 57AK(3) of the Act.

<sup>35</sup> Section 33AW(1) of the Act.

<sup>36</sup> Section 33AW(2)(a) of the Act.

withdrawal.<sup>37</sup>

4.15. Different considerations apply in the context of a disqualification direction<sup>38</sup> and other decisions of the Panel.<sup>39</sup>

4.16. A **disqualification direction** will take effect:

- if no appeal to IFSAT is lodged within the period allowed for bringing such an appeal (28 days after the affected person is notified of the decision or such extended period as the Registrar allows after consulting with the Chairperson), or is lodged within that period but is later withdrawn, at the time when it is confirmed by an order of a District Court; or
- if an appeal is lodged with IFSAT within the relevant period and the direction is confirmed by that Tribunal, at the time when the period allowed for lodging an appeal in the High Court against the determination of that Tribunal in respect of the direction has ended (28 days after the affected person is notified of the decision or such extended period as that Court allows), no appeal having been lodged within that period; or
- if an appeal is lodged within the relevant period (28 days after the affected person is notified of the decision or such extended period as that Court allows) but is later withdrawn, at the time when the appeal is withdrawn; or
- if an appeal is made to the High Court against the determination of IFSAT in respect of the direction and, on the hearing of the appeal by that Court, that determination is confirmed (with or without variation), at the time of confirmation of that determination; or
- if an appeal is made to the High Court against the determination of IFSAT but is later withdrawn, at the time when the appeal is withdrawn.

4.17. Any other **statutory decision** of the Panel will take effect:

- if no appeal against the decision is lodged with IFSAT within the period allowed for lodging such an appeal, at the end of that period (28 days after the affected person is notified of the decision or such extended period as the Registrar allows after consulting with the Chairperson); or

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<sup>37</sup> Section 33AW(2) of the Act.

<sup>38</sup> Section 33AW(3) of the Act.

<sup>39</sup> Section 33AW(4) of the Act.

- if an appeal is lodged with IFSAT within the relevant period (28 days after the affected person is notified of the decision or such extended period as the Registrar allows after consulting with the Chairperson) and the decision is confirmed by that Tribunal (with or without variation), at the time when the period allowed for lodging an appeal with the High Court against the determination of that Tribunal has ended, no appeal having been lodged within the relevant period (28 days after the affected person is notified of the decision or such extended period as that Court allows); or
- if an appeal is lodged with IFSAT within the relevant period (28 days after the affected person is notified of the decision or such extended period as the Registrar allows after consulting with the Chairperson) but is later withdrawn, at the time of the withdrawal of the appeal; or
- if an appeal is made to the High Court against the determination of IFSAT in respect of the decision and, on the hearing of the appeal by that Court, that determination is confirmed (with or without variation), at the time of confirmation of that determination; or
- if an appeal is made to the High Court against the determination of IFSAT in respect of the decision but is later withdrawn, at the time of the withdrawal of the appeal.

### ***Publication***

4.18. The Panel will, subject to paragraph 4.19, publish in such form and manner as it considers appropriate its findings and any of the following particulars:<sup>40</sup>

- (a) the name of the respondent on whom a sanction has been imposed;
- (b) details of the prescribed contravention(s) in respect of which the sanction has been imposed;
- (c) details of the sanction imposed;
- (d) the grounds on which the finding is based.<sup>41</sup>

4.19. Where the Panel determines that the publication of the findings or above particulars involves the disclosure of confidential information, relates to the commission of an offence or would unfairly prejudice a person's reputation, it

<sup>40</sup> Section 33BC(1) and (2) of the Act.

<sup>41</sup> Section 33BC(3) of the Act [s.52 Central Bank (Supervision and Enforcement) Bill 2011].



may consider whether to publish all or part of the decision.<sup>42</sup> The parties shall be entitled to make submissions in this regard. Such submissions on publication shall not affect the timeframe within which the parties must appeal the decision.

- 4.20. Separate to the publication of the Panel's decision, the Central Bank may issue a publicity statement on the outcome of the Inquiry.

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<sup>42</sup> Section 33BC(2) of the Act [s.52 Central Bank (Supervision and Enforcement) Bill 2011].

## Appendix 1: Pre-Inquiry procedures

Central Bank referral to the Regulatory Decisions Unit (the “RDU”)



Appointment of Inquiry Panel



RDU prepares Notice of Inquiry to be sent to the parties by registered post at least 28 days in advance of an Inquiry being held

A Case Management Questionnaire will be appended to the Notice of Inquiry



Both parties must complete the Questionnaire and return it to the RDU within the time specified in the Questionnaire



Panel will determine whether a case management meeting is required



Panel may issue directions

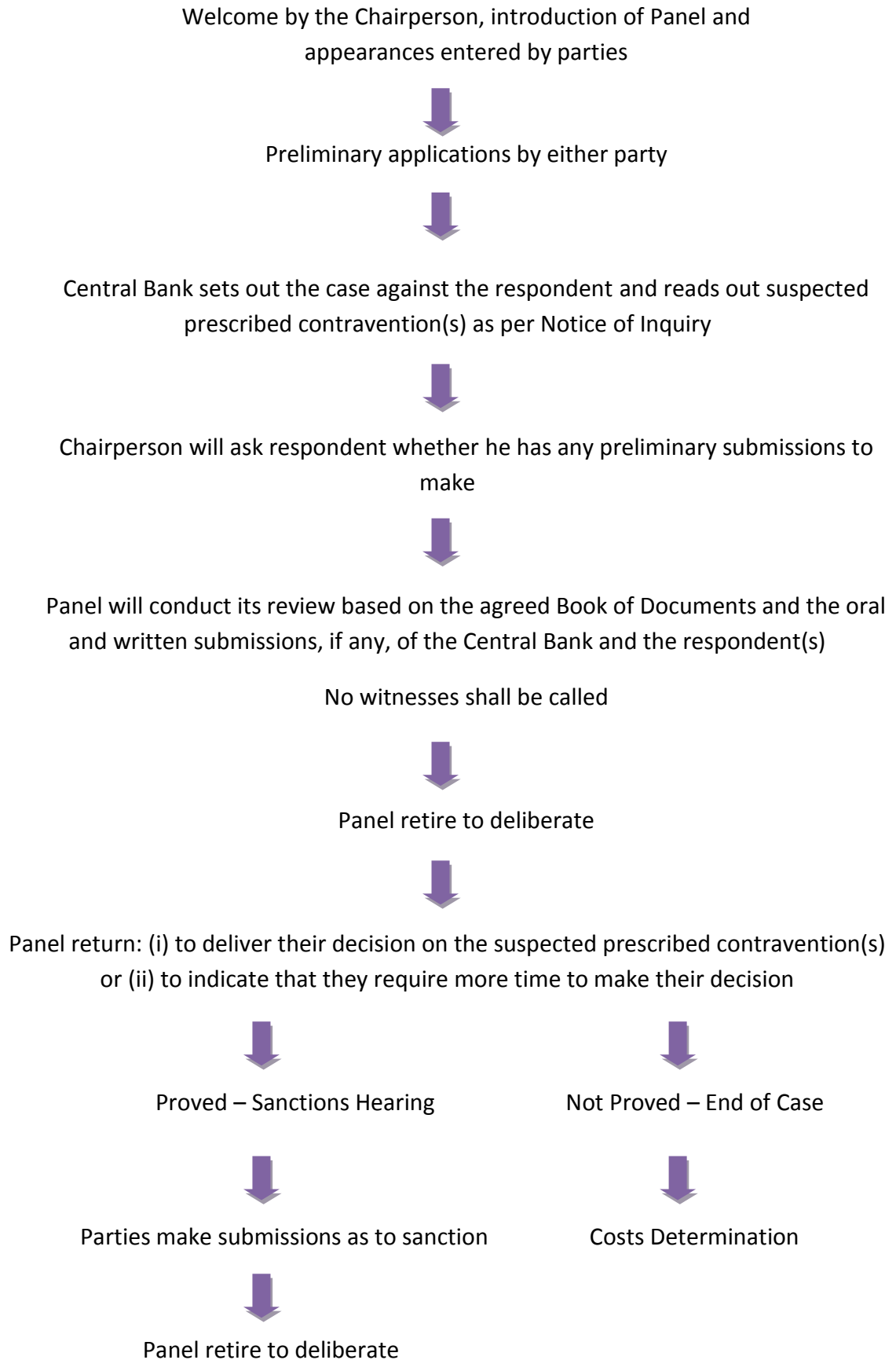


Panel will request the RDU to prepare an agreed Book of Documents at least 15 working days prior to the date assigned for the hearing of the Inquiry (unless otherwise directed by the Panel)



The RDU will deliver indexed copies to the Panel and each of the parties at least 5 working days prior to the Inquiry

**Appendix 2: Order of proceedings at oral hearing without live evidence**





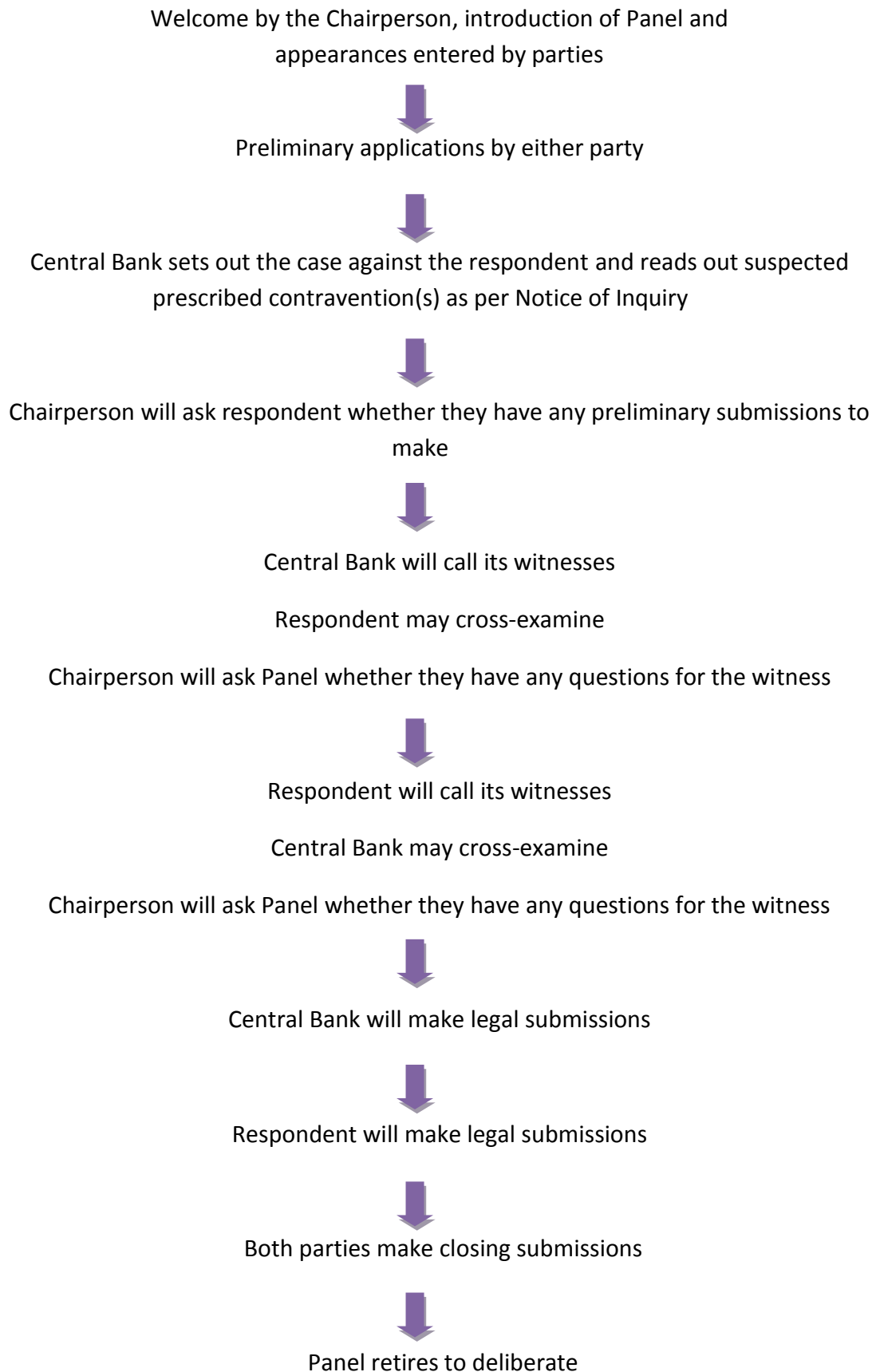
Sanctions Determination

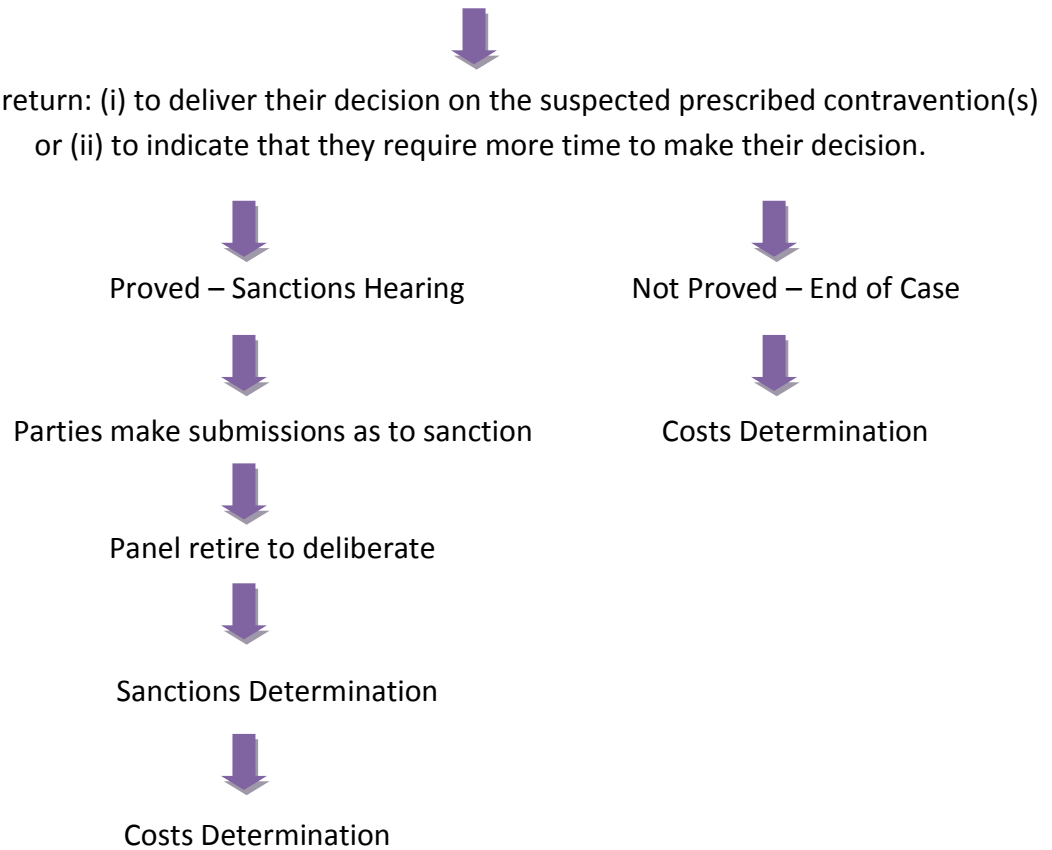


Costs Determination

**Note:** The written decision will be delivered to the parties by registered post as soon as it is available. If the written decision is not ready to be presented within one month, the Panel will write to the parties informing them of that fact.

### Appendix 3: Order of proceedings at oral hearing with live evidence





**Note:** The written decision will be delivered to the parties by registered post as soon as it is available. If the written decision is not ready to be presented within one month, the Panel will write to the parties informing them of that fact.



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