

## A decade of settlements under the Central Bank's Administrative Sanctions Procedure

*The Central Bank entered its first settlement agreement under its Administrative Sanctions Procedure in 2006. MUIREANN REEDY of Dillon Eustace's Regulatory Investigations Unit examines the evolution of publicity statements released following settlements under this regime, from the first brief statement released in 2006 to the robust statements which characterise today's settlements.*

A key feature of settlements under the Central Bank's Administrative Sanctions Procedure (the ASP) has been the subsequent release of publicity statements on the Central Bank's website, notifying the public of the details of these settlements. In recent years, the Central Bank's more robust approach to enforcement has been evidenced by a marked change in the tone and presentation of these publicity statements.

### The Early Days

The publicity statements released in the ASP's early days were short both in length and in information.

Sometimes the regulatory breach which had been committed was not specified or was described in vague terms. In 2006 and in 2007, no publicity statement ran to longer than 1 page and often only one publicity statement was released following settlements with multiple parties (arising from the same set of facts). For example, the publicity statement which was released following the Central Bank's first settlement under the ASP with Broadstone Fund Management Ltd (In Voluntary Liquidation) (Broadstone), Mr. Gerard O'Neill and Mr. David Murray was only 1 page long and did not identify the legislative provisions that were breached. Despite the fact that the settlement concerned three distinct parties, only one publicity statement was released. While later publicity statements refer to specific admissions that were made by the regulated entity and/or individual, this publicity statement merely states that: "The Financial Regulator has reasonable cause to suspect that breaches of regulatory requirements occurred." The publicity statement following the settlement with Quinn Insurance Limited (QIL) and Mr. Sean Quinn Senior in 2008, also runs to only 1 page. This was notwithstanding that the fines of €3.25 million on QIL and

€200,000 on Mr. Sean Quinn Senior were the biggest which the Central Bank had imposed on an entity or an individual at that point. The publicity statement consists of seven brief paragraphs, two of which note that no consequences arose for any of the firm's policyholders as a result of the "suspected breaches" and that the parties co-operated without delay.



Muireann Reedy

### Publicity Statements Now

Publicity statements over the last few years have changed dramatically in terms of detail, tone and presentation, from their earlier counterparts. This is evidenced by the publicity statement released following the Central Bank's second settlement with QIL in 2013 and those released following settlements in 2015 with Mr. Tadhg Gunnell, Octagon Online Services Limited (Octagon), Irish Taxi Owners' Co-Op Credit Union Limited (Irish Taxis) and Mr. Michael Hogan. The publicity statement released following the Central Bank's second settlement with QIL in 2013 is in marked contrast to its 2008 predecessor. It runs to 13 pages and goes into minute detail about the breaches committed. It also includes a detailed "market commentary" (used to deliver key enforcement messages and signalling) from the Head of the Enforcement Division.

In the publicity statement following the settlement with Mr. Tadhg Gunnell, the Central Bank stated that: "Mr. Gunnell has admitted his actions as part of the settlement agreement" and listed in bullet points five specific findings which Mr. Gunnell admitted to as part of the Central Bank's investigation. Although no fine could be imposed on Mr. Gunnell as he was adjudicated

bankrupt, this did not deter the Central Bank from publically stating what fine it would have imposed (€105,000), had Mr. Gunnell been in a position to pay one.

In Octagon, the change in tone in these statements is highlighted by the Director of Enforcement's robust market commentary where she noted that:

"This is the second time the Firm has exceeded the limits of its authorisation. The Central Bank warned Octagon not to conduct unauthorised activity in 2002 and twice in 2008. We also told the Firm to expect enforcement action if it should engage in own account dealing in the future." The publicity statement also quotes a decision taken at one of Octagon's board meetings, and under the penalty decision factors, fourteen separate matters are listed - twelve of which are negative.

The publicity statements released following the settlements with Irish Taxis and Mr. Michael Hogan show the change in presentation of these statements. Rather than releasing one publicity statement in respect of both matters (which were related), two separate publicity statements were released, each statement referring to and providing links to the other, to generate maximum leverage.

### What Next?

Up until last year all cases settled. Three cases however have now been referred to Inquiry (although one of these has since settled). It remains to be seen how Inquiry Members will deal with these cases and their outcome.

### **Muireann Reedy is a senior associate at Dillon Eustace.**

*The Dillon Eustace Regulatory Investigations Unit focuses on helping companies address regulatory enforcement issues and has been created in response to more robust enforcement actions by the Central Bank.*