An Inquiry pursuant to Part IIIC of the Central Bank Act 1942 (as amended) concerning the Irish Nationwide Building Society, Michael Fingleton, William Garfield McCollum, Tom McMenamin, John S. Purcell and Michael P. Walsh (the "Inquiry").

Decision of the Inquiry Members on an application by Michael Fingleton Junior for a termination of the Inquiry as against his father, Michael Fingleton, on medical grounds (the "Termination Application").

Introduction

1. By email dated 18 September 2019, Michael Fingleton Junior ("Mr Fingleton Junior") wrote to the Inquiry Members requesting that the Inquiry against his father, Mr Michael Fingleton ("Mr Fingleton"), be terminated in light of medical evidence heard by the Inquiry at a private hearing on 16 September 2019. At this private hearing the Inquiry Members heard evidence from clinician G who had treated Mr Fingleton [redacted]

2. Mr Fingleton Junior provided a brief analysis of clinician G's evidence and submitted that because of this evidence, *"…it would be inhumane and contrary to natural justice for the inquiry to continue in respect of my father Mr Michael Fingleton".*

3. This application for termination of the Inquiry as against Mr Fingleton was made in circumstances where the Inquiry modules in respect of Suspected Prescribed Contravention ("SPC") 6 and SPC 7, while progressing against the other Persons Concerned, had been temporarily stayed against Mr Fingleton. The temporary stay in respect of the SPC 6 and SPC 7 hearings was granted on medical grounds unrelated to the condition in respect of which this Termination Application is made.

Background to the Termination Application

Mr Michael Fingleton's Medical Condition January 2018 – May 2019

4. The Notice of Inquiry was served on Irish Nationwide Building Society ("INBS") and the persons concerned in the management of INBS, namely Michael Fingleton, William Garfield McCollum, Tom McMenamin, John S. Purcell and Michael P. Walsh (the

"Persons Concerned") on 15 July 2015. Following the issuing of this Notice, a number of procedural and administrative hearings called Inquiry Management Meetings ("IMMs") took place to deal with matters such as jurisdiction, public/private hearings, a witness protocol and an evidence protocol. At one such IMM, the Inquiry Members decided to adopt a modular approach to the hearing of evidence: SPCs 1-4 were to be heard as a single module, module 1. SPC 5 was to be heard as module 2, SPC 6 as module 3 and SPC 7 as module 4. It was further decided to hear these modules in the order of 2, 3, 4 and 1 – (i.e. SPC 5, SPC 6, SPC 7 and finally SPCs 1-4).

5. The hearing of evidence in module 2, SPC 5, was due to commence on 9 January 2018. However, following the receipt of four medical certificates from three different doctors treating Mr Fingleton (clinicians A, B and C) and oral evidence from clinicians B and C, this hearing did not commence until 20 February 2018 and, due to Mr Fingleton's health, hearings were held on mornings only for a limited period. Following a request from Mr Fingleton supported by a letter from a fourth doctor (clinician D), who attended to give oral evidence, the Inquiry decided to continue its hearings on a half day basis for the remainder of the SPC 5 module. These medical certificates and this oral evidence from the clinicians in question related to medical issues other than those in respect of which this application is made.

6. On 30 April 2018, the Inquiry Members received a further medical certificate from clinician A that stated that Mr Fingleton was unwell, and consequently the SPC 5 hearing was adjourned for a further five days.

7. Following the completion of evidence in SPC 5 on 29 June 2018, the Inquiry Members directed that there would be an exchange of written legal submissions in order to allow oral legal submissions on that module to take place in September 2018. The Persons Concerned were directed to provide their written submissions to the Inquiry by 16 August 2018.

8. On 10 August 2018, the Inquiry Members received another medical certificate from clinician D, accompanied by an email from Mr Fingleton Junior which stated that Mr Fingleton would not be able to meet the deadline for the SPC 5 submissions and sought an adjournment for an indeterminate period of time.

9. On 13 August 2018, the Inquiry Members received a further medical certificate from clinician D and on 21 August 2018 received a medical certificate from a new clinician,

clinician E. The previous medical conditions had not required Mr Fingleton's hospitalisation. However, clinician E advised that Mr Fingleton had been admitted to the hospital and was unfit to engage in any activity relating to the Inquiry for at least one month.

10. Clinician E provided a detailed medical report on 7 September 2018. Following receipt of this report, the Inquiry Members decided to postpone the SPC 5 submissions hearing that had been scheduled to take place from 11 September to 14 September 2018.

11. A private hearing was held on 24 September 2018 at which clinician E gave evidence regarding Mr Fingleton's condition. Following this private hearing, the Inquiry Members decided to postpone the commencement of the next module of the Inquiry, concerning SPC 6, that had been due to start on 2 October 2018.

12. On 30 October 2018, clinician E provided a second report to the Inquiry. This report outlined that Mr Fingleton [redacted] A further private hearing of the Inquiry was held on 13 November 2018 at which clinician E again gave evidence about the state of Mr Fingleton's health. A third report from clinician E was received on 28 November 2018.

13. On 4 December 2018, the Inquiry Members received a report from a sixth clinician, clinician F, which dealt with another aspect of Mr Fingleton's health at that time. A fourth report was received from clinician E on 15 January 2019, which stated that Mr Fingleton's condition was persisting. On 24 January 2019, clinician E's fifth report was received, advising that Mr Fingleton would be unable to participate in the Inquiry for at least four months.

14. On 28 January 2019, an IMM was held to consider options for proceeding with the SPC 6 hearing in Mr Fingleton's continued absence. Following this IMM, the Inquiry Members decided to stay the SPC 6 hearing insofar as it related to Mr Fingleton as a Person Concerned and to proceed in respect of INBS and Mr John S. Purcell (the other Person Concerned in respect of SPC 6), in what was referred to as "staggered hearings". The SPC 6 hearing in respect of INBS and Mr Purcell took place from 3 to 12 April 2019. Based on the then medical evidence that the prospect of Mr Fingleton

making a recovery from his then illness was good, the Inquiry Members decided to stay the Inquiry as against him until he was in a position to participate.

15. In the meantime, a sixth report was furnished by clinician E on 28 March 2019, a seventh report was furnished on 1 May 2019 and an eighth report was provided on 30 May 2019. None of these reports indicated that there had been an improvement in Mr Fingleton's condition such as would enable him to resume participation in the Inquiry.

16. Clinician E stated in her final report dated 30 May 2019: *"The prognosis for recovery from the episode is good and he is making slow improvement".* She concluded, however, that *"[Mr Fingleton] will not be able to take part in the Inquiry on either an oral or written basis for the next month".*

17. On 14 June 2019, the Inquiry Members decided, on the basis of this prognosis for recovery, to proceed with the hearing of the SPC 7 module of the Inquiry in a similar manner as had been done with SPC 6. The SPC 7 hearing insofar as Mr Fingleton was concerned was temporarily stayed and the hearing proceeded in respect of INBS and Mr Purcell (the other Person Concerned in SPC 7). The SPC 7 hearing in respect of INBS and Mr Purcell took place in July and September 2019.

Mr Michael Fingleton's Medical Condition from June 2019 to the Present Date

18. On 7 June 2019, Mr Fingleton Junior informed the Inquiry that, [redacted] *It is highly unlikely that he will be able to partake in any way with the Inquiry going forward".*

19. The Inquiry Members subsequently received a medical report on 2 July 2019 from Mr Fingleton's consultant physician, clinician G who stated:
[redacted] *in my opinion, is not able to participate in any inquiry at the present moment in time. Secondly, he will be unable to participate in any inquiry for the foreseeable future. It will be at least six weeks before we have a clear idea of Mr. Fingleton's ultimate outcome."*

20. A second report from clinician G was received on 20 August 2019, which was in similar terms to his first report.

21. Having considered clinician G's written reports, the Inquiry Members decided to hear oral evidence from him, and on 16 September 2019, clinician G was examined by the Legal Practitioner Team ("LPT") and gave evidence to the Inquiry Members in relation to Mr Fingleton's condition and prognosis. Enforcement and the Persons Concerned were also afforded an opportunity to ask clinician G questions but chose not to do so.

22. Clinician G confirmed that Mr Fingleton had [redacted]

23. [redacted]

24. [redacted]

25. [redacted]

26. [redacted]

[redacted]

27. [redacted]

28. The LPT gave clinician G a brief description of the work of the Inquiry and the level of engagement that would be required of Mr Fingleton and he stated:

    [redacted]

29. [redacted]

Mr Michael Fingleton's Termination Application

30. On 18 September 2019, Mr Fingleton Junior, as outlined at paragraph 1 above, requested that the Inquiry Members terminate the Inquiry insofar as it relates to his father. He based the Termination Application on the medical evidence provided by clinician G. He stated:

    [redacted]

[redacted]

31. Following receipt of this email, the Inquiry Members decided to hold an IMM to consider the Termination Application.

Termination Application Submissions

a) Submissions from Enforcement

32. The Inquiry Members wrote to Enforcement requesting written submissions. Specifically, the Inquiry Members asked that these submissions address the following matters:
    (i) The Inquiry Members' jurisdiction to terminate the Inquiry insofar as it concerns Mr Fingleton;
    (ii) The reasons put forward by Mr Fingleton Junior in the application and any written submissions in support of same; and
    (iii) Any other matters of relevance.

33. Enforcement delivered its submission on 11 October 2019. Enforcement addressed the jurisdiction of the Inquiry to consider the Termination Application in circumstances where the Inquiry Members had issued a decision on 1 March 2017 in which they had determined that they did not have the jurisdiction to consider a termination application by Mr Michael Walsh, then a Person Concerned in the Inquiry.

34. The Inquiry Members, having considered the provisions of Part IIIC of the Central Bank Act 1942 (as amended) (the "Act"), had concluded in March 2017 that they had no jurisdiction to question or overturn a statutory decision to commence the Inquiry on the basis of an alleged failure of that decision maker to follow fair procedures.

35. Enforcement submitted that Mr Walsh's application could be distinguished from the Termination Application, in circumstances where the issue is not whether the Inquiry

Members can overturn or review a referral for inquiry, but rather concerned Mr Fingleton's capacity to participate in such an inquiry.

36. Enforcement submitted:

> "*At the level of principle, a valid distinction can be drawn between the sort of application previously advanced by Mr Walsh and the present Application made on behalf of Mr Fingleton. By its very nature the application made by Mr Walsh called for a substantive determination in his favour in relation to the essence of the allegations of participating in the commission of the Suspected Prescribed Contraventions ("SPCs"). By way of contrast, the Application made by Mr Fingleton Jnr is not dependent on any consideration of the substance of the allegations – rather it is inherently procedural in nature in that the question posed is whether or not Mr Fingleton can properly participate in the process having regard to the medical evidence.*"[1]

The Inquiry Members agree with Enforcement's submission on this point.

37. Enforcement considered Mr Fingleton's fitness to participate in the Inquiry in light of the most current medical reports. It referred to the decisions already made by the Inquiry to proceed with modules 3 and 4 by way of "staggered hearings" on the basis that at that time it was considered possible that Mr Fingleton might at some stage recover sufficiently to participate again in the Inquiry.

38. Enforcement considered the approach the Inquiry Members should take in addressing the Termination Application and stated:

> *"The Inquiry Members jurisdiction is not to hold any inquiry, but only to hold an inquiry such as is envisaged by Part IIIC of the Act. The legislation makes it clear that such an inquiry is to have certain essential features, one being the right of a PCM to participate in the inquiry where the PCM so desires. If, on foot of a finding of unfitness, it transpires that a PCM who wishes to participate is incapable of exercising his/her right to participate, then, in Enforcement's view, it seems to follow that the inquiry against that person, as envisaged by the Act, cannot occur. Thus, it seems to Enforcement that the correct approach is not so much to ask whether the Inquiry Members have jurisdiction to terminate, but to ask instead whether the Inquiry Members have jurisdiction to continue*

[1] Enforcement Submission dated 11 October 2019, para 8

against a person where the inquiry in question would not be one as is envisaged by the Act. In essence, the question now in issue remains one of fitness, albeit against a background of different medical evidence."

39. Enforcement submitted that if the Inquiry Members determined that Mr Fingleton's condition was such that recovery seemed unlikely, it would be open to the Inquiry Members to determine if Mr Fingleton is now permanently unfit to participate in the Inquiry. That procedural approach would not, in Enforcement's view, give rise to any issues as regards jurisdiction and would accord with the approach taken by the Inquiry to date in its assessment of medical evidence and fitness. This is, in the Inquiry Members' view, a correct approach and one which has been adopted by them in reaching their decision.

40. In relation to a determination as to whether Mr Fingleton is permanently unfit to participate in the Inquiry, Enforcement referred to its previous submissions of 23 November 2018, 7 December 2018 and 14 January 2019, which were made in the context of the Inquiry's consideration of whether to postpone commencement of the SPC 6 hearings on the grounds of Mr Fingleton's health. Specifically, Enforcement referred to Section 4 of the Criminal Law (Insanity) Act 2006, as amended (the "2006 Act") which sets out a test to be applied when making a determination as to capacity, and which was referenced in the Inquiry Members' decision regarding the commencement of the SPC 6 hearings.

Section 4(2) provides:

"(2) an accused person shall be deemed unfit to be tried if he or she is unable by reason of mental disorder to understand the nature or course of the proceedings so as to -

(a) plead to the charge,

(b) instruct a legal representative,

(c) in the case of an indictable offence which may be tried summarily, elect for a trial by jury,

(d) make a proper defence,

(e) in the case of a trial by jury, challenge a juror to whom he or she might wish to object, or

(f) understand the evidence."

41. Enforcement noted the evidence of clinician G that even if Mr Fingleton was to recover to an extent that he could theoretically participate he would be doing so in challenging physical circumstances. In Enforcement's view, Mr Fingleton's rights to personal dignity and bodily integrity were factors to be taken into account in determining his fitness to participate.

42. Enforcement submitted that if the Inquiry Members were to come to the view that it would be contrary to Mr Fingleton's rights to dignity and bodily integrity to proceed against him in the current circumstances, then a finding of permanent unfitness in light of his medical condition would not be ultra vires Part IIIC of the Act.

43. The Inquiry Members considered Section 4(2) of the 2006 Act a helpful reference in assessing Mr Fingleton's fitness to participate meaningfully in the Inquiry.

44. By way of conclusion, Enforcement submitted that the Inquiry Members retained the ability to consider Mr Fingleton's ability to properly participate and, where the evidence requires it, to determine that he is permanently unfit to do so. Although the practical result of such a finding may be the same from Mr Fingleton's perspective, there remained in Enforcement's view an important distinction between the exercise of what is in essence a procedural jurisdiction (i.e. a finding of unfitness) and a substantive jurisdiction (i.e. a decision to terminate of the sort previously sought by Mr Walsh).

b) Submissions from Persons Concerned

Mr Michael Fingleton Junior

45. By letter dated 20 September 2019, the Inquiry wrote to Mr Fingleton Junior inviting him to deliver a written submission in support of the Termination Application. He was asked to address two matters in his submissions:
    (i) *"The Inquiry Members' jurisdiction to terminate the Inquiry insofar as it concerns your father.*
    (ii) *The reasons why the Inquiry, insofar as it concerns your father, should be terminated."*

46. Mr Fingleton Junior responded to this invitation by letter dated 1 October 2019 and raised a number of points:

(i) He submitted that any tribunal, court or inquiry carrying out a quasi-judicial function has an obligation to act in a fair and just manner. He stated that if a party, by reason of ill health or impairment of cognitive ability or other substantive reason is unable to defend himself, give instructions or understand what is transpiring before the Inquiry then it is manifestly unjust for such inquiry to continue and the Inquiry clearly has an inherent jurisdiction to terminate its proceedings.

(ii) Mr Fingleton Junior invoked Article 40.3.2 of the Irish Constitution and Article 6 of the European Convention on Human Rights ("ECHR"), which protect the right of the individual to fair procedures.

(iii) Section 33AY(2) of the Act states that the Inquiry shall observe the rules of procedural fairness. Mr Fingleton Junior also referred to the Inquiry Guidelines prescribed pursuant to Section 33BD of the Act which state:

> *"4.1 …The Inquiry at all times will observe the rules of procedural fairness…*
>
> *4.6 …The Inquiry Members may, at any point during an Inquiry, be requested to adjourn any Inquiry hearing. The Inquiry Members have the discretion to grant or refuse an application for adjournment. In considering any such request, the Inquiry Members shall exercise their discretion fairly, in accordance with fair procedures, taking into account the circumstances of the application and any submissions made".*

47. Mr Fingleton Junior submitted that where the subject of an Inquiry, by reason of his ill health cannot possibly participate, the Inquiry Members cannot possibly comply with this legislation as to proceed would clearly be in conflict with it. He submitted that *"it is a logical conclusion that as 'procedural fairness' cannot apply the Inquiry must terminate in such circumstance".*

48. In relation to the second question which Mr Fingleton Junior was asked to address, he stated that the contents of his email of 18 September 2019 in which he applied for termination should be taken into account.

49. Mr Fingleton Junior summarised clinician G's evidence and identified a number of matters which he considered to be "*centrally relevant*". He said that the Inquiry should be terminated as against his father as the nature of his father's medical condition was such that he would be unable to participate in the Inquiry going forward. He noted that

clinician G's evidence included the following matters which he said were *"centrally relevant":*

(i) [redacted]

(ii) [redacted]

(iii) [redacted]

(iv) [redacted]

(v) [redacted]

(vi) [redacted]

(vii) [redacted]

(viii) [redacted]

50. Mr Fingleton Junior further submitted that [redacted]

51. In conclusion, Mr Fingleton Junior submitted that [redacted]

Mr John S. Purcell and Mr William Garfield McCollum

52. Mr Purcell and Mr McCollum were each invited to provide submissions on the same terms as Enforcement but did not do so.

c) Submissions from the LPT

53. The LPT provided submissions on the Termination Application on 31 October 2019. These submissions addressed a number of issues: the decision of 1 March 2017 regarding Mr Walsh's application for the Inquiry to be terminated against him; the decision to proceed with the Inquiry by way of "staggered hearings"; Mr Fingleton Junior's submissions; Enforcement's submissions; the relevant provisions of the Act; the Constitutional right to fair procedures and Article 6 of the ECHR. The LPT also considered the medical evidence relating to Mr Fingleton, the relevant case law on the right to dignity and finally, the legal basis permitting the Inquiry Members to make a decision to terminate / permanently stay the Inquiry.

54. The LPT noted that the Inquiry Members had accepted in their decision of 1 March 2017 that there was no express provision in the statutory framework that allowed the Inquiry Members to review a decision of Enforcement to refer a matter for inquiry and that no such power could be inferred.

55. The LPT also referred to the Inquiry's decision of 4 March 2019 in which the Inquiry Members concluded that proceeding against Mr Fingleton in his absence was not appropriate in light of the case law identified.

56. As regards Enforcement's suggestion that the correct approach was not for the Inquiry Members to consider whether they had jurisdiction to terminate but rather to ask whether they had jurisdiction to *"continue against a person where the Inquiry in question would not be one as is envisaged by the Act. In essence, the question now in issue remains one of fitness, albeit against a background of different medical evidence",* the LPT considered the relevant statutory framework governing the Inquiry.

Central Bank Act 1942 (as amended)

57. In ***Fingleton v. Central Bank of Ireland***[2] the Court considered Section 33AO(2) of the Act which provides for the holding of an inquiry where the Central Bank of Ireland (the

[2] Decision of 24 April 2018.

"Bank") suspects on reasonable grounds that a person concerned in the management of a regulated financial service provider is participating or has participated in the commission of a prescribed contravention. Finlay Geoghegan J. noted that Section 33AO imposes a sanction and therefore it was to be interpreted in accordance with the principles applicable to one that imposes a penal sanction (paragraph 20).

58. Part IIIC of the Act provides the legislative framework for the conduct of Inquiries. Section 33AP provides that, before holding an Inquiry, notice must be given in writing of the proposed Inquiry to the financial service provider or other person concerned. This notice must *"(c) invite the financial service provider or person concerned either to attend the inquiry or to make written submissions about the matter to which the Inquiry relates."*[3]

59. Section 33AP(5) states: *"The [Bank] may proceed with an inquiry in the absence of the financial service provider or other person concerned so long as that financial service provider or person has been given an opportunity to attend the inquiry or to make written submissions to it."*

60. The LPT placed particular emphasis on this latter provision as, in their view, it unequivocally gives the person concerned the right to participate in the inquiry.

61. Section 33AQ(2) provides that at the conclusion of an inquiry relating to the conduct of a person concerned, the Bank shall make a finding as to whether the person concerned is participating or has participated in the prescribed contravention to which the inquiry relates. Under Section 33AQ(8), at the conclusion of the Inquiry the Bank must notify the person concerned of its decision which must identify whether the person participated, the grounds for the finding and the sanction, if any.

62. Under Section 33AR(2), where the Bank suspects on reasonable grounds that a person concerned is committing or has committed a prescribed contravention, and the person concerned acknowledges participation, the Bank may, with the person's consent, dispense with an inquiry and impose a sanction or hold an inquiry to determine the sanction, if any. Those sanctions are set out at Section 33AQ(5) and are potentially very significant, including *inter alia*, the imposition of a monetary penalty not exceeding €500,000, pursuant to Section 33AQ(5)(b) of the Act (as applied during the

[3] Section 33AP(2)

Review Period[4]) and a direction disqualifying the person from being concerned in the management of a regulated financial service provider for a specified period.

63. Section 33AY(2) provides that an inquiry shall observe the rules of procedural fairness, but is not bound by the rules of evidence.

64. Section 33AY(4) gives a person concerned an entitlement to be represented at the inquiry by a legal practitioner or any other person (with the leave of the Bank).

65. The LPT submitted that the foregoing provisions make it clear that the inquiry process is intended to be carried out with the participation of the person concerned and that the Bank is not entitled to proceed without permitting the involvement of the person concerned at all stages of the process. The Inquiry Members agree with this interpretation of the legislation.

66. At paragraphs 25 and 26 of their submissions, the LPT expressed the view that although there was no general power to terminate the Inquiry at the discretion of the Inquiry Members, the Act clearly requires that a person concerned be given the opportunity to participate throughout the process. The LPT concluded:

> *"Having regard to this review of the legislation and the principles applicable to the interpretation of same, the LPT advises that (a) the legislative scheme is premised upon the person concerned being in a position to participate substantively in the Inquiry if they so chose, in circumstances where that Inquiry can impose a significant sanction against them, and (b) that the Inquiry Members are required to observe the rules of procedural fairness in holding the Inquiry, including the core requirement of procedural fairness that a person concerned must be in a position to be substantively heard in their own defence if they so wish."*

Constitutional Right to Fair Procedures

67. The LPT cited a number of legal authorities regarding the constitutional right to fair procedures and in particular the right to be heard and the right to cross-examine one's accusers. They cited Cregan J. in ***Flynn v. National Asset Loan Management Ltd***.[5]

[4] 1 August 2004 to 30 September 2008
[5] [2014] IEHC 408

where he described the right to be heard as follows: "*The right to be heard is a powerful and important right … a right to speak or a right to make representations to the court, tribunal or statutory body which seeks to make a decision which affects the person concerned. It is a right which is at the heart of our legal system … (this right) has been recognised and protected in our constitution since 1937 and it has been articulated and applied in numerous cases of the High Court and Supreme Court over the last few decades*".

68. The LPT also cited ***The State (Irish Pharmaceutical Union) v. EAT***,[6] in which McCarthy J. noted that: "*whether it be identified as a principle of natural justice derived from the common law and known as audi alteram partem or, preferably, as the right to fair procedures under the Constitution in all judicial or quasi-judicial proceedings, it is a fundamental requirement of justice that person or property should not be at risk without the party charged being given an adequate opportunity of meeting the claim, as identified and pursued*".

69. The LPT expressed the view at paragraph 29 of their submissions that this principle applies with particular force in the context of this type of statutory inquiry, namely one where the person concerned is exposed to very significant penalties including a possible disqualification order and where the default position under the Act is that the hearing is heard in public and the ultimate findings published.

70. They further noted that should the right to be heard not be vindicated, then the right to cross-examine would also be undermined. It is clear from cases such as ***In Re Haughey***[7] that where the good name or livelihood of a person may be affected by a decision, a right to cross examine is likely to exist. The LPT concluded:

> *"In the instant case, the LPT believe that all the persons concerned, including Mr. Fingleton, have a right to cross examine witnesses appearing before the Inquiry. The Inquiry has proceeded on that basis to date. To proceed against Mr. Fingleton where ill health made it impossible for him to participate substantively would prevent him exercising his right to cross examine."*

The Inquiry Members agree with this conclusion of the LPT.

[6] [1987] ILRM 36
[7] [1971] I.R. 217

Article 6 of the European Convention on Human Rights

71. Article 6(1) of the ECHR provides *inter alia:*

> *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*

72. The LPT stated that Article 6 of the ECHR has been interpreted as encompassing a right to *"effective participation"* in the trial process which is grounded in both Article 6(1) of the ECHR (which applies to both criminal and non-criminal proceedings) and Article 6(3) (which only expressly relates to criminal proceedings).

73. The LPT cited two cases in which the European Court of Human Rights addressed the "effective participation" principle: ***SC v. United Kingdom***[8] and ***Stanford v. United Kingdom***[9]. In the former case, the Court stated:

> *"'effective participation' in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence."*

74. In the latter case, which was decided in the context of criminal proceedings, the Court stated:

> *"Nor is it in dispute that Article 6, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial. In general this includes, inter alia, not only his right to be present, but also to hear and follow the proceedings. Such rights are implicit in the very notion of an adversarial procedure and can also be derived from the guarantees contained in sub-paragraphs (c), (d) and (e) of para 3 of Article 6, - "to defend himself in person", "to examine or have examined witnesses".*

[8] [2005] 40 ECHR 10 (App No 60958/00)
[9] [1994] ECHR 6 (App No 16757/90)

75. The Inquiry Members found the criteria set down in these judgments useful in determining whether Mr Fingleton had the capacity to effectively participate in the Inquiry.

76. In their decision to proceed with the staggered hearings approach to SPC 6, the Inquiry Members relied on the case of ***Brabazon-Drenning v United Kingdom Central Council for Nursing Midwifery and Health Visiting***[10], in which the English High Court found Article 6 of the ECHR to have been breached where a disciplinary hearing proceeded in the absence of the nurse who was the subject of the hearing in circumstances where the hearing committee had been advised that she was too unwell to participate in the hearing:

> *"Save in very exceptional cases where the public interest points strongly to the contrary, it must be wrong for a committee which has the livelihood and reputation of a professional individual in the palm of its hands, to go on with a hearing when there is unchallenged medical evidence that the individual is simply not fit to withstand the rigors of the disciplinary process."*

The LPT stated that they did not believe that the present case was one of the "*exceptional cases*" referred to in the above extract.

77. The LPT submitted that based on the legislative scheme applicable to the Inquiry, the constitutional right to fair procedures and entitlements under ECHR, the Inquiry cannot proceed and make findings against Mr Fingleton if he is unable to participate substantively in the Inquiry by reason of his ill health.

78. The LPT summarised the medical evidence provided by clinician G in his written reports and in his oral evidence to the Inquiry. They expressed the view that it was a matter for the Inquiry Members as to whether they considered, having regard to the state of his health, that Mr Fingleton can adequately participate in the Inquiry and whether his constitutional right to fair procedures could be vindicated.

Relevant Case Law on the Right to Dignity

79. The LPT considered the issue of personal dignity and quoted at length from the judgment of McWilliam J in the case of ***Garvey v. Ireland***[11]*:*

[10] [2001] HRLR 6
[11] [1978] 10 JIC 0301

"The preamble to the Constitution states that the People of Eire "seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured,.....Do hereby adopt, enact and give to ourselves this Constitution". Walsh, J., in McGee .v. The Attorney-General (1974) I.R. 284 at p.319 said - "According to the preamble, the people gave themselves the Constitution to promote the common good with due observance of Prudence, Justice and Charity so that the dignity and freedom of the individual night be assured: the Judges must, therefore, as best they can from their training and experience interpret these rights in accordance with their ideas of Prudence, Justice and Charity". This statement was made in reference to a right given by the Constitution but I consider it has equal application to the operation of a statute".

80. The interaction between fair procedures and dignity was also emphasised by Hogan J. in ***C.E. v. Minister for Justice and Others***[12] where he stated:

"This obligation further sees to it that, in the words of the Preamble to the Constitution, "the dignity…of the individual may be assured", in that no agent of the State can otherwise invoke the power of the State in a manner affecting legal rights or interests without giving that a person such an opportunity: cf. by analogy the comments of Henchy J. in Garvey v. Ireland [1981] I.R. 75, 99. The notion of dignity of the individual - with its implication of the importance of treating all citizens with courtesy and respect - requires no less".

Legal Basis for a Termination / Permanent Stay of the Inquiry

81. The LPT concluded their submissions by considering the legal mechanisms open to the Inquiry Members in the event that they decided that Mr Fingleton was not able, by virtue of his current state of health, to participate in the Inquiry.

82. As noted above, there is no explicit power in the Act to terminate the Inquiry under these circumstances. The LPT advised that, rather than inferring a power to terminate, an approach more in keeping with the Inquiry's statutory powers is to permanently stay the Inquiry as against Mr Fingleton, having regard in particular to the provisions of Section 5A(2) of the Act, which gives the Bank power "*to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions*".

[12] [2012] IEHC 3

Oral Hearing 12 November 2019

83. Following receipt of the submissions from Enforcement, Mr Fingleton Junior and the LPT, the Inquiry proceeded to an oral hearing on the Termination Application on 12 November 2019. This hearing was heard partly in public but because it inevitably involved discussion of Mr Fingleton's medical condition, part of the hearing was conducted in private. Mr Fingleton Junior and Mr Gary McCollum were invited to attend the oral hearing but did not take up this invitation.

Oral Submission of the LPT

84. The LPT described the Termination Application as an application to have the Inquiry terminated in its entirety against Mr Fingleton. It submitted that what was being sought was a termination of the Inquiry not just in respect of the modules yet to be heard but also to terminate the Inquiry as against Mr Fingleton in relation to SPC5, which was a module that Mr Fingleton did participate in, including by giving evidence and examining witnesses. That module could not be completed because Mr Fingleton became unwell.

85. The LPT also pointed out that the Termination Application was grounded on Mr Fingleton's current medical condition that arose on 30 May 2019 and not on his previous incidents of ill health.

86. The LPT cited in detail the evidence given by clinician G and pointed out that the medical event that Mr Fingleton suffered in May of this year *"is qualitatively different to the other conditions for which he has been treated and in respect of which the Inquiry is aware".* [13]

87. The LPT described Mr Fingleton's medical history during the course of the inquiry from the adjournment of the SPC 5 module in January 2018 through to the current Termination Application.

88. The LPT summarised the submissions provided by Mr Fingleton Junior and by Enforcement. With respect to Mr Fingleton Junior's submissions, the LPT noted that whilst there was reference to Mr Fingleton Junior's perception of his father's condition and reference to the family's concerns, the Termination Application was in fact rooted in the clinical evidence given by clinician G.

[13] Transcript dated 12 November 2019, page 10, line 24 – 27.

89. The LPT referenced the importance of the submission from Enforcement on the question of jurisdiction and quoted the relevant passage in full. This extract from Enforcement's submission is quoted at paragraph 38 above but the opening sentence may be reiterated here:

> *"The Inquiry Members jurisdiction is not to hold any inquiry, but only to hold an inquiry such as is envisaged by Part IIIC of the Act."*

90. The LPT stated: *"The question they suggest you should ask yourself is, not have you jurisdiction to terminate, but … have you jurisdiction to continue against Mr Fingleton if you come to a certain view about his fitness to participate in the inquiry?"*[14]

91. The LPT also noted Enforcement's reference to Section 4(2) of the 2006 Act which was referenced by the Inquiry as a "useful touchstone" in assessing Mr Fingleton's fitness leading to the decision in March 2019 to proceed with the Inquiry by way of staggered hearings.

92. The LPT emphasised the relevance of the decision in ***The Pharmaceutical Union v the EAT***, an extract of which is quoted at paragraph 68 above. The respondent tribunal had failed to ask the parties to address their mind to the appropriate order to be made in the event of a finding of unfair dismissal. McCarthy J. was described by the LPT as unequivocal when he stated the fundamental requirement of justice that no person should be put at risk without being given an adequate opportunity of meeting the claim as identified and pursued. The LPT noted that McCarthy J's statement had remained unchallenged since the decision was delivered in the 1980s.

93. In the Pharmaceutical Union case, the Tribunal had directed re-engagement as the appropriate redress without affording the parties the opportunity of addressing this remedy. This was found to be a breach of the rights of the employer.

94. Applying this principle to the present Termination Application, the LPT stated:

> *"And one test to apply in approaching the position of Mr Fingleton is, given his state of health, does he have an adequate or real opportunity of meeting any of the allegations against him, either the modules yet to be heard in their entirety, the module in respect of SPCs 1-4, or modules 2 and 3, where he was unable to participate in the evidence because of his ill health, as you have*

[14] Transcript dated 12 November 2019, page 26, line 16 – 20.

found. Or module 1, where he was unable to participate in the submissions in respect of SPC 5 because of his state of health as of September of last year."[15]

95. The LPT also emphasised the decision in ***Brabazon-Drenning v The United Kingdom Central Council for Nursing, Midwifery and Health Visiting***. In their submissions, quoted above at paragraph 76, the LPT referred to the passage in the judgment which stated that, other than in exceptional circumstances, a committee cannot proceed with a hearing where there is unchallenged medical evidence that the individual is simply not fit to withstand the rigors of the disciplinary process. The LPT quoted further from the judgment:

    *"[*The nurse*] clearly was unable to attend this hearing because she was too ill to do so. In those circumstances, I do not think that there were any overriding public interest considerations which should have deprived her of a basic right to be present where the case was put against her and to be in a position where she could either cross-examine herself or have a representative with whom she could communicate cross-examine on her behalf. It was a breach both of the principles of natural justice and article 6".*[16]

96. The LPT referred to the right to dignity and in particular to the decision of Hogan J. in the case of ***C.E. v Minister for Justice and Others***.

97. The LPT submitted that it would be open to the Inquiry to make permanent the stay that it has already put in place in respect of Mr Fingleton's participation in the SPC 6 and 7 modules. He noted that Mr Fingleton Junior's application is for the Inquiry to be terminated as against his father.

Oral Submission of Enforcement

98. Enforcement made a submission on how the Inquiry Members might formulate their determination in the event that they were to accede to the Termination Application. Enforcement submitted that, for two reasons it would be preferable that the Inquiry would be discontinued as against Mr Fingleton rather than granting a permanent stay. Firstly, it would more closely reflect the decision process, namely a factual finding that Mr Fingleton was permanently unfit coupled with a determination that therefore the

[15] Transcript dated 12 November 2019, page 34, line 7 – 17.
[16] Transcript dated 12 November 2019, page 38, line 6 – 16.

inquiry could not proceed against him. Such a determination would not be a determination in relation to the allegations made against Mr Fingleton.

99. Secondly, Enforcement submitted, it would be preferable that any conclusion an inquiry would reach in circumstances of unfitness to participate would not be such as to preclude allegations being reconsidered at some future point.

100. The Inquiry Members requested written submissions from Enforcement, the Persons Concerned and the LPT on the form of any direction which the Inquiry Members might make in the event that they were to accept that Mr Fingleton was not fit to participate in the Inquiry.

101. At the conclusion of the oral hearing the Inquiry Members advised that an up to date medical report would be sought from Mr Fingleton's treating physician, clinician H.

Medical Opinion of Clinician H

102. Clinician H provided a medical report on Mr Fingleton's condition and prognosis dated 25 November 2019.

103. Clinician H confirmed that Mr Fingleton [redacted] Clinician H also confirmed that she had read the transcript of the evidence provided by her colleague clinician G at a private hearing of the Inquiry on 16 September 2019.

104. Clinician H stated:

[redacted]

[redacted] *in my opinion is not able to participate in an enquiry.* [redacted]

DECISION

Jurisdiction

105. The decision taken by the Inquiry Members on 1 March 2017 in relation to Mr Michael Walsh's application for termination can be distinguished from the present Termination Application. That decision concerned an application for termination on the basis that Enforcement had not acted fairly in coming to the decision to prosecute the Inquiry as against Mr Walsh. The Inquiry Members determined that they did not have jurisdiction under the Act to question or overturn a statutory decision to commence an inquiry and that the proper remedy for Mr Walsh to pursue was judicial review.

106. The present Termination Application is to terminate the Inquiry as against one of the Persons Concerned on the grounds of ill-health. The Inquiry Members agree with Enforcement's submission that the correct approach is not to infer a power to terminate under the Act, but to consider whether they have jurisdiction to continue with the Inquiry insofar as it relates to Mr Fingleton were they to determine that he is permanently unfit to participate in the Inquiry due to ill health.

107. A person concerned is entitled to fair procedures and must be given a meaningful opportunity to participate throughout the inquiry process. The conclusion of the LPT in their written submissions dated 31 October 2019 is, in the view of the Inquiry Members correct. The LPT concluded:

> *"Having regard to this review of the legislation and the principles applicable to the interpretation of same, the LPT advises that (a) the legislative scheme is premised upon the person concerned being in a position to participate substantively in the Inquiry if they so chose, in circumstances where that Inquiry can impose a significant sanction against them, and (b) that the Inquiry Members are required to observe the rules of procedural fairness in holding the*

Inquiry, including the core requirement of procedural fairness that a person concerned must be in a position to be substantively heard in their own defence if they so wish."

108. Where a person's right to participate meaningfully in the inquiry process cannot be vindicated, an inquiry against that person cannot proceed.

Mr Fingleton's Capacity to Participate in the Inquiry

109. The next question for the Inquiry Members is whether Mr Fingleton's medical condition and prognosis are such that he is permanently unfit to effectively or meaningfully participate in the Inquiry.

110. The tests set out in ***SC v United Kingdom***, ***Stanford v. United Kingdom*** and in Section 4(2) of the 2006 Act, whilst not relating to regulatory proceedings are helpful in distilling the factors that can usefully be considered in determining whether Mr Fingleton can meaningfully participate in the Inquiry as is the concept of "effective participation" referred to above. Those factors are as follows:

(i) Given the nature of this Inquiry Mr Fingleton should have the capacity to read and assimilate a significant quantity of documents.

(ii) He should be able to understand the allegations against him.

(iii) He should be able to either attend Inquiry hearings in person or review transcripts of hearings.

(iv) He should be able to understand the evidence.

(v) He should be able to make a proper defence.

(vi) He should be able to cross-examine witnesses.

(vii) He should be able to understand legal and procedural issues as and when they arise.

(viii) He should have the capacity to instruct legal representatives or alternatively have the capacity to make legal submissions on his own behalf.

111. The Inquiry considered the written and oral evidence provided by clinician G and the correspondence received from clinician H, the detail of which has been set out above. In summary, [redacted] On the basis of that evidence, the Inquiry Members are satisfied that Mr Fingleton's health is permanently impaired to the extent that he is currently and, in all

likelihood, will remain unable to effectively participate in the Inquiry. The Inquiry Members are further satisfied that to require him to participate in any way would be a failure to vindicate Mr Fingleton's right to dignity under the Constitution and under the ECHR.

112. The Inquiry Members are conscious of the public interest aspect of this Inquiry but that public interest is not so exceptional as to override Mr Fingleton's rights to fair procedures.

113. The Inquiry Members are also mindful of Mr Fingleton's advanced age.

Submissions on the Form of Determination – Permanent Stay or Discontinuance

114. As outlined at paragraph 100 above, the Inquiry Members requested submissions on the format of any determination they might make were they to accede to the Termination Application. Enforcement provided their submissions on 25 November 2019.

115. Enforcement stated that Part IIIC of the Act is silent as to the manner in which applications such as the present one might be dealt with. Enforcement reiterated its previous submission that the correct approach to the Termination Application is not so much to ask whether the Inquiry Members have the jurisdiction to terminate, but to ask instead whether the Inquiry Members have jurisdiction to continue against a person where the Inquiry in question would not be one as is envisaged by the Act.

116. Enforcement's submission was that it might be more appropriate in inquiries under Part IIIC of the Act to decide to "discontinue" an inquiry as against a Person Concerned rather than to impose what the LPT has described as a "permanent stay".

117. The point arising in these supplemental submissions is not whether the Inquiry Members can cease inquiring into a Person Concerned in these circumstances but rather how that decision should be expressed and what effect the decision ought to have.

118. Enforcement defined "Discontinuance" as follows:

> *"A discontinuance, when the term is used in civil litigation, has the effect of bringing the action to an end but "it does not follow that the proceedings cease to be in existence for all purposes and another party may still be entitled to apply for relief to which he is entitled"* [citing Delaney and McGrath, Civil Procedure in the Superior Courts (4th ed) at para 17 – 27]. *Order 26, rule 1, of the Rules of the Superior Courts 1986, as amended, also states that proceedings that have been discontinued cannot found a plea of res judicata.*
>
> *While the current circumstances are such that the Inquiry may take the view that there is no prospect of a future inquiry into the suspected prescribed contraventions (SPCs 1-7) as against Mr Fingleton, this may not be the case in other inquiries under Part IIIC of the Act. It therefore seems to Enforcement that the better approach is for inquiries, including the current Inquiry, to avoid an approach which might potentially hinder future action in situations such as this.*
>
> *This is particularly important because the Inquiry, once it has completed its task under Part IIIC of the Act, will be functus ex officio. A stay expressed to be permanent does not sit well with the limited statutory basis of the Inquiry. Unlike a court, it cannot entertain applications in the future. Again, while it may be unlikely to arise in this case given the nature of the medical evidence under consideration, in general terms, it would be appropriate for an inquiry to avoid a decision which could impact on matters arising later on."*

119. In relation to the suggestion of a "permanent stay", Enforcement submitted that it was, in the criminal law context, one which is appropriate only where "*the trial judge reaches a conclusion, not only that the trial at hearing cannot proceed fairly, but that no fair trial could be held at any stage thereafter."*[17]

120. Enforcement cited ***DPP v Haugh (No2)***[18], in which the trial judge had declined to grant a permanent stay on the basis that the circumstances which compel him to put a stay against further proceedings, may not be permanent or will remain as they are for the foreseeable future. This was characterised by the High Court in subsequent judicial

[17] Enforcement Submissions dated 25 November 2019, page 4, para 11 [citing DPP v H [2018] IESC 32 at para 48, O'Malley J.]
[18] [2001] 1 IR 162

review proceedings as an adjournment *sine die* that left it open for the DPP to apply for a new trial. A permanent stay, by implication, would not.

121. Enforcement considered this in the context of the Inquiry and stated:

> "*Of course, when the Inquiry has concluded its task under Part IIIC of the Act, it will no longer have any function in respect of the Persons Concerned. Therefore, by expressing a decision in terms of a "permanent stay", the Inquiry might frustrate future investigations or inquiries. Again, while this may be unlikely to arise in the instant case, as a general approach, Enforcement is of the view that a decision to "discontinue" is more appropriate in these circumstances."*

122. In conclusion, Enforcement submitted that as the term "permanent stay" is not used in Part IIIC of the Act, the better approach might be to simply decide to discontinue the Inquiry as against Mr Fingleton on the grounds of his medical condition.

123. Enforcement referred to the provisions of the 2006 Act and the process by which the question of fitness is considered in the criminal context. In this regard, Enforcement recalled that the Inquiry had previously identified the 2006 Act as a useful touchstone insofar as it deals with somewhat similar issues.

124. Pursuant to Section 4(3) of the 2006 Act, where a court determines that an accused person is unfit, it *"shall adjourn the proceedings until further order".* In effect, the possibility of the proceedings becoming live at some future point remains irrespective of how remote such a prospect may appear on the evidence. This is because the issue in the criminal proceedings has not been dealt with by reason of the finding of unfitness.

125. It was submitted that this formulation is more akin to the concept of a discontinuance than a permanent stay. Enforcement submitted that a similar formulation would be appropriate in the context of the Termination Application. It submitted that the language of "adjournment" seemed inappropriate in the context of an Inquiry which would be *functus ex officio* once its task has been completed. Such a formulation is therefore best achieved by way of describing what may occur as a "discontinuance" rather than a "permanent stay".

Submission of Mr Michael Fingleton Junior

126. Mr Fingleton Junior provided written submissions on 2 December 2019 on the format of any decision that might be made by the Inquiry Members. He submitted that it would be unreasonable in the light of the medical evidence available to the Inquiry that there should be any implication from the Inquiry's decision other than a final termination. He further submitted that it would be improper for the Inquiry to make any finding in relation to SPC 5 as Mr Fingleton could not make submissions in respect of this SPC due to his [redacted] ill health.

127. Mr Fingleton Junior referred to the LPT's observations at the oral hearing on 12 November 2019 where it stated:

> *"I do think it is important to state publicly that the medical reverse which Mr. Fingleton suffered in May of this year is of a particular serious nature, and it's one from which on the medical evidence he has not recovered."*

128. Mr Fingleton Junior submitted that all the arguments put forward which justified discontinuance equally applied to termination. He submitted:

> "*It would be in the light of Mr. Fingleton's medical condition inhuman and almost cruel that there could be any suggestion, even though it might be slight, that there was not the finality of termination.*
>
> *With respect to the submissions of Enforcement of the 25th of November 2019 we are not suggesting an approach of termination or permanent stay amounts to res judicata as might be implied in their submissions. We accept that no decision has been made or will have been made on the res in issue but that if the Inquiry Members are satisfied by reason of my father's medical condition and his consequent inability to defend himself that the continuance of the Inquiry as it affects him would be contrary to natural justice, in contravention of his constitutional rights and in contravention of the provisions of Article 6 of the European Convention on Human Rights, then the correct and humane decision is to terminate the inquiry insofar as it relates to him and thereby not contribute further to his trauma which could have serious and tragic consequences."*

LPT submissions

129. The LPT provided submissions on this matter on 11 December 2019. They reiterated their previous submission that there is no explicit power in Part IIIC of the Act to terminate the Inquiry as against any of the parties. The Inquiry Members agree that no such power is provided for in the Act and that no such power should be inferred.

130. The question then arises as to whether the appropriate order is a discontinuance as submitted by Enforcement or a permanent stay as submitted by the LPT.

131. In submitting that a discontinuance is the appropriate order, Enforcement drew an analogy with Order 26 of the Rules of the Superior Courts. Order 26 provides for the discontinuance of civil proceedings on the instigation of a plaintiff. It does not provide for discontinuance of proceedings on the part of a respondent although it does provide for a withdrawal of aspects of a defence.

132. The LPT referred to the case of ***Varma v The General Medical Council***[19] in which the High Court of England and Wales considered the consequences for an inquiry of a doctor being unable to participate due to ill health. The LPT quoted Forbes J. who held as follows at page 28 of the judgment:

> *" ….. I have no doubt that if it had subsequently appeared to the Panel during the course of the hearing that Dr Varma might be unable effectively to participate in the proceedings (as opposed to voluntarily electing not to be present), the Panel would have given further consideration to the question of whether a temporary or permanent stay should be granted."*

The Court clearly anticipates a permanent stay in the event of being permanently unable to effectively participate on the grounds of ill health.

133. In conclusion the LPT submitted:

> *"Enforcement raise a general concern about the form of an order providing for a permanent stay, in particular where, in another inquiry, there may be a prospect of a future inquiry against an individual. They point out that where an inquiry is at an end, and the relevant inquiry members are functus ex officio, practical difficulties may arise. In our view, in the event that the Inquiry*

[19] [2008] EWHC 753 (Admin).

Members consider that Mr Fingleton's position is "permanent or will remain as they are now for the foreseeable future" (DPP v Haugh No.2) then it is open to the Inquiry Members to permanently stay the Inquiry as against Mr Fingleton based on the specific circumstances applicable to Mr Fingleton's position. In the event that the Inquiry Members were to adopt this approach it is open to them to caution that they are not determining whether, in a different set of circumstances, the form of order might be different."

In the view of the Inquiry Members this is the correct approach.

134. This Inquiry was established to hear and determine allegations made in respect of INBS and the Persons Concerned. The Termination Application relates only to these proceedings and the Inquiry Members therefore are satisfied that, in light of their determination that Mr Fingleton is permanently unable to effectively participate in the Inquiry, the appropriate determination is that the Inquiry is permanently stayed insofar as it relates to Mr Fingleton as a Person Concerned. The Inquiry Members are not determining whether, in different circumstances, the form of order might be different.

135. The Inquiry Members determine that the Inquiry is permanently stayed as against Mr Fingleton as a Person Concerned in the Inquiry.

Completion of SPC 5

136. Enforcement has submitted that the SPC 5 module can be completed without obtaining either written or oral submissions from Mr Fingleton. The Inquiry members have considered the submissions received on this point in the course of the IMM of 28 January 2019. This IMM considered what options were available to the Inquiry for proceeding in the circumstances of Mr Fingleton's continued ill health.

137. The Inquiry Members do not agree that the SPC 5 module can be concluded, insofar as it relates to Mr Fingleton as a Person Concerned, in the absence of written and oral submissions from him. During the course of the SPC 5 evidence hearings, the Persons Concerned were advised that they would have the opportunity to make written and oral submissions in relation to SPC 5 and Mr Fingleton expressed his intention to do so.[20]

[20] SPC 5 Hearing Day 53 – Transcript dated 27 June 2018, page 7 – 8

The Inquiry will therefore proceed to complete SPC 5 in respect of the remaining Person Concerned to whom it is relevant.

138. The Inquiry Members do not agree that they can make any assumptions in relation to the content of any submissions that Mr Fingleton may have made.

139. In conclusion, the Inquiry is permanently stayed in its totality as against Mr Fingleton as a Person Concerned in this Inquiry.

Marian Shanley

Geoffrey McEnery

Ciara McGoldrick

20 December 2019