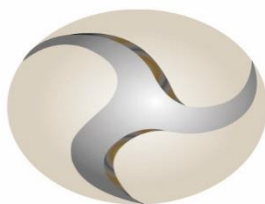


# Enforcement Decision Making Process

Presentation to Industry – 30 September 2019  
**Tom Maher**, General Counsel



**ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY**

*Lught-Reill Shirveishyn Argidoil Ellan Vannin*

# Overview

- What is it the enforcement decision-making process (“**DMP**”)?
- What decisions does it apply to?
- Why introduce it?
- Role of the Executive and the Board
- Case Review Panel – the challenge panel
- New Settlement procedure
- Key messages to industry
- Look at the staged process
- Questions welcomed any time



# DMP – what is it?

- A new ***transparent, published decision-making process*** for our main enforcement decisions.
- Complies with the ***principles of natural justice*** before any decision is taken.
- Clear ***stage by stage process*** that the Executive and Board of the Authority will follow in enforcement cases.
- We will explain the DMP to the subject of enforcement action and they will know at which stage in the process they are from time to time.
- It introduces our new ***settlement procedure*** in a public document.



# DMP – what decisions does it apply to?

- Most of our principal ***board retained*** enforcement decisions, such as:-
  - Prohibitions
  - Warning notices
  - Licence revocation/suspension
  - Civil penalties
  - AML Code civil penalties
- Para 2.1 of the DMP contains an ***exhaustive*** list of decisions to which DMP applies



# DMP – when does it not apply?

- DMP **does not apply** to:-
  - administrative decisions which are part of **normal or enhanced supervision**;
  - decisions to request or compel production of documents or attendance for interviews;
  - where an application is to be made by the Authority to the Isle of Man Court;
  - a direction on the grounds of competence (e.g. section 10(1) of the FSA 2008).
- DMP **can be disapplied** in the following cases:-
  - where the circumstances require urgent action to be taken;
  - where an alternative process is appropriate and reasonable in the circumstances.
- Any disapplication of the DMP will not impact any statutory notice period (e.g. 28 days for prohibitions).



# DMP – why introduce it?

- Removes the “**mythical mystery**” of enforcement. Avoid surprises on both sides.
- Strategic Objective #2 in our Strategic Plan: “**Enhance clarity around our regulatory, supervisory and enforcement processes.** Further develop our culture of constructive, open and transparent engagement with industry and key stakeholders.”
- A published and clear stage by stage DMP is in the interest of industry and the Authority.
- Removes the **legal ambiguity** regarding application of natural justice principles to our DMP.
- We listened to you: Industry Survey asked for more feedback about remediation, enforcement action and “lessons learned”.
- Experience in **other jurisdictions**. Useful and relevant caselaw in Channel Islands.



# Role of the Executive and the Board

- **Supervision** has a key role to play in handover of case to enforcement, and remaining involved as subject matter experts and RM (for BAU).
- **Enforcement** case officers progress the case through the DMP.
- **Case Review Panel** – a critical review and challenge part of the process.
- If settlement not appropriate or unsuccessful, enforcement paper goes to **Board**.
- **Board** retains power to impose the sanction, unless settlement agreed.
- **Board** meets twice: (1) “minded-to” stage and (2) final decision stage.
- An appeal lies to the **Financial Services Tribunal**.



# Case Review Panel (“CRP”)

- CRP is critical part of the process.
- Ad hoc membership. Includes HoDs and SMs from across the Authority.
- Chairman is totally independent of the investigation.
- Performs a review and robust challenge function to ensure **consistent** approach, **proportionality** and the right regulatory outcome.
- Gives **instructions** to Case Officers on next steps to take (may include settlement).
- Makes **recommendation** to CEO/HoD at end of settlement discussions.
- DMP cases do not go to Board without CRP or CEO approval.





# New Settlement Procedure

- Major new development.
- Subject has no right to settlement. Authority decides when appropriate.
- ***Without prejudice*** discussions. Well received by industry and advocates.
- CRP sets red lines and advises CEO/HoD on execution of settlement agreement.
- We still seek the right regulatory outcome.
- Civil penalty discount and terms of public statement.
- Saves significant time and resources for all parties.
- Experience in other jurisdictions.



# Key messages to industry

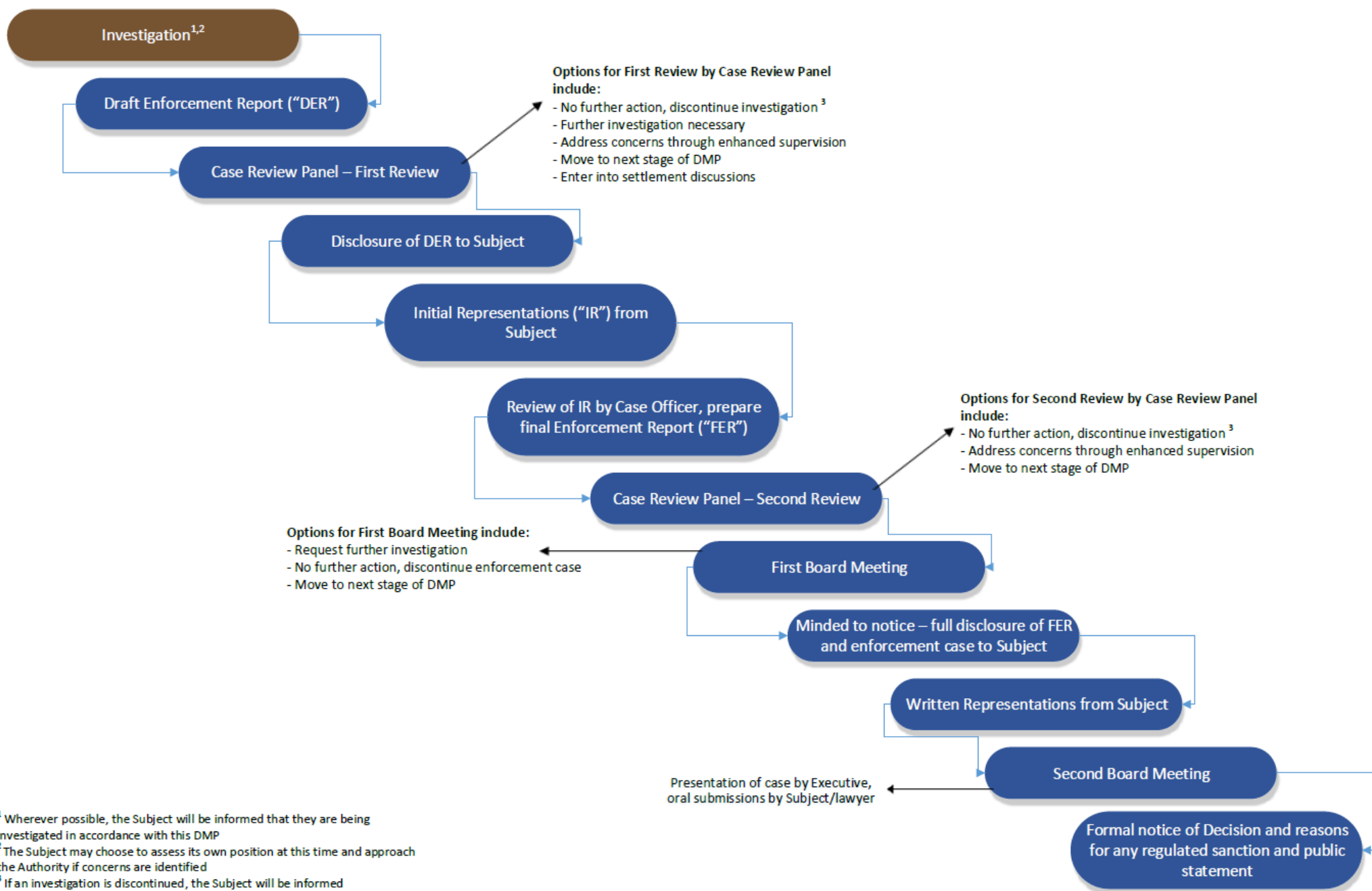
- We expect a positive ***culture*** towards regulatory obligations and governance, not a tick box compliance mentality.
- ***Top down approach*** – compliance, governance and oversight responsibility rests with Board. Take it seriously.
- Do not abdicate responsibility.
- Be open and honest with us. Come forward with ***problems and a plan***.
- It is in your interest to co-operate, clarify and explain.
- Increase in ***whistleblowing***.
- If we offer settlement discussions, use that opportunity. You benefit from ***without prejudice*** protection.



# Key messages to industry

- Our day job is to be a civil regulator and we use our civil powers.
- We do not need to caution you to carry out our regulatory inspections and civil investigations. Criminal investigations are very rare.
- Where appropriate, we work with you to remediate and get back to BAU.
- In serious cases, even with remediation, enforcement action may be appropriate.
- Public statements will include ***key lessons for industry***. Increased use of ***Dear CEO*** letters.
- Enforcement action is not the end of your business or livelihood.
- Avoid enforcement action in the first place. Have a robust governance culture.





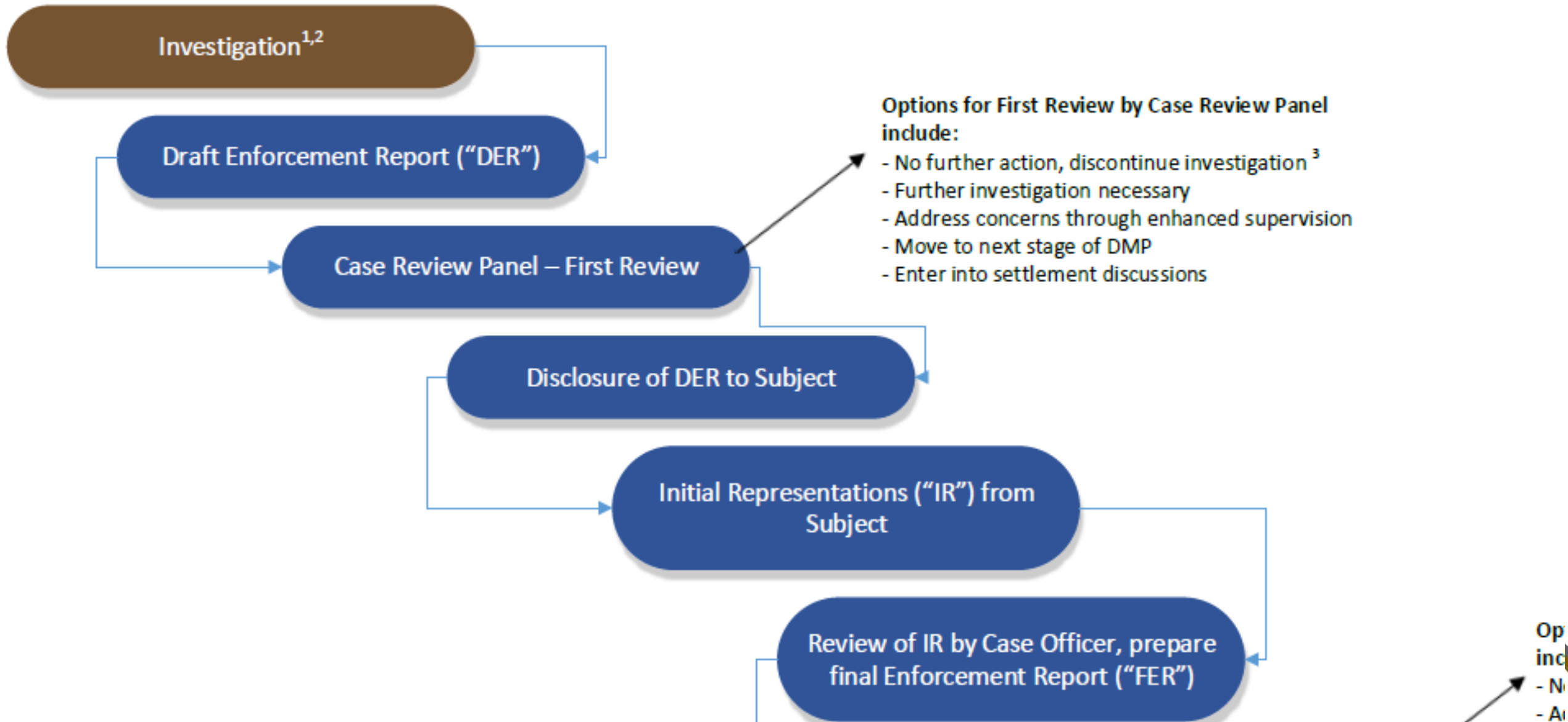
<sup>1</sup> Wherever possible, the Subject will be informed that they are being investigated in accordance with this DMP

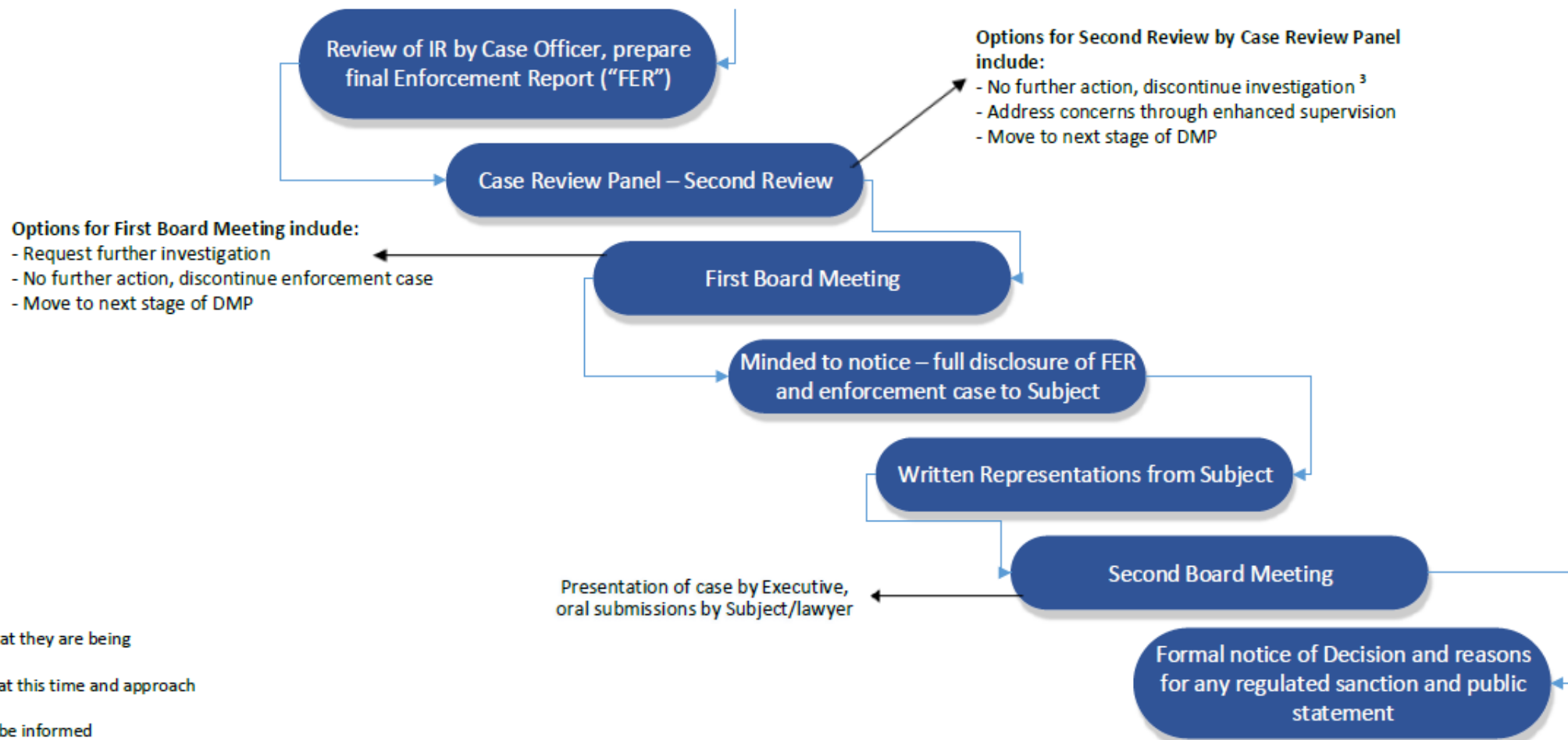
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# Enforcement Decision-Making Process





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# Questions?

- Any follow up questions or substantive feedback, feel free to email me
- **Tom Maher** – [tom.maher@iomfsa.im](mailto:tom.maher@iomfsa.im)

