



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

ASP Sanctions Guidance

November 2019

Contents

Introduction	3
Scope and application of the guidance	3
Part I: General principles	4
The Central Bank's mission and the purpose of enforcement action.....	4
Proportionality	4
Totality and section 33AS of the Central Bank Act 1942	4
Sanctioning factors.....	5
Comparator cases	5
Part II: Guidance on sanctioning factors	6
Section A: The Nature, Seriousness and Impact of the Contravention	6
Section B: The Conduct of the Regulated Entity after the Contravention	9
Section C: The Previous Record of the Regulated Entity	17
Section D: Other General Considerations	19

Introduction

1. In line with the Central Bank's commitment to transparency this guidance has been prepared to aid proportionality and consistency in decision making, and to provide clarity to regulated entities¹ and the public about the Central Bank's approach to sanctioning.

Scope and application of the guidance

2. This guidance covers sanctions imposed on firms and individuals under the Central Bank's Administrative Sanctions Procedure ("ASP"; as governed by Part IIIC of the Central Bank Act 1942) and provides further guidance on the application of the sanctioning factors set out in the Outline of the Administrative Sanctions Procedure ("Outline"). This guidance does not represent a new policy, and should therefore be read alongside that already set out in the ASP Outline and the Inquiry Guidelines prescribed pursuant to section 33BD of the Central Bank Act 1942 (the "Inquiry Guidelines").
3. This document provides guidance only. While the Central Bank should take the guidance into account, it may be appropriate to depart from it in certain cases. In particular, Inquiry members are not bound by the contents of this document. This means that an Inquiry may choose to disapply the guidance.

¹ References in this Guidance to "regulated entities" or "regulated entity" can be taken to include both present and former regulated financial service providers, as well as persons presently or formerly concerned in their management and any other person subject to Part IIIC of the Central Bank Act 1942 (as amended). Similarly, in this regard, reference to regulated entities having committed a prescribed contravention, can be taken to include situations where persons presently or formerly concerned in their management, or any other person subject to Part IIIC of the Central Bank Act 1942 (as amended), have participated in that prescribed contravention.

Part I: General principles

The Central Bank's mission and the purpose of enforcement action

4. In deciding on the appropriate sanction, the Central Bank should bear in mind its mission, which is to serve the public interest by safeguarding monetary and financial stability and by working to ensure that the financial system operates in the best interests of consumers and the wider economy. In imposing sanctions, the Central Bank seeks to provide a credible deterrent to firms and individuals, and to promote high standards in financial services.

Proportionality

5. The Central Bank is under a legal duty to act proportionately at all times, including when it imposes sanctions. Acting proportionately means that the Central Bank chooses the appropriate sanction(s) by considering all the sanctions available to it. It assesses the facts of the particular case (including, where relevant, any submissions or representations made by the regulated entity) and imposes the sanction or sanctions which best reflect the seriousness of the conduct to be sanctioned and serve the mission of the Central Bank, and take into account the rights of the regulated entity. In certain cases, it may be appropriate for the Central Bank to impose no sanction on a regulated entity, despite having found that (a) prescribed contravention(s) were / was committed. The rest of this guidance document should be read in light of this paragraph.

Totality and section 33AS of the Central Bank Act 1942

6. In many cases, a number of sanctions will be imposed on a firm or an individual. In such cases, the effect of the sanctions taken as a whole should be considered.
7. In addition, Section 33AS(1) of the Central Bank Act 1942 provides:

"If the Bank decides to impose a monetary penalty on a regulated financial service provider under section 33AQ or 33AR, it may not impose an amount that would be likely to cause the financial service provider to cease business."

8. Section 33AS(2) of the Central Bank Act 1942 goes on to state:

"If the Bank decides to impose a monetary penalty on a person under section 33AQ or 33AR, it may not impose an amount that would be likely to cause the person to be adjudicated bankrupt."

9. Therefore, where relevant, the financial position of a regulated entity must be considered in determining the appropriate monetary penalty.
10. Finally, section 33AS(3) of the Central Bank Act 1942 provides:

"(3) If conduct engaged in -

- (a) *by a regulated financial service provider constitutes two or more prescribed contraventions, or*
- (b) *by a person concerned in the management of such a financial service provider constitutes participation in two or more prescribed contraventions by such a financial service provider,*

an inquiry may be held under section 33AO or 33AR in relation to one or more of the contraventions, but only one monetary penalty may be imposed under section 33AQ or 33AR in respect of the same conduct."

11. Section 33AS of the Central Bank Act 1942 refers only to the imposition of monetary penalties, and not to other potential sanctions such as a direction to refund or withhold all or part of an amount of money charged or paid, or a direction to pay to the Central Bank all or a specified part of its costs.

Sanctioning factors

12. In deciding on the appropriate sanction, the Central Bank should take into account all of the circumstances of a particular case. Those factors are set out in part 6.3 of the Outline, and come under four broad headings:

- The Nature, Seriousness and Impact of the Contravention.
- The Conduct of the Regulated Entity after the Contravention.
- The Previous Record of the Regulated Entity.
- Other General Considerations.

13. Further guidance on the application of sanctioning factors is found in part II (below). In taking this guidance into account, the Central Bank should bear in mind the need for deterrence. This means that, notwithstanding the presence in certain cases of a number of factors which may appear to mitigate the conduct to be sanctioned, a significant sanction may be merited to fulfil the Central Bank's mandate.

Comparator cases

14. The Central Bank should also take into account to the extent practicable any relevant comparators. In doing so, the Central Bank should bear in mind that each case is unique, and that the weight to attach to comparators may therefore be limited.

Part II: Guidance on sanctioning factors

Section A: The Nature, Seriousness and Impact of the Contravention

Factor	Guidance notes
Whether the contravention was deliberate, dishonest or reckless.	Proven dishonesty is always at the most serious end of the spectrum of gravity. If a contravention involves dishonesty and / or was committed deliberately, the matter will ordinarily be viewed as more serious.
Duration and frequency of the contravention.	In general, contraventions that occur over a longer period or with greater frequency will be treated as more serious. However, a one-off contravention can be deemed very serious, depending on other factors such as the amount of any benefit gained or loss avoided due to the contravention, the impact or potential impact on the orderliness of financial markets, detriment caused to consumers, customers or investors, or other relevant factors.
The amount of any benefit gained or loss avoided due to the contravention.	Even if a benefit is not realised, or a loss not avoided, the potential benefit or loss can be taken into account.
Whether the contravention reveals any serious or systemic weakness of the management systems or internal controls relating to all or part of the business.	Serious or systemic weaknesses, particularly where they result in widespread or severe actual or potential detriment to consumers, customers or investors, or a threat to financial stability, will ordinarily mean that the matter is viewed as more serious.
The extent to which the contravention departs from the required standard.	This will be determined not in relation to the standards commonly observed in the sector, but objectively by reference to best practice.
The impact or potential impact of the contravention on the orderliness of the financial markets, including whether	The Central Bank will consider whether the contravention(s) resulted in actual or potential damage to: (a) the financial markets;

public confidence in those markets has been damaged or put at risk.	(b) public confidence in the markets; and / or (c) public confidence in the Central Bank.
The loss or detriment or the risk of loss or detriment caused to consumers or other market users.	The protection of consumers, customers and investors is a central part of the Central Bank's mission. For the purpose of determining the seriousness of the contravention(s), the actual or potential detriment to consumers or other market users will always be an important consideration. Where there has been widespread loss or detriment or the risk of loss or detriment, the contravention(s) will ordinarily be viewed as more serious.
The effect, if any, of the contravention on vulnerable consumers.	Where contravention(s) affect vulnerable consumers, customers or investors, such as: • those who have the capacity to make their own decisions but, because of individual circumstances, may require assistance to do so; • or those who have limited capacity to make their own decisions and require assistance to do so², the contravention(s) will ordinarily be viewed as more serious.
The nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention.	Where the contravention(s) facilitated the commission of financial crime, the contravention(s) will ordinarily be viewed as more serious.
Whether there are a number of smaller issues which individually may not justify administrative sanction, but which do so when taken collectively.	There will be instances of conduct that, when taken in isolation do not appear to be serious. However, where a number of issues collectively justify administrative sanction, they will ordinarily be viewed as more serious if they reveal systemic or cultural problems in a regulated entity.
Any potential or pending criminal proceedings in respect of the contravention which will be prejudiced	This factor refers to the provisions of section 33AT of the Central Bank Act 1942 (as amended), which must always be taken into consideration when considering the appropriateness of a monetary penalty against a regulated entity.

² Definition taken from Chapter 12 of the Central Bank Consumer Protection Code 2012

or barred if a monetary penalty is imposed pursuant to the Administrative Sanctions Procedure.	
--	--

Section B: The Conduct of the Regulated Entity after the Contravention

Factor	Guidance notes
How quickly, effectively and completely the regulated entity brought the contravention to the attention of the Central Bank or any other relevant regulatory authority.	Without infringing the constitutional rights of regulated entities, including the privilege against self-incrimination, regulated entities must be open and cooperative with the Central Bank. A failure to report a contravention in full will ordinarily be treated as an aggravating factor. Examples of this include but are not limited to instances where the regulated entity: (a) knew about the behaviour that constituted the contravention, but failed to report it; (b) wilfully withheld information about wrongdoing by the regulated entity; (c) failed to report the contravention(s), despite it being obvious; (d) failed to report the contravention(s), despite it continuing for a lengthy period of time; (e) failed to report the contravention(s) within a reasonable time after it came to their attention; and/or (f) the regulated entity failed to disclose the full extent of the wrongdoing, as it was known to it or them at the time of reporting. In instances where the regulated entity has made adequate disclosure in a timely fashion but has not gone above and beyond this basic level of reporting, this will ordinarily be treated as a neutral factor that neither aggravates nor mitigates the conduct in question. Where there has been exemplary self-reporting, this will ordinarily be treated as a mitigating factor. Examples of this include but are not limited to: (a) disclosure of all relevant information known to them, and adoption of an attitude of constructive engagement and a willingness to facilitate the Central Bank's investigation in whatever way possible;

	(b) reporting immediately when the contravention came to light; (c) reporting in circumstances where the contravention is serious and is likely to attract severe sanction; and/or (d) identification of other contraventions by the regulated entity.
The degree of co-operation with the Central Bank or other agency provided during the investigation of the contravention.	The Central Bank expects regulated entities to cooperate in an open manner at all times and to respond to requests promptly, effectively and accurately. In addition to potentially constituting a criminal offence and/or a further contravention, failure to cooperate adequately or at all or failure to engage co-operatively with the Central Bank will ordinarily be treated as an aggravating factor. Examples include but are not limited to: (a) provision of false, inaccurate and/or misleading information/ documents to the Central Bank; (b) failure to provide complete and timely information/explanations or documentation in response to investigation letters/statutory requests; (c) responses provided by the regulated entity require extensive protracted engagement by the Central bank; (d) provision of disordered, imprecise, ambiguous responses which lack clarity and are deliberately vague, possibly with a view to frustrating the Central Bank investigation; (e) failure by a regulated entity to preserve relevant information under its control including electronically stored information; (f) destroying information or putting information and/or documents beyond the reach of the Central Bank; (g) engaging in evasive, misleading or obstructive conduct in the course of an interview; and/or

- (h) advice or directions to other officers or employees not to cooperate openly or fully with an investigation.

Providing the expected level of co-operation will ordinarily be treated as a **neutral factor** that neither aggravates nor mitigates the conduct in question. Examples include but are not limited to:

- (a) timely and complete responses to all requests from the Central Bank;
- (b) furnishing information and/or documentation in a timely and orderly manner in response to a request;
- (c) the regulated entity regularly updates and engages with the Central Bank in relation to large document/e-data requests in relation to timelines etc. Agreement with the Central Bank on a protocol to undertake matters such as e-data indexing, coding, hard copying etc.;
- (d) the regulated entity shares the output of internal investigations and/or third party reviews;
- (e) assisting in the identification and location of current/former employees for interview by the Central Bank and facilitates the attendance of staff at interview; and/or
- (f) being open and cooperative at interview.

Where there has been exemplary cooperation, this will ordinarily be treated as a **mitigating** factor. Examples include but are not limited to:

- (a) the regulated entity provides responses to correspondence which go above and beyond the basic provision of information and/or documentation;
- (b) the regulated entity engages constructively with the investigation and seeks to facilitate the Central Bank's understanding of, for example, the business and its structure, roles, responsibilities and governance structures and the factual matters under investigation;

	(c) the regulated entity proactively and voluntarily furnishes additional information to the Central Bank in order to assist the investigation, which, for example, facilitates/expedites the review of documentation previously requested; (d) the regulated entity proactively identifies methodologies for document identification, which facilitate the Central Bank's investigation and saves time, cost and resource; (e) the regulated entity proactively and voluntarily provides the Central Bank with the output of any pre-existing internal investigation and/or third party review; (f) the regulated entity engages with the investigation from the outset, seeking to assist the Central Bank wherever possible and aiding in time, cost and resource savings; and / or (g) the regulated entity is proactive in establishing previously unknown relevant facts, identifying previously undetected issues and bringing them to the attention of the Central Bank and/or providing information about individuals potentially involved in the contravention(s).
Any remedial steps taken since the contravention was identified, including identifying whether customers have suffered loss or detriment and compensating them, taking disciplinary action against staff involved (where appropriate), or addressing any systemic failures, and taking action to ensure that similar problems do not arise in the future.	The Central Bank expects that the subject of an investigation will take remedial steps to address a contravention³. Failure to remediate adequately or at all will ordinarily be treated as an aggravating factor. Examples include but are not limited to: (a) despite knowledge of the issues which are the subject of the contravention, the regulated entity fails to take prompt remedial steps to address the contravention; (b) although the regulated entity puts a remediation plan in place, it fails to test adequately its implementation and/or whether the steps taken are effective, requiring follow-up engagement/action by the Central Bank;

³ Nothing in this guidance constitutes a Central Bank policy on redress or compensation; these matters are mentioned in this guidance because they are relevant to the interpretation of sanctioning factors.

- (c) in seeking to identify affected consumers, customers or investors, the approach and/or methodologies adopted by the regulated entity take a narrow interpretation of those affected and/or deliberately seeks to exclude potentially affected consumers, customers or investors from any remediation programme;
- (d) the regulated entity's approach to calculating refunds and/or compensation deliberately seeks to minimise unfairly any payment due to affected consumers, customers or investors;
- (e) the regulated entity adopts an obstructive and/or deliberately complex approach to remediation, including by failing to establish an appropriate and effective complaints process for affected consumers, customers or investors and/or an appropriate and effective appeals process for affected consumers, customers or investors to whom a refund and compensation is to be paid;
- (f) the regulated entity fails to identify adequately whether consumers, customers or investors had suffered loss or detriment and to put in place an appropriate plan to redress and compensate those adversely affected or only does so in response to a statutory direction by the Central Bank;
- (g) senior management in a firm actively participates in the failure and/or delay in remediating;
- (h) the regulated entity fails to take appropriate disciplinary action against those responsible for wrongdoing;
- (i) the regulated entity addresses the specific instance of non-compliance but fails to address any systemic weaknesses identified, including by failing to take action designed to ensure that similar problems do not arise in the future; and / or
- (j) the regulated entity was previously the subject of a risk mitigation programme in respect of the subject matter of the contravention but fails to take appropriate remedial action.

Providing expected remediation will ordinarily be treated as a **neutral factor** that neither aggravates nor mitigates the conduct in question. Examples include but are not limited to:

- (a) after the contravention or the behaviour underlying it was identified, the regulated entity immediately and voluntarily takes steps to remediate the issue without the Central Bank having to exercise its statutory powers;
- (b) the regulated entity immediately commences an internal investigation tasked with examining the contravention and any individual wrongdoing;
- (c) the regulated entity voluntarily and promptly seeks to identify whether consumers, customers or investors suffered loss or detriment and, where that occurred, puts in place an appropriate plan to redress and compensate those adversely affected;
- (d) the regulated entity voluntarily and promptly establishes an appropriate and effective complaints process for affected consumers, customers or investors;
- (e) the redress and compensation paid by the regulated entity is, in this context, the minimum expected by the Central Bank;
- (f) the regulated entity takes appropriate corrective action to address any systematic weaknesses or failures, including through the adoption of new policies and procedures, internal controls and mechanisms for monitoring ongoing compliance; and / or
- (g) the regulated entity takes appropriate steps to promote changes to culture and values across its business including implementing staff training and taking appropriate disciplinary action.

Where there has been exemplary remediation, this will ordinarily be treated as a **mitigating** factor. Examples include but are not limited to:

- (a) in seeking to identify whether consumers, customers or investors have suffered loss or detriment and put in place an appropriate plan to redress and compensate those adversely affected, the regulated entity goes above and beyond the minimum expected by the Central Bank;

	(b) the redress and compensation paid by the regulated entity is over and above the minimum expected by the Central Bank (by reference to, for example, the assumption underlying the remediation programme and the calculation methodologies); (c) the regulated entity voluntarily and promptly establishes an appropriate and effective appeals process for affected consumers, customers or investors to whom redress and compensation is to be paid; (d) the regulated entity develops customer-facing processes to remediate its conduct which go above and beyond those expected by the Central Bank including, for example, generous time periods for complaints and appeals, the waiver of its legal right to argue that certain claims are statute barred (either in civil litigation or before the Financial Services and Pensions Ombudsman) for a set period agreed with the Central Bank and/or the funding of independent legal advice for those affected; (e) the regulated entity voluntarily and promptly engages an independent third party to investigate and report on the contraventions and any individual wrongdoing, including wrongdoing at the most senior levels of the organisation; (f) the scope of the regulated entity's internal/independent third party investigation goes beyond the specific contravention(s) identified and seeks to identify and remediate broader governance, control and risk management issues within a particular business area or the regulated entity generally; (g) the regulated entity proactively and voluntarily implements additional internal controls, procedures, oversight and takes other reasonable steps specific to the conduct in question, in order to reduce the likelihood of recurrence of the conduct; (h) the steps taken by the regulated entity, in response to the Central Bank's investigation, are not only those required to bring the firm into compliance and to seek to ensure compliance on an ongoing basis but rather reflect a 'best practice' approach;
--	--

	(i) the regulated entity seeks to recruit new staff to improve standards of compliance and culture within the organisation, seeking to establish itself as 'best in class' from a management and governance perspective.
The likelihood that the same type of contravention will recur if no administrative sanction is imposed.	The likelihood of recurrence will be judged based in part on other factors such as remediation. If the likelihood of recurrence is high, this will ordinarily be treated as an aggravating factor. If the likelihood of recurrence is deemed to be low, this will ordinarily be treated as a neutral factor that neither aggravates nor mitigates the conduct in question.
Whether the contravention was admitted or denied.	Because it will save considerable time and expense on the part of the Central Bank, an early admission by the regulated entity may be treated as a mitigating factor. To be treated as such, admissions must be full, frank and made at the earliest opportunity.

Section C: The Previous Record of the Regulated Entity

Factor	Guidance notes
Whether the Central Bank has taken any previous enforcement action including instances resulting in a settlement or sanctions or whether there are relevant criminal convictions.	The Central Bank will take previous enforcement action, including previous settlements and relevant previous convictions into account when considering sanction. In assessing the impact of a criminal conviction for the purposes of sanction, the Central Bank will consider the relevance of the offence, by considering matters including the circumstances surrounding the conviction, the length of time since the conviction, the explanation offered by the convicted person. Criminal convictions which may be considered relevant include (but are not limited to) offences involving; (a) financial crime, including money laundering and terrorist financing (or their equivalents) (b) fraud, misrepresentation, dishonesty or breach of trust; (c) offences under legislation relating to companies or Financial Service providers; (d) market manipulation, insider dealing, revenue law; or (e) any other offence relevant to the specifics of the case. Convictions for relevant offences will ordinarily be treated as an aggravating factor. Where the regulated entity has previously been the subject of enforcement action, and particularly where that enforcement action related to similar or identical contraventions, this will ordinarily be treated as an aggravating factor. Where a regulated entity has an unblemished record, the Central Bank will ordinarily treat this as a mitigating factor.

Whether the regulated entity has previously undertaken not to do a particular act or engage in particular behaviour.	Where the entity has previously undertaken not to act/engage in particular behaviour and does so in contravention of this undertaking, this will ordinarily be treated as an aggravating factor.
Whether the regulated entity has previously been requested to take remedial action and the extent to which such action has been taken.	Where a regulated entity has previously been requested to take remedial action, if this has not been done or has not been done in a timely fashion or to the required standard, this will ordinarily be treated as an aggravating factor. Where such remedial action has been taken by the regulated entity, this will ordinarily be treated as a neutral factor that neither aggravates nor mitigates the conduct in question.

Section D: Other General Considerations

Factor	Guidance notes
Prevalence of the contravention.	If a contravention is particularly prevalent or widespread, a greater uplift for deterrence will ordinarily be considered more likely.
The appropriate deterrent impact of any sanction on the regulated entity and on other regulated entities.	The need for credible deterrence is of paramount importance to the Central Bank in the exercise of its enforcement function. The need to consider deterrence is important in the determination of appropriate non-monetary and / or monetary penalties against a regulated entity.
Action taken by the Central Bank in previous similar cases.	As noted in the guidance, the Central Bank should take into account any relevant comparators to the extent practicable. In doing so, the Central Bank should bear in mind that each case is unique, and that the weight to attach to comparators may therefore be limited.
The level of turnover of the regulated entity in its last complete financial year prior to the commission of the contravention.	Turnover may also be relevant for a determination of the impact of a monetary penalty on a regulated entity and, by extension, to the deterrent effect of a monetary penalty.
Any other relevant consideration.	The list of sanctioning factors is not exhaustive. In certain cases, it may be appropriate to take into account factors which are not enumerated above.



T: +353 (0)1 224 6000
www.centralbank.ie



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem