

Submission to Joint Committee on Public Service Oversight and Petitions.

In this document I refer to the Financial Regulator - In making this reference I am referring to that part of the Central Bank function with responsibility for financial regulation.

Information about me, Alan Jackman:

I am against blanket debt forgiveness (the only reason I am making this statement is because some people when I have contacted them in relation to this issue have been concerned that I have an agenda and that I am in favour of blanket debt forgiveness). I do however believe that people who cannot pay their debts should not be psychologically and physically broken down.

According to the Financial Regulator there has been 64 Billion Euro of Debt Forgiveness in the Banking System to date (not all of it allocated at this point). The reason I would suggest there has not been outcry over this type of Debt Forgiveness is because it has been almost entirely for very wealthy people and corporate entities. In addition the media has almost always described this Debt Forgiveness as paying bondholders or bailing out the banks.

The only agenda I have in relation to this matter is that I believe in a fair go for everyone regardless of their background or status - I believe certain provisions within the 1942 Central Bank Act work actively against this principle and seek to preserve a system and the interests of vested parties, rather than to protect the State and uphold the rights of its Citizens.

A General Overview Of The Issues Underpinning My Petition:

The piece of legislation that is the the subject of my Petition is the 1942 Central Bank Act (and in particular Part IIIC) and the Administrative Sanction Procedure that is derived from the provisions contained within the Act - This legislation relates to Financial Regulation.

However I am contending the real issue at the center of my Petition is in fact the Public Administration of Justice and Equality before the law.

I would contend this matter has as much relevance for the Department for Justice, Equality and Law Reform as it does for the Department for Finance.

A Separate Legal System Administered In Secret:

Financial Regulation in Ireland, including the pursuit of wrongdoing (even wrongdoing that is of a potentially criminal nature) takes place under the Provisions contained in the 1942 Central Bank Act - These provisions include the

Strict Professional Secrecy Provisions.

The reason for such secrecy at the heart of the Regulatory Framework appears to be based on the following thinking: The Financial Regulator and this Regulatory Framework are in place to protect the Banking System, not to protect the State or to vindicate the rights of its Citizens, in the belief that protecting Banks and the Banking System is in the interest of the Economy and a stable Economy is in the public interest.

I am contending the Administrative Sanction Procedure amounts to a separate legal system for Regulated Entities and those people who work in them.

So what is the **Administrative Sanction Procedure**?

It is essentially a Procedure that sets out how a separate Legal System for Regulated Financial Service Providers works. The Procedure sets out how the Financial Regulator will deal with a Financial Institution if it suspects it has committed a Prescribed Contravention.

The Administrative Sanction Procedure is derived from the provisions contained in the 1942 Central Bank Act.

What is a Prescribed Contravention? An Institution will have committed a Prescribed Contravention if it breaks the law or does not comply with a Statutory Instrument or Code.

The Administrative Sanction Procedure and indeed all other elements of Regulation is implemented in secrecy.

I am contending that the Provisions contained in the Act and the Administrative Sanction Procedure essentially constitutes a separate legal system for Banks and Banking Professionals, administered in secret by (Central) Banking Professionals (themselves sworn to secrecy).

Is the Administrative Sanction Procedure Constitutional?

This arrangement set down in legislation appears to be contrary to the Constitution in that:

- It is not in accordance with the principle of the Public Administration Of Justice;
- All citizens are equal before the law;
- It fails to protect citizens and to vindicate their rights;

Conflict of Interest:

I am contending that the Financial Regulator as presently constituted is fundamentally compromised in Supervising and Regulating the Banking System - The people it pursues for wrongdoing are the same people whose cooperation it needs to make the System work.

In 2012 the British Government recognised this conflict of interest at the heart of its Regulatory Framework and split its Financial Services Authority in two - One agency now regulates the Banking System from a Prudential perspective and another agency regulates Conduct within the System.

EU Directives:

I have been informed that these Provisions within the Act, including the Strict Professional Secrecy Provisions, have been enacted to comply with European Union Directives that have been continually updated - I do not know if this particular assertion is correct.

I would contend that every Nation State reserves the right to make its own laws and while it may make sense to enact such Provisions to deal with the Prudential elements of financial regulation, and those elements involving systemic risk, it is an entirely different matter to enact these Provisions and have them cover elements of financial regulation that relate to the conduct of Financial Institutions and their employees.

Vindicating Citizen's Rights:

Advocates for the existing Regulatory Framework might well point out that there is a Financial Services Ombudsman in place to resolve disputes between financial institutions and their customers.

I would contend the Financial Services Ombudsman is not the appropriate body to deal with more serious breaches of the respective Codes.

A person cannot make a complaint to the Financial Regulator - Consequently the Regulator cannot vindicate a citizen's rights.

Please note: I will expand on this matter more fully later in this submission.

A More Detailed Explanation Of the Legislation Underpinning The Administrative Sanction Procedure:

The legislation enacted in Part IIIC of the 1942 Central Bank Act permits the Financial Regulator to all intents and purposes administer a legal system, in secret and separate from the Public Administration of Justice, for financial institutions and their employees.

As part of the Administration Sanction Procedure the Financial Regulator can:

- Dispense with inquiries and go straight to a Sanction;

- Summon, make Findings, Caution, Reprimand, Disqualify and Sanction;
- Make Settlements at any stage in the Inquiry Process;
- Grant immunity from criminal prosecution by levying a fine;

As part of the Administrative Sanction Procedure the Financial Institution can:

- Appeal the Financial Regulator's decision to the High Court.

In addition it appears the Central Bank as part of the Administrative Sanction Procedure incorporates the role of the Director of Public Prosecutions within the the Central Bank itself - In its Outline of the Administrative Sanction Procedure (version 2013) the Central Bank states:

The Central Bank may decide to pursue prescribed contraventions through the Administrative Sanctions Procedure instead of bringing a summary prosecution.

However, the Central Bank will consider the circumstances of each case on its merits and may decide to pursue matters which constitute both a prescribed contravention and a criminal offence via the criminal courts.

In deciding whether to pursue criminal proceedings, the Central Bank will exercise its discretion, having regard to the Director of Public Prosecution's "Guidelines for Prosecutors". **End.**

Can a person make a complaint to the Financial Regulator?

- **A person cannot make a complaint against a financial institution or an individual within a financial institution to the Regulator even where the complaint involves criminality and where the person is the injured party:**

If a person approaches the Regulator with instances of wrongdoing in a **bank even where it involves potential criminality or wrongdoing that has been perpetrated against them**, the person will be informed that the Financial Regulator cannot investigate individual complaints.

Please note: This mechanism appears contrary to Article 40.3.1 of the Constitution: The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

Please note: In an answer to a Parliamentary Question the Minister for Finance Michael Noonan has stated the following: There is no impediment on any person from making any complaint to the Central Bank about a bank or an employee of a bank.

The above answer provided in response to a Parliamentary Question is erroneous. The Central Bank has made it explicitly clear to me on several occasions it has no role in individual complaints.

The two conflicting positions appears to indicate an extraordinary disconnect between the Financial Regulator and the Department of Finance.

Please note: A person can provide information via the Central Bank's Whistleblower Hotline or via its Enquiries Unit but a person cannot make a complaint.

I Will Now Provide An Elaboration On A Selection Of Various Sections Within The Act:

- **Section 33AK:**

If a person does put information before the Financial Regulator the person cannot be informed whether the matter has or has not been subsequently investigated or the outcome of any ensuing investigation.

The reason the Financial Regulator cannot disclose whether the matter has or has not been investigated or the outcome of an ensuing investigation is because the Financial Regulator is bound by the Strict Professional Secrecy Provisions in the 1942 Central Bank Act - The Provisions are enacted in Section 33AK of the Act.

Please note: In the very unlikely event of a sanction being imposed as a result of an investigation then a very concise statement will be issued by the Regulator and posted on its website.

The Financial Regulator (though not obliged to) is presently publishing Settlements.

- **Section 33AZ:**

According to the Central Bank's own outline of the Administrative Sanctions Procedure the Regulator can hold the final part of the Sanction Inquiry in public - However it cannot do so, in accordance with Section 33AZ of the Act, where the Regulator **suspects the law has been broken**, a person's (that is a Banking Professional's) **reputation may be damaged** or the wrongdoing relates to matters of a confidential nature – In these cases the hearing must be held in private and subject to the Strict Professional Secrecy Provisions.

Please note: Section 33AZ of the Act appears to act contrary to Article 40.1 of

the Constitution which states: All citizens shall, as human persons, be held equal before the law.

Please note: The constraints imposed by Section 33AZ can be contrasted with a recent prominent case of a Garda stationed in Dublin – It is alleged the Garda was in possession of images of child pornography. He denied the charge and was presumed innocent pending trial. However a Court ruled that his anonymity should not be preserved in the interests of the Public Administration of Justice after submissions made on behalf of RTE.

Another example of where this constraint has not applied in the past, is in the case of professional drivers - If a bus or LUAS driver was suspected of driving without due care and attention then this person may well be prosecuted and tried under the Public Administration of Justice - The driver would not be afforded the protection of secrecy because of his or her profession.

Section 33AT:

Please see an extract from the Central Bank's Administrative Sanction Procedure below:

No criminal prosecution may be brought if the prescribed contravention(s) in question has already been the subject of an Inquiry under the Administrative Sanctions Procedure which led to the imposition of a monetary penalty. **End.**

This Provision has been included in the Act to ensure, quite understandably, that a financial institution or indeed a person is not punished twice for committing a Prescribed Contravention.

However in addition this Provision allows the Financial Regulator to effectively grant automatic immunity from criminal prosecution in accordance with this Provision even where it has evidence that criminality has taken place. Consequently any evidence subsequently provided to An Garda Síochána is performed as an academic exercise.

Please note: There has been at least one high profile case where an entity and an individual in a position of authority within that entity both received fines thereby receiving immunity from criminal prosecution for committing a prescribed contravention where there was good reason to suspect the breach may well have been criminal.

In contrast banking executives in another financial institution who were engaged in very similar activities were charged and tried under the Public Administration of Justice.

Please note: The Financial Regulator is obliged to inform An Garda Síochána if it uncovers criminal wrongdoing in a financial institution.

- **Section 33AP:**

In accordance with this Provision the Financial Regulator will inform a financial institution that it suspects it of engaging in wrongdoing and order it to stop - This is communicated via an Examination Letter. The Examination Letter must specify the grounds on which the Regulator's suspicions are based.

Consequently when a whistleblower comes forward with information in relation to wrongdoing in a financial institution and reports it to the Financial Regulator the Regulator will communicate its suspicions in a letter to the financial institution. Once the financial institution receives the Examination Letter, the financial institution may realise that the information was provided to the Regulator by one of its own employees.

I am contending that in circumstances where a financial institution becomes subject to the Administrative Sanction Procedure as a result of the actions of a whistleblower, the whistleblower will not be protected by having the complaint publicly recorded and acknowledged.

I am contending the secrecy at the heart of the process may well result in whistleblowers being exposed to undue influence and pressure without the protection of a formalized process subject to public scrutiny.

I am also contending that similarly the secrecy at the heart of the process may also result in investigators within the Financial Regulator, who endeavour to pursue wrongdoing within a bank, being pressurised or induced into taking no further action.

Please note: The Oireachtas did introduce certain protections for whistleblowers in the Central Bank Supervision and Enforcement Act 2013.

Please note: It has been widely reported an auditor at a major financial institution brought serious irregularities to the Financial Regulator's attention, in and around 2002 - The whistleblower has stated the Regulator requested he withdraw his allegations and then did not act for a further two years.

- **Section 33AR and Section 33AV:**

Section 33AR of the Act allows the Financial Regulator with the consent of the financial institution to dispense with an inquiry and impose on the financial service provider any sanction that it is empowered to impose under section 33AQ.

Section 33AV of the Act allows a Financial Institution to enter into an agreement in writing with the financial service provider or person to resolve the matter.

Financial institutions can agree to enter into a Settlement at anytime in the process in accordance with the Provision contained in Section 33AV of the Act.

The Provisions contained in Sections 33AR and 33AV give rise to the following

questions:

Could a financial institution agree to enter a Settlement in order to prevent more serious wrongdoing being detected?

In deciding to dispense with the inquiry could the Financial Regulator be acquiescing in covering up more serious breaches?

Please note: The Financial Regulator is obliged to report criminal activity to An Garda Síochána.

A Summary Of My Concerns Relating To The Legislation As Set Out Above:

The Financial Regulator like the Court System is not directly accountable, for its decisions taken in the pursuit of wrongdoing, to the Government, the Oireachtas or the Public.

The Court System however unlike the Financial Regulator makes itself accountable by holding its hearings in public and acquires its credibility by not only publicly administering justice but publishing judgments made by its judges.

The Public Administration of Justice as a concept enshrined in the Constitution, is fundamental to a Nation State dedicated to the principles of open justice, the separation of powers, vindicating individual rights and the principle that all citizens are equal before the law.

In contrast Sections 33AK and 33AZ of the Central Bank Act 1942 ensure that not only will investigations undertaken by the Regulator and the outcomes of these investigations remain secret (except in the result of a Sanction) but in addition the Sanction Inquiry Hearing itself will take place in secret for the reasons set out in Section 33AZ of the Act.

Given that wrongdoing in financial institutions is pursued under the Strict Professional Secrecy Provisions the following questions arises:

How can the public be assured that the impact of legislation such as the 2010 Banking Reform Act and the various codes such as the Consumer Protection Code and the Mortgage Arrears Protection Code are not very much diminished?

The Financial Regulator's overriding objective is to protect the financial system, not to protect the State or the Citizen - I am contending the Financial Regulator will protect the financial system even at the expense of the State.

I am contending that recent legislative changes are very much diminished because the hearings take place in secret and the public cannot lodge formal complaints.

I am contending that the State and the Citizen, notwithstanding the legislative changes introduced in recent years, still has to put **blind faith** in the Financial

Regulator after a Systemic Banking Collapse that was only averted by officially injecting 64 Billion Euro into the System.

My Concerns Relating To The Vindication Of Citizen's Rights:

In 2011 Master of the High Court Edmund Honohan was reported by RTE to have said:

It was a criminal offence to demand repayment so frequently as to cause alarm, distress or humiliation; to tell a debtor they are guilty of criminal offence; to pretend to be officially authorised by law to enforce payment and that unjustified enrichment of creditors was also prohibited under law.

End.

The Financial Services Ombudsman offers binding arbitration as a means to resolve civil disputes between financial institutions and customers - It is not an appropriate body to deal with the type of issues referred to by the Master of the High Court.

In response to a Parliamentary Question in relation to this matter the Minister for Finance replied:

The Central Bank may not, however, in every instance be the most appropriate authority to whom the complaint should be made. This will depend on the subject matter of the complaint. **End.**

As stated earlier a person cannot make a complaint to the Financial Regulator.

I do not believe that these matters should be referred to An Garda Siochana in the first instance - I do not believe that bank employees should be subject to Garda investigation in the first instance at the same time I do believe that members of the public are entitled to protection and to have their rights vindicated.

I am contending that in relation to such matters, including psychological violence, as outlined by the Master of the High Court a person should be permitted to lodge a formal complaint with the Regulatory Authority.

It should be noted that the Financial Regulator is presently supervising financial institution with the express aim of ensuring such incidents as described above from occurring. In such circumstances it makes sense to allow persons to make complaints to the Financial Regulator.

Please note: The 2010 Banking Reform Act makes it very clear that only Bank Officials with authority within a Bank are responsible for their actions.

Please note: I am contending the vast majority of such instances would not result in a hearing, indeed the most complaints should not even necessitate investigation - It would allow the Financial Regulator to stop financial institutions engaging in such practices and provide a public record.

An abridged sequence of events that led me to making a submission to the Petition Committee:

- In 2006 myself and my bank (I had dealt with this bank almost exclusively for nearly twenty years) became embroiled in a dispute after I lodged a complaint with it - I am led to believe the nature of this dispute nor the details of my complaint cannot be expanded upon in this forum given it is presently before the Financial Services Ombudsman .
- In or around September 2009 I engaged in a series of emails with the Bank and copied a person in Financial Regulator's Banking Supervision Division on the correspondence. I had not contacted nor spoke with this person in the Regulator prior to copying them on the emails.
- I subsequently phoned the Financial Regulator and spoke with this person in its Supervision Division. I was surprised to learn that the person had read all the emails. The person informed me that they understood the detail of the convoluted and complicated content in the correspondence. They had come to the opinion that nature of the allegations I had made were of a serious nature and warranted investigation and urged me to put the matters before the Regulator and request it to investigate the matters.

The person went on to explain to me that if I did decide to put the matters before the Financial Regulator for investigation then the Regulator, given it was bound, by the Strict Professional Secrecy Provisions in the 1942 Central Bank Act would not be able to tell me whether the matters had been investigated or the outcome of any such investigation - I understand that the above explanation appears contradictory but this is exactly how the discussion transpired. The person went on to explain that in the very unlikely event of the Bank being sanctioned, a notice to this effect would be printed in the national newspapers.

I did not put these matters before the Regulator at that time given that I considered the process as constituted to be unsatisfactory.

- I believe that it was shortly after my discussion with the Regulator outlined above that I first wrote to the Department of Finance in relation to the constraints placed on the Regulator by way of legislation.
- In the summer of 2011 the Regulator confirmed in writing that if a person puts matters before the Regulator, that given the Regulator is bound by the Strict Professional Secrecy Provisions in the 1942 Central Bank Act it cannot inform the person whether the matter has been investigated or the outcome of any investigation.
- At this time I watched a news item on RTE's *Six One News* in which the Master of the High Court Edmund Honohan outlined various examples of potential interactions between banks and their customers that according to him amounted to criminal offences.

I also formed the opinion that the Regulatory Framework (and the Strict Professional Secrecy Provisions) as presently constituted in legislation has significant bearing on the prevailing cultures that operate in the country's banks.

- I contacted the Department of Finance again. I spoke with a very senior official within the Department - We discussed the Strict Professional Secrecy Provisions in the 1942 Central Bank Act. This senior official had responsibility for the Act - The senior official failed to disclose what another official in the Department described as 'an unfortunate conflict of interests'.
- I subsequently spoke with another senior official in the Department of Finance on or around October 7th 2011 and had several further telephone conversations with officials within the Department.

Please see below a portion of an email I sent to that senior official at the Department on October 7th 2011:

Beginning of Extract:

I also informed you that I had a conversation with **Name and Position Redacted** at the Department earlier this year - In this conversation **Name Redacted** stated the matters I was bringing to the Department's attention were matters for the Regulator - I pointed out that I would have put the matters before the Regulator but for the Strict Secrecy Provisions in the 1942 Central Bank Act. **Name Redacted** had informed me in **Gender Redacted** capacity **Gender Redacted** had responsible for the Act however at a later point in the conversation **Name Redacted** stated that the Oireachtas was responsible for changing the legislation. I pointed out to **Name Redacted** (and to you) that this was a very simplistic view and that although the Oireachtas enacted the legislation, its initiation, formulation and amendments were essentially performed by the Department, the Minister and the Cabinet). I note that my explanation on how laws are made and amended corresponds with your approach when you told me today that the Department decides what matters are brought to the Minister's attention.

End of Extract

- After my conversation with the very senior official in the summer of 2011 the Department subsequently informed me that the Department was **not** the place to raise matters relating to the 1942 Central Bank Act, enquired about my mortgage and was it in arrears, and informed me that I should go to the Financial Services Ombudsman.
- I wrote to several politicians in all political parties raising this matter and Anthony Lawlor TD wrote to the Taoiseach Enda Kenny and Minister Michael Noonan on my behalf without response.
- In May 2012 I put my complaint with my Bank before the Financial Services Ombudsman for adjudication - I am still awaiting a decision.

- In early 2013 I wrote to the clerk of the Finance Committee and outlining my concerns relating to the fact that a person providing information to the Regulator (even when the matters directly concerns them) cannot be informed if an investigation was or was not carried out, nor the outcome of any such investigation. I was informed by the Chairman of the Finance Committee these reservations were relayed in a report to Minister Brendan Howlin for consideration in relation to Freedom of Information legislation that the Minister intends to bring before the Oireachtas.
- On July 5th 2013 I put matters relating to my dispute with my bank before the Regulator - I did so in accordance with the Central Bank's instructions, by emailing the Central Bank at **enquiries@centralbank.ie**.

I received an acknowledgement from the Regulator on July 15th 2013 signed: **BSD Admin**. This acknowledgement re-iterated that the Regulator could not investigate individual customer complaints nor disclose the outcome of any investigation. It also stated this information would be used by the Regulator in its supervisory function of the bank. I have reproduced a copy of this email from the Central Bank at the end of this document.

I was not satisfied that having submitted my information including supporting data to an email address simply named, enquiries@centralbank.ie, that I should receive an acknowledgement signed BSD Admin. I telephoned the Central Bank and after speaking with several people I eventually spoke with a Senior Official in Banking Supervision. This person confirmed that they would take receipt of the information.

- In 2013 I again contacted the Department of Finance in relation to the matters in this submission and the Department wrote to me on July 9th 2013 informing me that 'this Department has no powers to investigate the issues you raise'. I was not satisfied with the response from the Department of Finance and requested that the Department clarify whether Minister Michael Noonan had read my correspondence and whether he had been fully briefed on the matters I had raised with the Department - This clarification was not forthcoming.
- In October 2013 I made a submission to the Petitions Committee with regard to my concerns with the Provisions contained in the 1942 Central Bank Act.
- On October 16th 2013 the Department of Finance confirmed that the Minister Michael Noonan was not aware of the detail of my concerns in relation to legislation governing the Financial Regulatory Framework and it had no intention of bringing it to his attention in the future.
- In or around February 2014 I provided further supporting data to the Financial Regulator;
- I received a letter from the Financial Regulator dated March 25th 2014 in which the Regulator again pointed out it had no role in investigating individual complaints and that it could not disclose whether it had or had not investigated

the matters I brought to its attention.

What am I hoping will transpire as result of bringing this matter to the attention of the Petitions Committee?

- I would like the Committee to bring the contents of this Submission to the attention of the Minister for Finance and the Minister for Justice, Equality and Law Reform;
- I would like the Committee to endeavour to have this matter debated in Dail Eireann particularly given that, although from this autumn Irish Financial Institutions will be supervised by the Single Supervision Mechanism, I am led to believe enforcement will remain within the remit of the Financial Regulator;
- I would like the Committee to bring this matter to the attention of other relevant Committees within the Oireachtas including the Justice, Defence and Equality Committee.

What sort of legislative changes would I like to see occur as a result of my Petition?

Please note: Financial Regulation is an extremely complex area. I do not have specialist knowledge in relation to this subject. I have provided a series of suggested changes below as means to hopefully starting a debate on this matter.

I would hope there would be a debate and that as part of this debate the legal profession, advocates of the Public Administration of Justice and transparency would be consulted.

I am contending that banking professionals should not be allowed to make the laws for other banking professionals.

- I would like to see legislative change that removed the Conflict of Interest at the heart of the Regulatory Framework. I have stated previously the British Government has recently established two authorities - The Prudential Regulatory Authority and the Financial Conduct Authority;
- I would like to see legislative change that confined the Administrative Sanction Procedure and the Strict Professional Secrecy Provisions to matters relating to Prudential Regulation alone;
- I would like to see legislative change that resulted in a Regulatory Conduct Authority established incorporating a specialist An Garda Siochana unit, that works directly with the Director of Public Prosecutions in deciding if an alleged contravention merits criminal prosecution;

- I would like to see legislative change that allows individuals to be able to lodge a formal complaint to a Financial Conduct Authority where that individual is the injured party. The area of complaint, can be confined to such matters as - dishonesty of a serious nature on the part of the financial institution, psychological violence, non disclosure of personal records;
- I would like to see legislative change that resulted in complaints and hearings being subject to a process that adheres with the Public Administration of Justice;

Please note: My concerns in relation to secrecy does not relate to the supervision of financial institutions, commercial agreements, prudential matters and matters relating to systemic risk. My concerns in relation secrecy is when it applies to wrongdoing.

Please note: I am contending that honesty in banking is of the utmost importance. Financial Institutions are obliged to act honestly and fairly in their dealings with customers in accordance with the Consumer Protection Code.

The process administered by the Financial Services Ombudsman is essentially binding arbitration. If however either party engages in dishonesty as part of the Financial Services Ombudsman's process there is essentially no penalty unlike the civil courts. I am contending that without honesty the process itself is very much diminished.

Please See Three Hypothetical Case Histories Outlined Below:

The case histories below are hypothetical scenarios that have some basis in fact and may resemble cases that have occurred in recent years. Similarities are coincidental and these case histories are not intended to be considered as accurate portrayals of actual events:

The reason I am providing these case histories is to illustrate that this legislation does impact people in their day to day lives.

Case History 1 - The Homeowner:

A homeowner and his partner are forced to move out of their apartment with their family. A court has ruled the property is unsafe and death trap. The family is moved into temporary accommodation. The homeowner gets stressed from the upheaval and uncertainty related to these events.

The homeowner and his partner, although both are working, fall into mortgage arrears - They receive a series of letters that they consider threatening, distressing and unnerving. They receive notice of an impending court date in relation to the debt. The man takes his own life.

The man's partner thinks that stress resulting from combined events over the previous year or so, prompted her partner to take his own life. He had no history of depression. It's impossible to know what precisely, if any specific or indeed combination of events, resulted in the man committing suicide..

We do know however that if a homeowner does receive threatening correspondence that does cause alarm and distress and if that person contacts the Financial Regulator they will be told:

They cannot make a complaint. They cannot be informed if the matter has been investigated or the outcome of any resulting investigation.

Case History 2 - Financial Institutions Providing Loans To Buy Shares:

A CEO of **a financial institution called Firm A** decides to buy shares in another financial institution called Firm B. The CEO draws down loans from his own Firm A in order to buy the shares. The CEO doesn't inform the Financial Regulator that he has drawn down these loans. The CEO is buying the shares for his own personal benefit.

In and around the same time the CEO of **a financial institution called Firm B** realises that the CEO in Firm A has bought up shares in his company. CEO of Firm B learns that CEO of Firm A may have to sell his complete share holding in Firm B.

Please note: Both Firm A and Firm B are financial institutions.

The CEO in Firm B believes that if the CEO of Firm A sells his share holding in Firm B in one lot, it will have a catastrophic effect on his firm's share price. He decides to provide loans to a set of individuals, to buy the shares in Firm B belonging to the CEO of Firm A. He believes if he does not take this course of action the very existence of Firm B is in doubt. The CEO of Firm B unlike the CEO of Firm A informs the Financial Regulator that he is providing these loans.

Some months later the Financial Regulator discovers that the CEO of Firm A, has used loans provided by his company to buy shares in Firm B without informing it.

The Financial Regulator enters into a Settlement Agreement, under the Administrative Sanction Procedure and the Strict Professional Secrecy Provisions, with the CEO of Firm A and his company, in relation to breaches in legislation. The CEO of Firm A resigns from his position and both he and his company are fined.

The following question arises:

In receiving a fine was CEO of Firm A and his company granted immunity

from criminal prosecution, under Section 33AT of the 1942 Central Bank Act?

Over five years later the CEO of Firm B is tried under the Public Administration of Justice for very similar activities to those engaged in by CEO of Firm A (there are differences - Firm B provided loans to customers of Firm B, to buy shares in the same company that provided the loans, that is, Firm B).

By the time of the trial it still has not been confirmed whether the former CEO of Firm A received immunity from criminal prosecution - The former CEO of Firm A is now a witness for the prosecution against the CEO of Firm B.

At the trial, the Head of the Regulatory Authority, at the time the above loans were provided, the share dealings took place and also when his agency, the Financial Regulator, entered the Settlement agreement with the former CEO of Firm A and his company, gives evidence.

At the end of the trial the judge in the case is critical of the person who was in charge of the Financial Regulator at the time the offences took place and indeed when the CEO of Firm A entered a Settlement Agreement with the Regulator.

Whatever the rights or wrongs in the above scenario the following is clear:

- The CEO of Firm A was dealt with under the Administrative Sanctions Procedure and his hearing was held in private. He may well have been granted immunity from criminal prosecution when he was levied with a fine;
- The CEO of Firm B was dealt with under the Public Administration of Justice - I would contend that in this case the public interest was served in that the public got to understand what actually occurred;
- The person who was criticised by the Judge in this scenario had ultimate responsibility for the Administrative Sanctions Procedure while he was in charge of the Financial Regulator;

Case History 3 - The Whistleblower and the Financial Regulator:

An auditor working in a bank uncovered overcharging on foreign exchange transactions. He also became aware of matters relating to share dealing that he believed to be illegal. He reported these matters to the Financial Regulator. The Financial Regulator appeared in the whistleblower's opinion to take the allegations seriously.

Some months later the Financial Regulator asked the whistleblower to attend a meeting. The whistleblower alleges at this meeting the Financial Regulator asked

him to withdraw his allegations - The whistleblower refused. The Financial Regulator does not stop the bank from overcharging on foreign exchange transactions and according to the whistleblower it continued for a further two years.

The bank outsourced the whistleblower's job (as auditor). The whistleblower retired from the bank and signed a confidentiality agreement.

The Financial Regulator went before a Dail Committee and informed it that it first became aware of the overcharging in 2004.

The whistleblower goes before a Dail Committee and informed it that he informed the Regulator two years earlier in 2002.

The bank admitted to overcharging and refunded approximately 65 Million Euro (many of the customers cannot be identified so the bank donates about 30 Million Euro to charity).

The most extraordinary aspect of the scenario outlined above, in my opinion, is not that the Financial Regulator allegedly asked the whistleblower to withdraw his allegations nor that it did not stop the bank from overcharging and allowed it to continue to do so for another two years.

The most extraordinary aspect, in my opinion, is that the whistleblower and the Financial Regulator cannot agree on the year that the whistleblower reported the matter to the Regulator.

I am contending that the way the above matter was dealt with by the Financial Regulator can be explained by the fact that a person cannot formally lodge a complaint with it (in the case of a whistleblower their anonymity can be preserved) in conjunction with the Strict Professional Secrecy Provisions.

Conclusion:

I am contending that if new laws are introduced and old laws are changed, then banking professionals will change, their attitudes, behaviours and approach to business.

Ireland is not only a democracy it is a republic. The country has a constitution that aspires to the principles of the public administration of justice, that all persons are equal before the law and citizens should be able to vindicate their rights.

I am contending that matters directly relating to the administration of justice should not have been co opted into financial regulation.

Appendix:

Information re Sanctions:

I was informed by the Regulator that as of the summer of 2013 there has been one sanction made against one Bank, of the six main Irish Banks (Allied Irish Bank, Bank of Ireland, Irish Nationwide, EBS, Permanent TSB) with regard to the Consumer Protection Code and the Mortgage Arrears Code (and this relates to Foreign Exchange and I understand the historic case highlighted by Eugene McErlean) since the Regulator has been vested with this power.

This year an insurance company was sanctioned for failing to comply with regulation in relation to the Consumer Protection Code.

Email response from the Central Bank after I submitted information to it in July 2013:

Dear Mr Jackman,

I refer to your recent correspondence and contact with the Central Bank. **The Central Bank does not have a role in investigating individual complaints** and I note that you have raised the matters concerned with the Financial Services Ombudsman which is the appropriate channel for individual customer complaints and with the Data Protection Commissioner in relation to data protection issues.

You have indicated that you have substantial information that you wish to submit to the Central Bank for consideration. **Such information may be submitted to this address but I would point out that any information received will be passed to the relevant supervisory divisions for use in their general supervisory work but it will not be possible to disclose to you any action taken on foot of information submitted as we are bound by the confidentiality provisions of the Central Bank Act 1942.**

Kind regards,

BSD Admin

Additional information and documentation provided to the Committee with this Submission:

- Parliamentary Questions submitted to the Minister for Finance Michael Noonan with the Answers to those questions;
- Copies of Two letters / emails sent by the Department of Finance to me dated July 11th 2013 and October 2013;

- A selection of emails that I sent to the Department of Finance in relation to the matters raised in this submission;
- A copy of the Administrative Sanction Procedure downloaded from the Central Bank's website;
- Emails from the Central Bank confirming an individual cannot make a complaint to the Central Bank under any Code or piece of legislation and that the Regulator is bound by the Strict Professional Secrecy Provisions;
- [Miscellaneous correspondence between myself, a financial institution, and the Data Protection Commissioner \(including two recorded conversations\);](#)