IRISH COMPLIANCE QUARTERLY
Autumn, 2014

Protected Disclosures

The Whistleblowers' Charter

Plus

Managing the Arrears Outsourcing Process

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The Updated Fitness and Probity Regime

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ANNUAL CONFERENCE 2014

SAVE THE DATE

Irish Financial Services: Raising the Bar on Compliance, Culture and Conduct

23rd October 2014

Radisson Blu, Golden Lane,
Dublin 8

Fees

Members €150 **Non-Members** €250
Non Members please call 01 669 8507 to book your place.

Time

8:00am Registration & Networking
8:45am - 13:15pm Conference
13:15pm - 14:30pm Networking Lunch

CPD

Awaiting Accreditation

www.acoi.ie

SPEAKERS

Simon Harris TD Minister of State at the Departments of Finance PER and Taoiseach with Special Responsibility for the OPW, Public procurement, and International Banking (incl IFSC)

Ann Nolan Second Secretary General of Department of Finance

Anthony Smith Meyer Editor-in-Chief of Journal of Business Compliance

Michael Dowling Lecturer, DCU

Mick Clifford Author, Journalist and Columnist for the Irish Examiner

Clive Kelly General Manager & Executive Director of Partner Re Insurance Ireland & Board Director of the ACOI

Foreword & Contents

Irish Compliance Quarterly

WELCOME TO THE AUTUMN PUBLICATION OF ICQ, THE OFFICIAL PUBLICATION OF THE ACOI.

This is now our third edition of 2014 and with one more to go in December, we have been heartened by the positive feedback we have received about the publication to date.

Our cover story focuses on the important issue of Protected Disclosures, now that the legislation has been enacted by the Government. This is a topic that is relevant to every business in Ireland and Compliance Officers need to put in place proper procedures to deal with them should they arise.

In addition, ICQ examines the latest changes to the Central Bank's Fitness and Probity regime, which were introduced in early September.

With outsourcing looming large in the financial services sector, ICQ continues its regulatory focus on arrears management and what compliance officers need to do.

ICQ also publishes its regulatory tracker, which keeps readers and members up to date with all the latest regulatory developments in the Irish and European financial services sector.

Finally, readers have the opportunity to win an iPad by completing our membership survey, as well as giving members the opportunity to let the ACOI know what they think about a range of different initiatives, and to articulate their views on how we can do things better. The survey is open to all members and details of the lucky winner of the iPad will be published in the next issue of ICQ.

As you may already know, this digital publication is available to browse online and, as it is HTML5- enabled, you can also read it on your smartphone and tablet.

I would like to thank all of the contributors, who shared their time, expertise and valuable insights with us and I would take this opportunity to invite members to submit their suggestions for future editions. In particular, the ACOI Publications Committee would be delighted to hear from members interested in submitting content, so please email your suggestions or content to publications@acoi.ie.

We hope you enjoy this third issue of ICQ and we look forward to bringing you a special Winter issue.

Valerie Bowens
Chairperson,
ACOI Publications Committee

Contents

ICQ is published by:
The Association of Compliance Officers in Ireland (ACOI), Fitzwilliam Hall, Fitzwilliam Place, Dublin 2. T: 01 - 669 8506.
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For more information on the ACOI visit **www.acoi.ie**
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Managing the Outsourcing Process

The Arrears Working Group continues its focus on the outsourcing and in this issue looks at the outsourcing of arrears management.

Over the past few years outsourcing has become more common practice among banks in their day-to-day activities, particularly in the arrears management area. Due to the ongoing trend of outsourcing, the Central Bank of Ireland (CBI) is focused on this area and most likely will continue to do so into the future. In order to mitigate any compliance and operational risks arising from outsourcing activities, effective controls and processes must be put in place to ensure adherence with CBI requirements, CEBS guidelines and other relevant legislation. This will include determining whether the outsourcing activity is considered material in the context of the activities of the regulated entity, as this would require formal engagement with the CBI.

It is paramount to remember that while the regulated entity may outsource the activity, it retains responsibility for those activities and it is therefore vital that all risks are considered. These include reputational risk, operational risk and the risk of fraud. In this article we highlight some of the areas a Compliance Officer should focus on to effectively mitigate any compliance and regulatory risks when outsourcing arrears management activities.

The best approach for a Compliance Officer is to develop a comprehensive checklist that will capture all compliance risks when outsourcing activities regulated by the CBI.

As a starting point, below is a checklist that highlights some of the key items that you, as a Compliance Officer, should consider when outsourcing arrears management. It is important to note that the amount of checks and due diligence when considering any type of outsourcing far exceeds this checklist. As the Compliance Officer, for starters, you should consider the following when outsourcing arrears management:

THE OUTSOURCING AGREEMENT

Service Level Agreements (SLA): Do the SLAs consider the CBI codes and the customer categories?

CBI Access: Does the agreement include that the CBI will have access to data held by the service provider so that they can carry out their supervisory functions?

Exit Strategy: Does the exit strategy consider how customers will be informed and what will the transitional process be?

Regulatory Obligations: Does the agreement specify the provider's responsibility in respect of adherence to regulatory obligations? Is the service provider regulated or unregulated and have the regulatory risks been identified? Is CBI approval or notification required or do other regulatory bodies need to be notified? Does the service provider hold appropriate licences/registrations? e.g. Trust or Company Services Provider registration for AML purposes.

STAFFING ISSUES

Minimum Competency Code (MCC): Are staff appropriately qualified as required under the MCC? Are staff up-to-date with their CPD hours? Are there appropriate supervision

"The best aproach for a Compliance Officer is to develop a comprehensive checklist that will capture all compliance risks when outsourcing activities regulated by the CBI."

plans in place as yet unqualified staff? Are there appropriate live registers in place for monitoring all the MCC staff requirements?

Fitness & Probity Standards: Are staff required to abide by the fitness & probity standards? If this is the case, have the appropriate controlled functions been identified? Have the relevant staff agreed to abide by the Fitness & Probity Standards?

Staff Training/Coaching: Are staff provided with adequate training for arrears management e.g. CBI codes training, treating customers fairly and ethics? Are staff provided with mandatory training e.g. anti-money laundering, sanctions? Have you had sight of the training provided to ensure it meets your company's specific requirements?

Subcontracting: If the service provider subcontracts out work, are the subcontractors compliant with the relevant qualifications and standards? Will the service provider use investigators? Does the outsourcing agreement allow for subcontracting?

Evidencing: Have you agreements in place on how to ensure compliance with the MCC, the Fitness & Probity Standards and is training completed? Have you agreed on regular/interim reporting requirements? Has your HR department included these staff in their ongoing monitoring of adherence to the MCC and Fitness & Probity Standards?

SPECIFIC ARREARS HANDLING PROCESSES

Unsolicited Personal Visits: How will unsolicited personal visits be managed? Who will send the advance notification to your customers? Have you agreed the exact criteria with the service provider of how to proceed with an unsolicited personal visit?

Standard Financial Statement: Have you considered the process on how to assist customers to complete a Standard Financial Statement?

Call Recording: Are you satisfied that Data Protection principles are being followed? Are calls recorded and how are the records being stored?

Appeals: Have you considered how the appeals process will adhere to the Code of Conduct on Mortgage Arrears (CCMA) and the Code of Conduct for Business Lending to Small and Medium Enterprises? Where a staff member of the service provider will be a member of the Appeals Board, are they appropriately qualified?

Communications: Do the communications rules compliment your company's Communications Policy as required under the CCMA? Is the letter suite to be used compliant with the relevant regulations and CBI codes?

Adequate Systems: How robust are the systems and are they set up with the relevant regulations and legislation considered?

Records Management: Has your service provider the ability to retain adequate records for the required periods e.g. up to 12 years for CCMA customers? Can your provider retrieve records within the required timelines?

IMPACTED DAY-TO-DAY PROCESSES

Data Access Requests (DAR): Have you reviewed the DAR process and are you satisfied it complies with your company's standards? Does the DAR process that has been agreed between your company and the service provider consider compliance around timelines, redaction etc?

Complaints: Is there an adequate complaints system in place? Are the complaints procedures compliant with the relevant regulations? Who will manage the FSO complaints process? How will the complaints be reported to your company?

Incidents and Errors: Have you documented processes for incident reporting e.g. thresholds, timeframes? Have you

agreed an escalation process?

Interaction with outsourced provider: Have you identified, agreed, documented and communicated an interaction strategy between your company's internal processes and those of the service provider?

Change Management Process: Have you a documented change management process in place for future regulatory changes that may impact processes and systems?

OVERSIGHT REQUIREMENTS

Controls: Are there adequate controls in place (e.g. directive, detective and preventative)?

Monitoring and auditing: Are there adequate quality checks and assurance in place? Has the outsourcing agreement included a section for the allowance of spot-checks by the regulated entity?

The outsourcing process from start to finish should be suitably managed and controlled to ensure all aspects of the outsourcing requirements are considered by the regulated entity e.g. the completion of a full risk assessment, due diligence of the outsourcing provider's IT security.

From this high-level overview of what you, as a Compliance Officer should consider, it is clear that there are several areas to assess when outsourcing arrears management. This will ensure that your company can be satisfied that all compliance risks have been addressed. Developing a comprehensive checklist of compliance requirements relevant to your company will ease the compliance assessment prior to entering into any such outsourced agreement. As well as maintaining a high standard of compliance, this in turn will maintain the quality service your customers expect regardless of whether they are dealing directly with your company or the service provider. ICQ

CPD Progress Report

Áine Kingston of the Professional Services Development Committee looks at some of the highlights of what has been a busy CPD in 2014.

Early events included those on topical issues such as Fitness and Probity as organisations worked to embed the relatively new regime and reporting process into their business, and also in the area of Data Protection, where we looked at the importance of Social Media Policies.

The CPD calendar also included presentations dedicated to supporting Compliance Officers in Credit Unions as they work towards implementation and embedding the new regulatory framework in branches across the country.

Consumer Protection and Anti-Money Laundering/Counter Terrorism Financing continued to be areas of cross-sector focus, having remained firmly on the Central Bank of Ireland's list of enforcement priority areas for 2014.

2014 has marked the launch of our series of workshops focusing on the role of the Compliance Officer from a practical perspective (for Compliance Professionals by Compliance Professionals). Recognising the challenges facing our members, the concept of a series of seminars/forums was developed where compliance officers can discuss the day-to-day challenges they face in their roles – some of which were outlined in the Compliance in Financial Services in Ireland Survey 2013 published earlier in the year. The objective here is learning through the sharing of real-life examples of how experienced compliance professionals have dealt with difficult issues/dilemmas over the course of their careers, with frank and open discussion on how the panel and members in attendance have dealt with specific challenges. The key to the success of these seminars is an open dialogue and the sharing of views, and we thank all who have participated to date for their generous contributions.

On the social scene ACOI members enjoyed the Annual Dinner in May in The Guinness Storehouse with entertainment from comedian Neil Delamere, followed by a Craft Beer and Cider Tasting Evening in September in the Galway Bay Brewery run, Alfie Byrne's.

Before 2014 comes to a close there will be some final CPD events on topics including Financial Crime with a spotlight on forensic case work & investigation. Also not forgetting the ACOI Annual Conference, this year entitled: Irish Financial Services: Raising the Bar on Compliance, Culture and Conduct taking place on 23rd October in the Radisson Blu, Golden Lane.

For those of you considering your next career move the ACOI will also be hosting a Compliance Careers Open Evening on October 16th in the Hilton Charlemont, which will feature leading recruiters and ACOI compliance specialists who will be available on the evening to give advice on personal and professional development in the current market.

We thank again all who have contributed their time to making this year's CPD programme a success, in particular the many excellent speakers we have been very grateful to have involved and to all members and non-members for participating. As we look towards 2015 and a new year of CPD some events already in the diary include topics such as the increasingly complex issue of Technology and Compliance, and the first of the next series of workshops on the Challenges Facing Compliance Officers which will involve a case study on preparing a Risk Assessment.

For further information on CPD members should refer to the new online calendar of events on www.acoi.ie, which will be kept up to date throughout the year as events/topics emerge. Our members are central to the development of our CPD Programme and we welcome any comments, feedback and suggestions for events. Please contact the ACOI's Professional Development Services Committee on PDS@ACOI.IE with any comments you may have on our CPD service. ICQ

Are You Fit and Proper?

On September 4th 2014, the Central Bank of Ireland published S.I. 394 of 2014, The Central Bank Reform Act 2010 (Section 20 and 22) (Amendment) Regulations 2011 (the "Amending Regulation") which provides for a number of changes to its existing fitness and probity regime. Joe Beashel, Partner and Head of Regulatory Risk Management and Compliance at Matheson examines the changes.

The Amending Regulation takes effect on December 31st 2014. The key change is the introduction of six new pre-approval controlled functions (PCFs) which are summarised below. We summarise the changes below and offer suggestions as to the steps which could be considered in preparation for these changes.

Although 'fit and proper' rules only ever sporadically appeared in supervisory financial services legislation, it was always the case that financial services organisations were required to demonstrate to the Central Bank that senior management were 'fit and proper' prior to authorisation being granted. However, once authorised, there were no real or coherent statutory powers that allowed the Central Bank deal with individuals when issues did arise.

The current fitness and probity regime has its genesis in the aftermath of the financial crisis, and in particular the fact that the Central Bank was, in effect, legally powerless to deal with individuals holding key posts within financial service providers. As those events demonstrated, the decisions and actions of high-ranking individuals within financial institutions had a far-reaching effect, not only on the business of that institution but also on the stability of the financial sector as a whole. It was for this reason that, following his appointment as Head of Financial Regulation at the Central Bank in January 2010, Matthew Elderfield identified the absence of a statutory basis for the approval of key persons in the financial services industry as a significant weakness in Ireland's regulatory infrastructure.

Initially implemented in December 2012, the Central Bank's current "Fitness and Probity Regime" applies to all regulated financial service providers (RFSP). A separate regime applies to the credit union sector, which is not considered in this article as it will not be affected by the changes in the Amending Regulation.

LEGAL AND REGULATORY FRAMEWORK

The fitness and probity legal and regulatory framework consists of primary and secondary legislation together with codes of practice and guidance documents setting out the standards expected, as follows:

- The Central Bank Reform Act 2010 which became law on July 17th 2010, with Part 3 of the Act creating a system for the regulation of persons performing "controlled functions" (CF) or PCF within an RFSP.
- The Central Bank Reform Act 2010 (Section 20 and 22) Regulations 2011 as amended, which identify what roles are both CFs and PCFs.
- The Fitness and Probity Standards which on the basis they were issued as a code under section 50 of the Act, have the force of law.
- Non-statutory Guidance notes – Guidance on Fitness and Probity Standards 2011 (the "2011 Guidance"), and the related Fitness and Probity FAQ Document (the "FAQ").

Underpinning all of these statutory and non-statutory rules and guidance, and to ensure the efficacy of the new regime, the Central Bank was given significant supervisory powers in Part 3 of the Act. These include the power to issue suspension or prohibition notices to an individual in a CF or PCF role following an investigation under that Part.

CFs

There are 11 categories of staff identified as being CFs in Schedule 1 of the Regulations. Pre-approval in respect of appointment to CFs is not required. However, a financial institution must not permit a person to perform a CF unless it is satisfied, on reasonable grounds, that the person meets the Standards and that the person has agreed to abide by the Standards. As above, individuals who fail to meet the Standards can be temporarily or permanently removed from CFs by the Central Bank following an investigation under Part 3 of the Act.

PCFS

There are currently 41 positions which are prescribed as PCFs by the Regulations and in respect of which, the approval of the Central Bank of a proposed appointee is required prior to that individual taking up the PCF.

NEW PCFS

From December 31st 2014, a further six roles will become PCFs. These are:

- The office of Chief Operating Officer (PCF-42) for all regulated financial service providers;
- Head of Claims (PCF-43) for Insurance Undertakings;
- Signing Actuary (PCF-44) for Non-Life Insurance Undertakings and Reinsurance Undertakings;
- Head of Client Asset Oversight (PCF-45) for Investment Firms;
- Head of Investor Money Oversight (PCF-46) for Fund Service Providers; and
- Head of Credit (PCF-47) for Retail Credit Firms.

Prior approval of the Central Bank is required before an individual can be appointed to a PCF. PCFs are approved by the Central Bank on an institution-specific basis. Therefore, a previous approval in respect of one RFSP will not, of itself, enable a person to perform a PCF for another.

Whether or not these new PCFs are relevant to your business will depend on the financial services provided. The position remains that a financial institution is not required to create any CF or PCF which is not already in existence, unless it is obliged to do so.[1]

IDENTIFYING NEW PCFS WITHIN YOUR ORGANISATION

The Central Bank has published Guidance on the Fitness and Probity Amendments 2014 (the "2014 Guidance") which discusses how an assessment of whether the PCF already exists within an organisation is approached. It confirms that it is the function rather than the job title of the individual that determines whether or not they are captured within the scope of a PCF.

Where persons are already employed in new PCFs as at December 31st 2014 ("In-situ new PCFs")

Regulated financial service providers are required to compose a list of persons, if any, performing the new PCFs as of December 31st 2014. This list must be submitted to the Central Bank no later than June 30th 2015.

Confirmation of due diligence

The Chief Executive Officer / partner or sole trader, as relevant, must confirm in writing to the Central Bank that his or her organisation has performed due diligence per the 2011 Guidelines in respect of persons identified as in-situ new PCFs by 30 June 2015.

Confirmation regarding compliance with the Standards

By no later than June 30th 2015, an organisation must confirm in writing to the Central Bank that it is satisfied on reasonable grounds that in-situ new PCFs are compliant with the Standards and that they have obtained the written agreement of those persons to abide by the Standards.

The form of each of the foregoing submissions has yet to be confirmed by the Central Bank though one would expect it to be similar to the arrangements put in place when the new regime was originally introduced.

In practical terms, in-situ new PCFs are permitted to continue in the role following December 31st 2014 without it being necessary to obtain approval from the Central Bank. As most of those in-situ new PCFs will already be CFs, they should have already entered into a written agreement to abide by those standards. It is not clear whether the Central Bank expects that a new written agreement to abide by the Standards must be sought but it is something which we would recommend.

Where a vacancy will be created for a new PCF after December 31st 2014

For organisations who having conducted an assessment, determine that there is or will be a vacancy created by the amendments to the Regulations (e.g. where an Investment firm might soon be required to employ a Head of Client Asset Oversight as a consequence of the proposed changes to the client asset rules), then it might be prudent, if possible, to fill this post prior to December 31st 2014. Persons who are in-situ in any of the new PCFs as at December 31st 2014 will not be subject to the approval process – i.e. any appointment made up to December 31st 2014 will fail to be considered as an In-situ new PCF as at that date and not subject to pre-approval by the Central Bank.

After December 31st 2014, the new PCFs will be subject to the same rules on pre-approval as the existing 41 PCFs.

OTHER CHANGES EFFECTED BY THE AMENDING REGULATIONS

Exclusion of 'Certified Persons'

The Amending Regulation puts on a statutory basis the decision of the Central Bank to remove 'certified persons'[2] as defined in the Investment Intermediaries Act, 1995 from scope of the Regulations and Standards. A consequential change is that the outsourcing exemption can no longer be availed of when outsourcing PCFs or CFs to certified persons.

Change in PCF Titles

Two PCF title changes will also be effected – PCF 14 from 'Head of Risk' to 'Chief Risk Officer', and PCF-26 from 'Head of Markets Supervision' to 'Head of Regulation' on the basis that this better describes these roles.

Stock Exchange changes

The change from a limited to a public limited company by the Irish Stock Exchange and the consequential change in authorised entity is also captured.

Alternative Investment Fund Managers "AIFMs"

The Amending Regulation makes the changes necessary to capture AIFMs within scope of the fitness and probity rules.

With a little over three months to the deadline, each organisation should now consider what steps it should take to best prepare for these changes. ICQ

[1] The 2014 Guidance uses the example that there is a requirement for Non-Life Insurance and Reinsurance Undertakings to have a Signing Actuary

[2] As defined in section 55 of the Act.

FULL LIST OF ALL PCFs. (Changes effective from 31 December 2014 in red italics.)

General

PCF1 Executive director
PCF2 Non-executive director
PCF3 Chairman of the board
PCF4 Chairman of the audit committee
PCF5 Chairman of the risk committee
PCF6 Chairman of the remuneration committee
PCF7 Chairman of the nomination committee
PCF8 Chief executive
PCF9 Member of partnership
PCF10 Sole Trader
PCF11 Head of Finance
PCF12 Head of Compliance
PCF13 Head of Internal Audit
PCF14 *Chief Risk Officer*
PCF15 Head of Compliance with responsibility for Anti-Money Laundering and Counter Terrorist Financing

Terrorist Financing Legislation

PCF16 Branch Manager of branches in other EEA countries
PCF17 Head of Retail Sales
PCF42 *Chief Operating Officer*

Insurance

PCF18 Head of Underwriting
PCF19 Head of Investment
PCF20 Chief Actuary
PCF43 *Head of Claims*
PCF44 *Signing Actuary*

Banking

PCF21 Head of Treasury
PCF22 Head of Credit
PCF23 Head of Asset and Liability Management

Stock Exchange

PCF24 Head of Traded Markets
PCF25 Head of International Primary Markets
PCF26 *Head of Regulation*
PCF27 Head of Operations

Investment Firms

PCF28 Branch Managers in Ireland
PCF29 Head of Trading
PCF30 Chief Investment Officer
PCF31 Head of Investment
PCF45 *Head of Client Asset Oversight*

Investment Intermediaries / Collective Investment Schemes

PCF32 Branch Managers in Ireland
PCF33 Head of Transfer Agency
PCF34 Head of Accounting (Valuations)
PCF35 Head of Trustee Services
PCF36 Head of Custody Services
PCF46 *Head of Investor Money Oversight*

UCITS Self-Managed Investment Company / Management Company

PCF37 Head of Transfer Agency
PCF38 Head of Accounting Valuations
PCF39 Designated Person to whom a director of a UCITS Self-Managed Investment Company or Non UCITS Self-Managed Investment Company or Management Company may delegate the performance of the management functions
PCF46 Head of Investor Money Oversight

Payment Institutions

PCF40 Branch Managers within the State

Financial Service Providers established outside Ireland

PCF41 Manager of a branch in Ireland of a regulated financial service provider established in a country that is not an EEA country

Retail Credit Firms

PCF47 *Head of Credit*

The Whistleblowers' Charter

The long-awaited Protected Disclosures Act 2014 came into operation on July 15th and it provides a detailed and comprehensive legislative framework for protecting whistleblowers in all sectors of the economy, writes Philip Brennan.

The legislation covers 'workers' which is broadly defined as including employees (current and former) in the public and private sector, contractors, consultants (in certain circumstances), agency workers, trainees, temporary workers and those on work experience.

So, what is a 'Protected Disclosure? To qualify as a protected disclosure a worker must make a disclosure of 'relevant information' in a specified manner. To qualify as 'relevant information' a worker must reasonably believe that the information disclosed tends to show one or more 'relevant wrongdoings' and that such wrongdoing came to their attention in connection with their employment. So absolute proof of wrongdoing is not necessary. In addition, the suspected wrongdoing must be related to their employment and not, for example, related to someone's personal life outside or unconnected to the workplace.

WHAT IS 'RELEVANT WRONGDOING'?

Wrongdoing is broadly defined in the Act. It includes circumstances such as where:

- an offence has been, is being or is likely to be committed,
- a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,
- a miscarriage of justice has occurred, is occurring or is likely to occur,
- the health or safety of any individual has been, is being or is likely to be endangered,
- the environment has been, is being or is likely to be damaged,
- an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
- an act or omission by, or on behalf, of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed.

It is immaterial whether the wrongdoing occurred, occurs or would occur in the State or elsewhere or whether the law applying to it is that of the State or that of any other country or territory.

The legislation does not include breaches of in-house Codes of Ethics, Conduct or Behaviour or breaches of internal policies or operating procedures as 'relevant wrongdoing' unless they fall within one of the definitions above. Employers should consider if they wish to voluntarily include such codes, policies or procedures in the protections offered in their Whistleblowing Policy.

WHAT IS NOT 'RELEVANT WRONGDOING?'

A matter is not regarded as relevant wrongdoing if it is one where it is the function of the worker or the worker's employer to detect, investigate or prosecute it and it does not consist of, or involve, an act or omission on the part of the employer. So, for example, disclosure of an issue by an internal auditor or a compliance officer who monitors compliance with internal controls, whose job it is to detect such matters, may not be protected.

A disclosure is not a protected disclosure if a claim to legal professional privilege could be maintained in respect of it in legal proceedings and it is made by a person to whom the information was disclosed in the course of obtaining legal advice. In other words only one layer of protection will apply in such circumstances – legal professional privilege.

MOTIVATION AND TIME SPAN

The motivation for the making of a disclosure is irrelevant to whether or not it is protected. So even when an employee does not enjoy a good working relationship with a colleague, it doesn't debar that employee from making a disclosure of wrongdoing against the colleague provided there is information which tends to show potential wrongdoing.

Malicious or malevolent disclosures do not, however, qualify for protection and may land the perpetrator in all sorts of legal difficulties.

In proceedings involving an issue as to whether a disclosure is a protected disclosure it will be presumed, until the contrary is proved, that it is.

A disclosure made before the date of the passing of the legislation may still be a protected disclosure if penalisation or detriment is suffered after that date.

> ***"It is immaterial whether the wrongdoing occurred, occurs or would occur in the State or elsewhere or whether the law applying to it is that of the State or that of any other country or territory."***

To whom can protected disclosures be made? There are six different alternatives available to workers.

Employer or another person: A protected disclosure may be made by a worker to his or her employer. A protected disclosure may also be made to another person (e.g. a supplier) where the worker reasonably believes that the relevant wrongdoing relates solely or mainly to the conduct of that

person or to something for which that person has legal responsibility.

Outsourced Service Provider:
A worker is also regarded as having made a protected disclosure if they do so to a nominated outsourced service provider in accordance with a procedure authorised by the employer. This facilitates the appointment of specialist professional firms as trusted intermediaries for the receipt of disclosures and the provision of guidance. In some cases such firms also protect the identity of the whistleblower, thus adding a further layer of protection.

Legal Adviser or Trade Union Official:
A protected disclosure may be made to a legal adviser, if it is made by a worker in the course of obtaining legal advice from a barrister, solicitor or trade union official.

The only hurdle that a worker must pass in alternatives one, two and three is that he/she must reasonably believe that their concern represents a 'relevant wrongdoing'. This is a low hurdle to meet.

Prescribed Body:
A protected disclosures may also be made to a person or body prescribed by the Minister for Public Enterprise and Reform. These, typically, are various regulators and the Minister has, by means of Statutory Instrument 339 of 2014, already prescribed 72 such bodies. These include the Central Bank or any authorised officer or employee of the Central Bank in relation to contraventions of financial services legislation and the Data Protection Commissioner in relation to compliance with the Data Protection Acts.

Sponsoring Minister:
Employees of Public Bodies may make a disclosure to a Minister responsible for the function or area in question.

"At the time the worker makes the disclosure, he or she must reasonably believe that they would be subjected to 'penalisation' by their employer if they made the disclosure to them or to their outsourced service provider or (where the disclosure is to a prescribed person) that evidence will be concealed/ destroyed."

The hurdles to be passed in the case of alternatives three and four are higher. The worker must reasonably believe that he/she is disclosing the relevant wrongdoing to the appropriate prescribed body or Minister and they must also reasonably believe it to be substantially true.

Disclosures to other Persons (including the Media):
A disclosure to a person other than those just mentioned, such as to the media, can also qualify for protection but a significantly higher hurdle rate applies. Firstly, the wrongdoing must be exceptionally serious in nature and the worker must reasonably believe that the information disclosed and any allegation contained in it is substantially true.

The disclosure must not be made for personal gain (excluding any reward payments payable under or by virtue of any enactment).

At the time the worker makes the disclosure, he or she must reasonably believe that they would be subjected to 'penalisation' by their employer if they made the disclosure to them or to their outsourced service provider or (where the disclosure is to a prescribed person) that evidence will be concealed/destroyed. Alternatively, they must be in a position to demonstrate that a substantially similar disclosure was previously made, but to no avail.

In determining whether it was reasonable for a worker to have made the disclosure to other persons, regard will be had to such matters as the identity of the person to whom the disclosure was made, and the seriousness of the relevant wrongdoing, whether the wrongdoing is continuing or is likely to occur in the future, whether the disclosure is made in breach of a duty of confidentiality owed to the employer or any other person, inaction relating to previous disclosures and whether the worker complied with employer procedures.

It is clear that while protections can apply at all levels of

disclosure, the legislation is trying to encourage workers to disclose wrongdoing to their employer or their outsourced service provider. It follows that it is in employers' interest to facilitate and protect such workers and promptly act on such disclosures, if they wish to remove the avenue of disclosures to 'other persons', particularly the media.

WHAT PROTECTIONS APPLY?

There are five key protections. They include:

Right of Protection from Unfair Dismissal:

The legislation amends the Unfair Dismissals Act 1997 by including the dismissal of an employee for having made a protected disclosure as one of the grounds deemed to be an unfair dismissal. It further provides that persons excluded from the terms of the Unfair Dismissals Act 1997 (e.g. for short service) are not excluded in the case of an unfair dismissal for having made a protected disclosure.

The maximum amount of compensation payable by an employer in the case of an unfair dismissal following a protected disclosure is increased from two to five years remuneration.

Employees who are dismissed in such circumstances may also apply to the Circuit Court within 21 days (or longer if the Court permits) for 'Interim Relief' which, if granted, may result in reinstatement of the employee to their former or another position, subject to certain conditions, pending the full hearing of the case.

Right of Protection from 'Penalisation':

Employees who make a protected disclosure are entitled to protection from 'penalisation' or the threat of penalisation by their employer. In addition if their employer causes or permits any other person to penalise or threaten an employee with penalisation they are also entitled to protection.

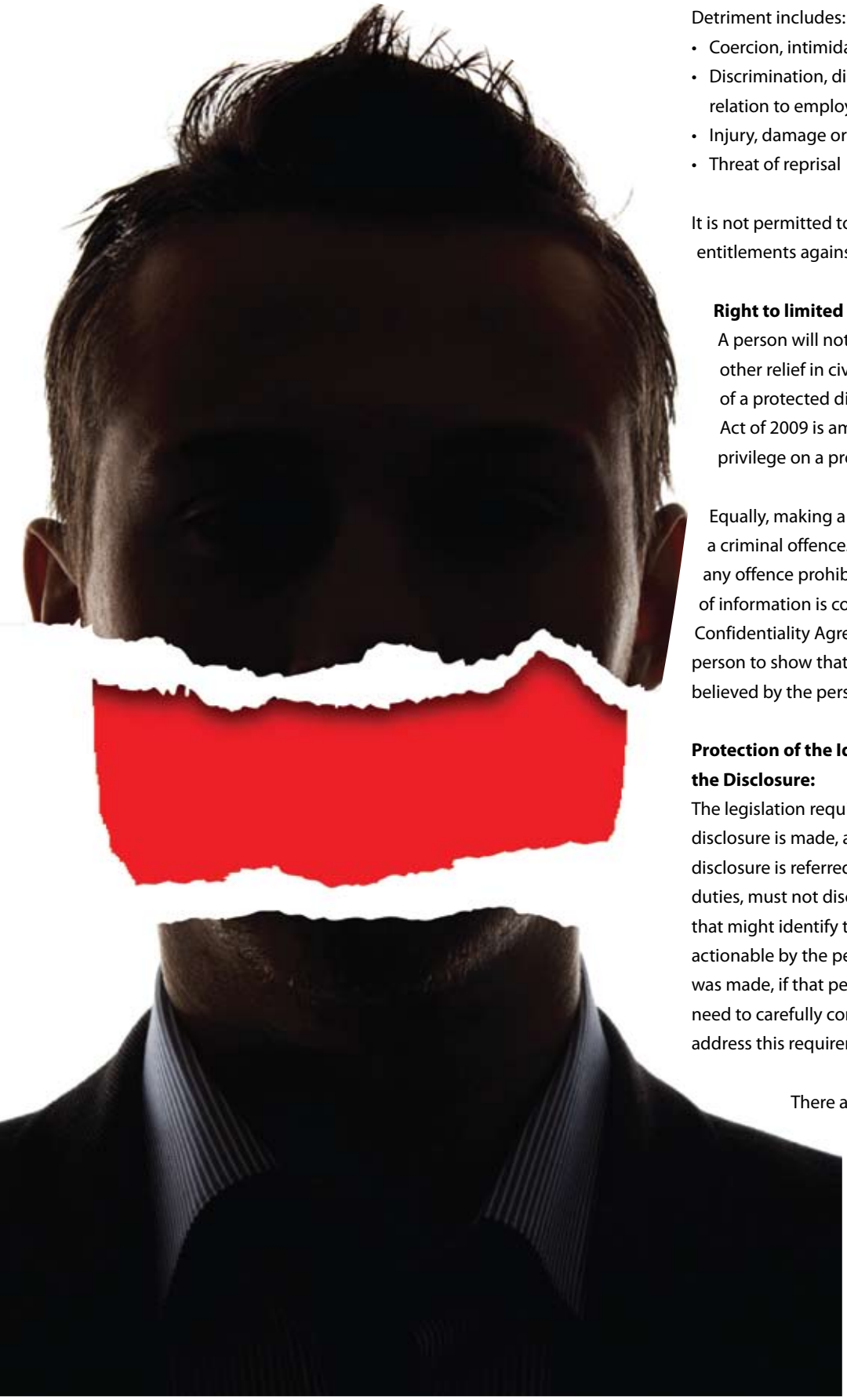
In the event of a contravention of this prohibition the employee is entitled to avail of redress by making (either directly or through their trade union) a complaint to a Rights Commissioner within six months. Detailed provisions are set out in the Act for such course of action, including the right of both parties to be heard and present evidence; the requirement for the Commissioner to communicate a decision to both parties declaring if the complaint was or was not well founded; the entitlement of the Commissioner to require an employer to take a specified course of action including the payment of compensation of up to five years remuneration. There is a right of appeal of such decisions to the Labour Court within six weeks and decisions of Labour Court, on appeal, are enforceable by Circuit Court.

Penalisation is any act or omission experienced by a whistleblower or their family at the hands of an employer or any third party that affects a worker to the worker's detriment including:

- Suspension, lay-off or dismissal
- Demotion or loss of opportunity for promotion
- Transfer of duties, relocation, reduction in wages or change in working hours
- Any discipline, reprimand or other penalty (including financial penalty)
- Unfair treatment
- Coercion, intimidation or harassment
- Discrimination, disadvantage or unfair treatment
- Injury, damage or loss
- Threat of reprisal

Protection against victimisation or other detriment caused by a third party:

Where a third party, such as a manager or another employee, causes a 'detriment' to a worker who has made a protected disclosure then the worker who has suffered the detriment has a right of action in tort against the person who causes the detriment. The detriment can be caused to a worker or to a another person (such as a member of the worker's family).



Detriment includes:

- Coercion, intimidation or harassment,
- Discrimination, disadvantage or adverse treatment in relation to employment (or prospective employment)
- Injury, damage or loss, and
- Threat of reprisal

It is not permitted to claim protection under two different entitlements against the same person.

Right to limited civil/criminal immunity:
A person will not be liable to damages, or subject to any other relief in civil proceedings, in respect of the making of a protected disclosure. For example, the Defamation Act of 2009 is amended so as to confer qualified privilege on a protected disclosure.

Equally, making a protected disclosure will not constitute a criminal offence. Where prosecution of a person for any offence prohibiting or restricting the disclosure of information is contemplated (such as breach of a Confidentiality Agreement), it will be a defence for the person to show that the disclosure was, or was reasonably believed by the person to be, a protected disclosure.

Protection of the Identity of the Individual who makes the Disclosure:
The legislation requires that a person to whom a protected disclosure is made, and any person to whom a protected disclosure is referred in the performance of that person's duties, must not disclose to another person any information that might identify the whistleblower. A failure to comply is actionable by the person by whom the protected disclosure was made, if that person suffers any loss. Employers will need to carefully consider the steps they put in place to address this requirement.

There are, however, exceptions to the requirement to protect the identity of the discloser. These apply, for example, where all reasonable steps are taken to avoid disclosure. They also apply where the person to whom the protected disclosure was made or referred reasonably believes that the whistleblower does not object to the disclosure of any such information; or the person to whom the protected

disclosure was made or referred reasonably believes that disclosing any such information is necessary for the effective investigation of the relevant wrongdoing concerned; the prevention of serious risk to the security of the State, public health, public safety or protection of the environment; the prevention of crime or prosecution of a criminal offence or the disclosure is otherwise necessary in the public interest, or is required by law.

PROCEDURES TO BE MAINTAINED BY PUBLIC BODIES

Every public body is required to establish and maintain procedures for dealing with protected disclosures made by workers employed by the public body and to provide these to employees. While similar mandatory provisions do not apply to private employers, it is clearly in the interest of all employers to put a scheme in place for making protected disclosures and promote this to their employees. The aim should be to encourage and facilitate 'internal' reporting of suspected wrongdoing to the employer or their outsourced service provider. In determining whether it was reasonable for an employee to disclose outside the organisation, such as to the press, the courts are likely to look not alone at how robust policies and procedures are but also to the commitment of Boards and senior management to protecting employees.

Public bodies are also required to report annually, within six months of year end, on the operation of the legislation in their body. It may be that the more progressive private sector employers will follow a similar trend by publishing similar details in their annual accounts.

ATTEMPTS TO NEUTRALISE THE PROVISION OF THE LEGISLATION

Any provision in an agreement will be void in so far as it purports to prohibit or restrict the making of protected disclosures, to exclude or limit the operation of any provision of the legislation, to preclude a person from bringing any proceedings under or by virtue of the legislation, or to preclude a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.

OTHER ACTS AND STATUTORY INSTRUMENTS

Previous enactments which made specific provision for whistleblowing have been amended to take account of the new overarching legislation. In the first edition of ICQ published on April 1st 2014 I wrote about the specific provisions of Part V of the Central Bank (Supervision & Enforcement) Act 2013 and the provisions for voluntary and mandatory reporting of breaches of financial services law to the Central Bank. While Part V has not been repealed, that part which deals with voluntary disclosure has effectively now been superseded by the Protected Disclosures Act which offers similar protections. Mandatory disclosure to the Central Bank under Part V by holders of Pre-Approval Controlled Functions (PCFs) remains in place, as before.

OVERSIGHT OF COMPLIANCE OFFICERS

The Protected Disclosures Act is law since July 15th 2014 so Compliance Officers should ensure that their firm is taking appropriate steps to put in place or update their Whistleblowing Scheme. Minister Howlin has promised to publish Guidelines for Public Service Bodies. These should also be helpful in setting a standard for private sector employers and should be available in the near future. However, employers should not be tempted to await these guidelines but should already be taking steps to comply with the new law.

The Central Bank of Ireland (CBI) is , I understand, currently taking an active interest in the nature and operation of whistleblowing schemes in regulated firms. This is understandable. A well-structured and well-used scheme is a key resource in deterring, promptly identifying and managing the rectification of wrongdoing and malpractice in the workplace. An effective scheme means that every employee in the organisation is assisting in the monitoring of compliance.

As compliance officers you should be ensuring that your Board and senior management understand the business benefits as well as the new legal imperative of having an effective whistleblowing scheme in place. You should be involved at every step in its design and roll out, providing advice and guidance and ensuring the scheme is embedded across the organisation. Thereafter, you should carefully monitor its operation and effectiveness and report regularly and independently on this to your Audit or Risk Committee.

Philip Brennan is Managing Director of Raiseaconcern.com, a service provider which advises on and operates whistleblowing schemes for employers. He is also Chairman of ACOI. He can be contacted at philipbrennan@raiseaconcern.com). ICQ

Banking

Domestic

CENTRAL BANK – CHANGES TO FITNESS AND PROBITY REGIME

The Central Bank of Ireland has published an Amending Regulation (S.I. 394 of 2014) which introduces a number of changes to the Fitness and Probity Regime. The Amending Regulation is accompanied by Non Statutory Guidance on the Fitness and Probity Amendments 2014 which aims to assist regulated financial service providers in complying with their obligation under the Amending Regulation.

The Amending Regulation, which prescribes six new PCFs pursuant to Section 20 and 22 of the Central Bank Reform Act 2010, will come into effect on 31 December 2014. Persons in situ in any of the six new PCFs on 31 December 2014, may continue in those positions and do not require the approval of the Central Bank to continue to perform that PCF.

EU and International

EBA – CONSULTATION ON GUIDELINES ON PAYMENT COMMITMENTS TO DEPOSIT GUARANTEE SCHEMES

On 25 September 2014, the European Banking Authority (EBA), launched a consultation on Guidelines on payment commitments to deposit guarantee schemes (DGS). The draft Guidelines have been developed in accordance with Article 10(3) of the Deposit Guarantee Schemes Directive (DGSD), which mandates the EBA to issue guidelines on payment commitments.

The proposed Guidelines lay down the requirements that will secure reliable funding for the DGS, notably a marking-to-market of the value of the collateral and the obligation for the credit institution to provide additional funding in case of deterioration. In addition, the Guidelines clarify the prudential treatment of payment commitments. In particular, within the supervisory review and evaluation process (SREP), competent authorities shall assess the risks to which the capital and liquidity positions of a credit institution would be exposed should the DGS call upon them to honour their commitment, which should be treated as a cash payment from a prudential point of view.

The consultation runs until 2 January 2015.

EBA – CONSULTATION ON THE ELIGIBILITY OF INSTITUTIONS FOR SIMPLIFIED OBLIGATIONS FOR RECOVERY AND RESOLUTION PLANNING

On 25 September 2014, The European Banking Authority (EBA) launched two consultations on its draft Guidelines and implementing technical standards (ITS) relating to recovery planning, resolution planning and resolvability assessments under the Bank Recovery and Resolution Directive (BRRD).

The draft Guidelines specify the criteria laid down in the BRRD by establishing a mandatory set of indicators against which competent and resolution authorities should determine the impact of the failure of an institution and its winding up under normal insolvency proceedings and therefore its eligibility for simplified obligations. A list of optional indicators is also provided which, in addition to the mandatory indicators, may be taken into account in the assessment process.

The Guidelines also clarify that Globally Systemically Important Institutions (G-SIFI) and Other Systemically Important Financial Institutions (O-SIFI) should not be subject to simplified obligations, since it is assumed that their failure would always be likely to have a significant negative effect.

The draft ITS launched for public consultation along with the Guidelines include a number of templates and definitions to be used by competent and resolution authorities for the identification and transmission of information to the EBA about the way they have assessed institutions against the criteria set out in the BRRD, including the mandatory indicators, and the nature of the simplified obligations applied to eligible institutions.

The consultation runs until 3 January 2015.

EBA – CONSULTATION ON THE IMPLEMENTATION OF RESOLUTION TOOLS

On 24 September 2014, the European Banking Authority (EBA) published a consultation paper on three sets of Guidelines relating to the Bank Recovery and Resolution Directive (BRRD). The aim of the documents is to facilitate the implementation of resolution tools in the EU banking sector, in particular in relation to the regulation of the sale of business tools and the asset separation tool, as well as the transfer of an institution or its assets under any of the resolution tools.

The Guidelines are divided into two groups and will be consulted upon at two distinct stages. The first includes Guidelines on the sale of the business tool and Guidelines on the asset separation tool. Both relate to the implementation of resolution tools against constraints stemming from the EU competition and transparency rules in relation to state aids. They aim at balancing these constraints with the objective of an efficient resolution regime.

The second public consultation relates to the Guidelines on necessary services. These define a minimum list of necessary 'critical' services that the resolution authority may require from the institution under resolution (i.e. the purchaser after a sale of business, a bridge bank or the transferee after a transfer of assets).

The consultation runs until 22 December 2014.

EBA – PUBLICATION OF FINAL GUIDELINES ON TYPES OF TESTS, REVIEWS OR EXERCISES THAT MAY LEAD TO PUBLIC SUPPORT MEASURES UNDER BRRD

On 22 September 2014, the European Banking Authority (EBA) published its final Guidelines required by Article 32(4)(d)(iii) of the Bank Recovery and Resolution Directive (BRRD). The Guidelines specify the type of tests, review or exercises that may lead to extraordinary public support measures for institutions in the banking sector

The Guidelines specify the main features of the types of tests, reviews or exercises that may lead to support measures. These features include a timeline, a scope, a time horizon and reference date, a quality review process, a common methodology and, where relevant, a macro-economic scenario and hurdle rates, as well as a timeframe to address the shortfall.

The EBA expects competent authorities to implement the Guidelines by 1 January 2015. Competent authorities and resolution authorities must notify the EBA as to whether they will comply with the guidelines by 1 December 2014.

EBA – CONSULTATION ON GUIDELINES ON TRIGGERS FOR USE OF BRRD EARLY INTERVENTION MEASURES

On 22 September 2014, the European Banking Authority (EBA) launched a consultation on two draft Guidelines on (i) the triggers for using early intervention measures and on (ii) the circumstances under which an institution shall be considered as failing or likely to fail (triggers for resolution). They aim at promoting convergence of supervisory and resolutions practices in relation to how resolution should be triggered and how to apply early intervention measures.

The Guidelines on triggers for early intervention are addressed to competent authorities and clarify the conditions for using early intervention measures foreseen by the Bank Recovery and Resolution Directive (BRRD). The triggers for early intervention are to a large extent based on the outcomes of the supervisory review and examination process (SREP). The draft Guidelines also provide for the possibility of triggering early intervention measures on the basis of significant events and material deterioration or anomalies in the key indicators monitored by the competent authorities before they are fully reflected in the SREP scores.

The determination that an institution is failing or likely to fail is made by the relevant competent authority, but Member States may grant this power to the relevant resolution authority too. In this regard, the draft Guidelines provide separate guidance for the competent authorities, where the determination is based primarily on the outcomes of the SREP assessment of the viability of an institution, and for the resolution authorities, where the determination is based on the objective elements specified in the Guidelines (which cover an institution's capital and liquidity position as well as other requirements for continuing its authorisation).

EUROPEAN COMMISSION ADOPTS DELEGATED REGULATION ON RTS ON OWN FUNDS REQUIREMENTS FOR FIRMS BASED ON FIXED OVERHEADS

On 4 September 2014, the European Commission published the text of the Delegated Regulation it has

adopted setting out the regulatory technical standards (RTS) on own funds requirements for firms based on fixed overheads under article 97(4) of Capital Requirements Regulation (CRR).

The Commission adopted this Delegated Regulation on 4 September 2014. The Delegated Regulation will be published in the Official Journal of the EU (OJ) if no objection is expressed by either the European Parliament or the Council within the relevant time period.

ECB – PUBLICATION OF FINAL LISTS OF SIGNIFICANT AND LESS SIGNIFICANT CREDIT INSTITUTIONS FOR PURPOSES OF SSM

On 4 September 2014, the European Central Bank (ECB) published its final list of significant supervised entities and the list of less significant institutions for the purposes of the single supervisory mechanism (SSM).

The significant list of credit institutions (in part A of the document) lists the 120 institutions that the ECB will directly supervise from 4 November 2014. The ECB will directly supervise credit institutions, financial holding companies or mixed financial holding companies that are deemed significant at the highest level of consolidation within participating Member States.

The less significant credit institutions in the participating countries (listed in part B of the document) will continue to be supervised by national competent authorities under the overall oversight of the ECB.

Insurance

Domestic

CENTRAL BANK – SOLVENCY II PREPARATORY REPORTING

On 22 September 2014, the Central Bank of Ireland (the Central Bank) published a letter (dated 18 July 2014) reminding (re)insurers of the Central Bank's expectation of reporting by them under the Guidelines on Preparing for Solvency II - Submission for Information. The requirement to submit an annual and a quarterly (beginning with Q3 of 2015) preparatory submission in 2015 applies to (a) (re)insurers designated as High and Medium-High impact under the Central Bank's PRISM (Probability Risk and Impact SysteM) regime and (b) to groups above a specified threshold. However, Medium-Low and Low impact reinsurers (and below-threshold groups) may wish to submit equivalent reports to assist with their own Solvency II preparations. The letter advises that preparatory reports and Solvency II reports (from January 2016) must be made in XBRL format. The European Insurance and Occupational Pensions Authority (EIOPA) is developing a tool for undertakings to assist in preparing reports in this format (expected to be available before the end of 2014).

CENTRAL BANK PUBLISHES 2013 INSURANCE STATISTICS

On 17 September 2014, the Central Bank published its Insurance Statistics for 2013. The statistics contain a summary of the life and non-life insurance returns made to the Central Bank in respect of business written between 1 January and 31 December 2013. Notably, despite a fall in the number of undertakings with head offices in Ireland, the statistics show a significant increase in total net life and industrial assurance premiums during 2013, when compared to 2012.

INTERMEDIARY TIMES – PII FOCUS

In the latest edition of its 'Intermediary Times' newsletter, published earlier this month, the Central Bank reminds insurance intermediaries that they must hold minimum PII cover of €1.25m per claim and €1.85m in aggregate per annum for their insurance mediation activity. In addition to this, insurance intermediaries which are also (a) investment intermediaries or (b) debt management firms must also hold the same level of PII cover in respect of each of those other regulated strands of activities, with effect from 1 October 2014. The Central Bank also confirms that it is currently contacting all (re) insurance intermediaries whose latest annual return has indicated a failure to satisfy PII requirements, as part of its ongoing thematic review of PII held by those firms.

EU and International

IMD 2 – FURTHER COMPROMISE PROPOSAL PUBLISHED

On 9 September 2014, the Presidency of the Council of the EU published a third compromise proposal (12961/14) regarding the European Commission's text of the revised Insurance Mediation Directive (IMD 2). A number of amendments are proposed, including (a) insertion of an express reference confirming that ancillary insurance intermediaries (AIMs) are captured by passporting provisions, (b) a power for Member States to stipulate that (re)insurance distributors responsible for the activity of a (re)insurance intermediary or AIM are responsible for ensuring that the (re)insurance intermediary or AIM meets their conditions for registration (and/or shall register the (re)insurance intermediary or AIM) and (c) that intermediaries who are natural persons must now be registered with the competent authority of the Member State where they carry out their distribution activity, if this is different than the Member State of their residence. 'Customer demands and needs' obligations have also been heightened for intermediaries who provide advice. Previously, such intermediaries were required to 'explain the reasons underpinning' their advice. Now, having assessed the customers' demands and needs, the insurance undertaking must provide a customer with a personalised recommendation as to why the specific product in question is most suitable. The general principles on freedom to provide services and freedom of establishment (Chapter IV), professional requirements (Chapter V) and sanctions and measures (Chapter VIII) have also undergone amendment.

IAIS UPDATES – COMFRAME AND OTHER ITEMS

On 22 September 2014, the International Association of Insurance Supervisors (IAIS) released an updated version of its Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame). ComFrame is a set of requirements focussed on the group-wide supervision of internationally active insurance groups. The IAIS is also developing a risk based global insurance capital standard (ICS) which is to be included within ComFrame. On 12 September 2014, the IAIS published its ICS Principles which will be followed in the development of ICS. An important step in the development of ICS is the development of higher loss absorbency requirements; and, on 23 September 2014, the IAIS published the Principles which will be followed in the development of higher loss absorbency requirements for global systemically important insurers.

IAIS REVISES MEMORANDUM OF UNDERSTANDING

On 8 September 2014, the IAIS published a revised Multilateral Memorandum of Understanding on Co-operation and Exchange (MMoU). The revised MMoU is dated 10 July 2014 and supersedes the prior (February 2007) MMoU. Changes include: (a) an updated list of signatory authorities; (b) certain changes to the section dealing with passing confidential information; and (c) a new section (in the application and accession Annex) on legal succession and transfer of membership.

COMMON DATA EXCHANGE TEMPLATE FOR SOLVENCY II

On 15 September 2014, fund and asset management associations in the UK, Germany and France published a draft template for Solvency II-related data exchange between (re)insurers and investment management companies. The template, jointly produced by the Investment Management Association in the UK, the BVI in Germany and Club AMPERE in France, is designed to streamline Solvency II compliance. The expectation is that the template will ensure that investment management companies (obliged under Solvency II to inform (re)insurers of the portfolio composition of managed funds) provide (re)insurers with information meeting Solvency II requirements. The template is subject to further refinement (including a review at the end of 2014).

PROPOSED ASSESSMENT OF ROMANIAN INSURANCE SECTOR

On 1 September 2014, the EIOPA announced an upcoming independent assessment of the Romanian insurance sector. The European Commission and EIOPA, together with the Romanian Financial Supervision Authority have agreed on the key proposed strands of the assessment. This will include a balance sheet review and an individual stress test, using Solvency II standards in both cases. The assessment is expected to be completed by June 2015.

CMA PUBLISHES FINAL REPORT ON THE PRIVATE MOTOR INSURANCE MARKET

On 24 September 2014, the UK's Competition and Markets Authority (CMA) published its final report following its investigation into the private motor insurance (PMI) market. This focuses on potential adverse effects on competition including of: (a) separation of cost liability and cost control (i.e. that, typically, the

non-fault party is in control of cost and has little or no incentive to control/limit this); (b) market concentration/competition between PMI insurers; (c) add-ons; and (d) potentially anti-competitive arrangements between such insurers and price comparison websites. The CMA identified issues in cost liability/control separation, but concluded that there is no suitable solution which is also proportionate. Issues have also been identified regarding add-ons and the CMA has made certain recommendations to the Financial Conduct Authority in the UK (the FCA) (e.g. that the FCA should consider whether insurers/brokers should provide prices for all/certain add-ons they offer to price comparisons websites).

EIOPA UPDATES RISK DASHBOARD

On 17 September, EIOPA published its updated quarterly risk dashboard, based on data provided by certain large insurance groups for Q2 of 2014. The dashboard indicates that the risk environment remains largely unchanged when compared to Q1 of 2014. The only notable changes identified are: (a) signs of improvement in credit risk conditions; (b) reduction of liquidity and funding risk (due to a higher level of issue of catastrophe bonds); and (c) a slight increase in life premiums but a decrease in non-life premiums.

EIOPA CHAIRMAN STATEMENT

EIOPA published a statement given by its Chairman at a hearing of the Chairpersons of the European Supervisory Authorities held by the European Parliament's Economic and Monetary Affairs Committee (ECON). Amongst other matters, the statement called for bolstering of EIOPA's independence and capacity so that it could be tasked with: (a) a centralised oversight role in the field of internal models; (b) a coordinating role on insurance matters towards the single supervisory mechanism; and (c) an enhanced supervisory role for the largest cross border insurance groups.

EIOPA – THIRD ANNUAL CONFERENCE ON GLOBAL INSURANCE SUPERVISION

Earlier this month, EIOPA hosted its third annual Conference on Global Insurance Supervision. The purpose of the conference is to provide a forum for exchanges between national supervisors, the insurance industry and other interested parties. The conference focused on topics including the impact of the low interest rate environment on insurance, global trends in risk-based supervision, upcoming challenges in the implementation of global standards, consumer protection as a supervisory focus and regulatory developments in emerging markets. A summary report of discussions, and key presentations, are available on EIOPA's website.

PRA UPDATE NOTE REGARDING SOLVENCY II

On 29 August 2014, the Prudential Regulation Authority (PRA) in the UK published an update note concerning Solvency II (2009/138/EC). The PRA expects that the note will be of most assistance to (re) insurers intending to use an internal model. The note focuses on the relationship between risk margin and calibration of non-hedgeable risks, and assessment of credit risk for matching adjustment portfolios. In the PRA's view, risk margin should not be viewed as a means of offsetting/reducing longevity risk calibrations when calculating the solvency capital requirement (SCR) or as a substitute for capital requirements. The PRA acknowledges that it has not finalised its position regarding assessment of credit risk by (re)insurers intending to use internal models, but also sets out some views in this regard.

FCA FOCUS ON LIFE SETTLEMENTS FUND SALES

On 24 September 2014, the FCA issued two press releases in relation to the EEA Life Settlements Fund (LSF). The first press release reminds firms which advised clients to invest into the LSF to examine their sales in light of the FCA's guidance on traded life policy investments. The second press release, directed at LSF investors who may have been mis-sold the product, encourages such investors to make a complaint before the deadline passes (in some cases, this may be in December 2014).

FCA PUBLISHES REPORT OF REVIEW ON PPI REDRESS IN THE UK

On 29 August 2014, the FCA published a report on redress for payment protection insurance (PPI) mis-selling in the UK. The report provides an update on how firms have been handling the PPI complaints and redress process (which the FCA believes has been working well). Over 13 million PPI complaints have been made to UK firms since 2007, and over £16 billion has been paid out in redress. The FCA indicated that, for the remainder of 2014, it will be focussing on recent mail-outs to high-risk customers who may have been mis-sold PPI but who have not complained. The FCA hopes to be in a position to scale down its supervision of PPI redress schemes during 2015.

UK FOS – A TEST EDITION OF OMBUDSMAN NEWS

On 23 September 2014, the UK Financial Ombudsman Service (FOS) published the latest issue of its Ombudsman News. This issue looks at two areas which are frequently the subject of FOS complaints, i.e. (a) exclusions in travel insurance policies related to alcohol consumption and (b) denial of motor theft claims. A number of case studies are also included. The core message in relation to travel insurance is that the FOS expects a high standard of proof from an insurer which claims that alcohol exclusion has been triggered. For motor theft claims, the focus is on exclusions in relation to keys being left in vehicles and vehicles being left unlocked and unattended. The FOS reports that approximately 40% of theft claims have been wrongly rejected by insurers.

UK FOS – COMPLAINTS DATA FOR FIRST HALF OF 2014

On 2 September 2014, the FOS published its complaints data for the first half of 2014. Of 191,129 new cases during that period, 70% related to PPI. Non-PPI complaints increased by 3%, when compared to the second half of 2013. The FOS confirmed that it had found in the consumers favour in 57% of all cases across the six month period - a 6% increase when compared to the last six months of 2013. In the FOS's view, consumer frustration with the manner in which complaints are being handled by firms (including insurers) has led to an increase in escalations to the FOS.

EIOPA PUBLISHES SUMMARY OF 2013 ANNUAL REPORT

On 12 September 2014, EIOPA published an executive summary of its 2013 annual report (published in June 2014). This highlights that protecting consumers' interests is still one of EIOPA's main priorities. Other key 2013 activities by EIOPA included the focus on preparation for Solvency II and steps taken to enhance the quality of the supervisory framework in the EEA (e.g. EIOPA has begun work on a supervisory handbook).

UK FOS UPDATES ON LEGAL EXPENSES INSURANCE

The FOS recently updated its online resource regarding legal expenses insurance. This section of the FOS website provides information as to how the FOS deals with complaints relating to such insurance and includes information such as the types of complaints typically made, as well as case studies.

EIOPA ARTICLE ON RISK MANAGEMENT AND SOLVENCY II

On 18 September 2014, EIOPA published an article produced by its Executive Director entitled 'Solvency II: a revolution in risk culture?'. The article focuses on risk management in the context of Solvency II. It emphasises that the insurance sector should be well equipped to manage risk, given that (re)insurance is a risk industry. It also highlights that Solvency II should result in important changes to risk culture for (re)insurers – with a keener focus on the ongoing process of risk management as part of business strategy, rather than as a reactive process.

GOVERNOR OF THE BANK OF ENGLAND – SPEECH ON INSURANCE REGULATION

On 25 September 2014, the Bank of England published a speech given by its Governor on regulation in the insurance sector. The speech emphasised the vital role of the insurance sector in the UK. Key proposed reforms highlighted include (a) capital standards which are resilient, appropriate for the business concerned and consistent (b) appropriate accountability of personnel within the industry and (c) worldwide standards for globally systemically important insurers. He also acknowledged the importance of robust interaction with industry and regular review of the regulatory approach to take account of evolving business models and financial conditions.

FCA INSURER AUTHORISATION PROCESS UPDATE

On 11 September 2014, the PRA and FCA published a user-friendly table on the process for becoming authorised as an insurer. This sets out the elements of the application process (broken down into the pre-application, application assessment and authorisation stages). The key actions required of firms and the expectations of the UK regulator are also summarised. The FCA points out that the timing of each stage of the process depends upon the promptness and quality of the materials submitted to it.

Investment Firms

EU and International

ESMA – PUBLICATION OF DRAFT RTS ON MAJOR SHAREHOLDER DISCLOSURES

On 29 September 2014, the European Securities and Markets Authority (ESMA) published its draft Regulatory Technical Standards (RTS) under the revised Transparency Directive. The draft RTS support the objectives of the revised Directive by facilitating the creation of a harmonised regime regarding the aggregation of holdings of shares and financial instruments, the calculation of notification thresholds and the exemptions from notification requirements.

The draft RTS on major shareholding notifications addresses the following issues:

- Method of calculation of 5% threshold exemption regarding trading books and market makers;
- Calculation method regarding a basket of shares or an index;
- Methods for determining the 'delta' for calculating voting rights; and
- Financial intermediaries' notification regime of financial instruments.

The Final Report also sets out the indicative list of financial instruments which are subject to the notification requirements laid down in the Directive.

ESMA – CONSULTATION ON DRAFT GUIDELINES CLARIFYING THE DEFINITION OF DERIVATIVES UNDER MIFID

On 29 September 2014, the European Securities and Markets Authority (ESMA) published a consultation on future guidelines clarifying the definition of derivatives as financial instruments under the current Markets in Financial Instruments Directive (MiFID I).

The different approaches to the interpretation of MiFID I across Member States mean that there is no commonly-adopted application of the definition of derivative or derivative contract in the EU for some asset classes. The practical consequences of this have come to the forefront with the implementation of the European Markets Infrastructure Regulation (EMIR).

These guidelines will allow a common approach by national competent authorities in the implementation of EMIR in respect of the classification of certain financial instruments as derivatives, until MiFID II when the relevant implementing regulation will start applying.

ESMA – PUBLICATION OF GUIDELINES REGARDING CPSS-IOSCO PRINCIPLES FOR FINANCIAL MARKET INFRASTRUCTURES IN RESPECT OF CENTRAL COUNTERPARTIES

On 4 September 2014, the European Securities and Markets Authority (ESMA) published Guidelines and Recommendations regarding the implementation of CPSS-IOSCO principles for financial market infrastructures (PFMIs) in respect of Central Counterparties (CCPs).

The Guidelines apply to competent authorities designated under Article 22 of the European Market Infrastructure Regulation (EMIR) for carrying out the duties resulting from EMIR for the authorisation and supervision of CCPs.

ESRB RESPONDS TO ESMA CONSULTATION ON MANDATORY CLEARING FOR OTC CREDIT DERIVATIVES

On 25 September 2014, the European Systemic Risk Board (ESRB) published its response to the consultation launched by the European Securities and Markets Authority (ESMA) on 11 July regarding the first set of rules imposing mandatory clearing of OTC derivatives by central counterparties under EMIR. The consultation considers, in particular, the possible establishment of the clearing obligation for OTC interest rate derivatives.

Funds

Domestic

CENTRAL BANK CHRISTMAS FILING DEADLINES

The Central Bank set out its deadlines for receipt of applications with pre-Christmas or pre-year end approval. Details of applications with pre-Christmas or pre-year end approval deadlines must be filed with the Central Bank, by 3 October 2013. The Central Bank will accept late applications, in exceptional circumstances. Normal timeframes apply for QIAIF authorisations and filings until 22 December.

CONSULTATION PAPER ON FUND MANAGEMENT COMPANY EFFECTIVENESS – DELEGATE OVERSIGHT (CP86)

The Central Bank published a Consultation Paper on Fund Management Company Effectiveness - Delegate Oversight. This focuses on four key measures which aim to encourage and support the continuous improvement of fund management company effectiveness. The closing date for responses is 12 December 2014. CP 86 concerns how the boards of fund management companies (including self-managed/ internally managed investment companies) and their delegates operate and is relevant for all those with an interest in the sector.

UPDATED AIF RULEBOOK

On 18 September 2014, the Central Bank published the latest version of the AIF Rulebook. The AIF Rulebook is the Central Bank's rulebook in relation to AIFs which contains chapters concerning Retail Investor AIF, Qualifying Investor AIF, AIF Management Companies, Fund Administrators, Alternative Investment Fund Managers and AIF Depositaries. The AIF Rulebook was updated to reflect the Central Bank's final rules on loan originating QIAIFs.

LOAN ORIGINATING FUNDS

The Central Bank now allows for the authorisation of QIAIFs that originate loans. The Central Bank's AIF Rulebook has been updated to reflect this change (as referenced above).

To date, Irish regulated funds have been prohibited from granting loans though they have been permitted to acquire loans on the secondary market. The Central Bank has stipulated a number of conditions. This is a welcome development for managers looking to undertake loan origination in a regulated fund structure as well as for prospective borrowers which will have access to potential new sources of debt funding.

CENTRAL BANK THEMATIC REVIEW OF DATA INTEGRITY OF REGULATORY RETURNS BY INVESTMENT FIRMS, FUND SERVICE PROVIDERS AND STOCKBROKERS

On 12 September 2014, the Central Bank issued a letter to industry regarding the outcome of a Thematic Review of data integrity of regulatory returns submitted to the Central Bank by investment firms, fund service providers and stockbrokers. The review examined the structure of the finance function; the oversight of financial and regulatory returns by the Board of Directors and senior management; and the production and reporting of management information. The letter sets out a number of recommendations and suggests that firms should implement the recommendations and also review their existing procedures within their financial reporting functions to ensure that due care and attention is given to the production, oversight and reporting of all regulatory returns.

EU and International

ESMA CONSULTATION ON UCITS V DEPOSITARY FUNCTION

ESMA issued a consultation paper on draft technical advice to the European Commission under UCITS V. UCITS V (inter alia) upgrades the duties and liabilities of UCITS' depositaries by clarifying the safekeeping, oversight and cash flow monitoring functions and prescribes the types of entity that may act as a depositary. ESMA's consultation considers two areas related to the depositary function:

- Insolvency protection when delegating safekeeping
- Independence requirements.

The consultation closes on 24 October 2014. ESMA will then use the feedback received to finalise its technical advice and submit it to the European Commission by the end of November 2014.

UPDATED ESMA IT TECHNICAL GUIDANCE FOR AIFMD REPORTING

On 23 September 2014, ESMA issued updated IT technical guidance (rev 4) for AIFMD reporting.

Cross Sectoral

Domestic

CENTRAL BANK – PUBLICATION OF THE INTERMEDIARY TIMES

On 25 September 2014, the Central Bank published Issue 3 of its Intermediary Times newsletter.

The newsletter discusses the following issues:

- The Handbook of Prudential Requirements for Investment Intermediaries (which comes into effect from 1 October 2014);
- Amendment of professional indemnity insurance levels;
- ICCL levy; and
- Un-contactable insurance intermediaries.

EU and International

ESA – PUBLICATION OF JOINT COMMITTEE REPORT ON CROSS-SECTOR RISKS FACING EU FINANCIAL SYSTEM

On 22 September 2014, the Joint Committee of the European Supervisory Authorities (ESAs) published its bi-annual report on the risks and vulnerabilities in the EU financial system.

The report identifies a number of risks to financial stability in the EU, including prolonged weak economic growth in an environment characterised by high indebtedness, intensified search for yield in a protracted low interest rate environment, and uncertainties in global emerging market economies. The report also highlights risks related to conduct of business and information technologies.

ECB – PUBLICATION OF OPINION ON PROPOSED CYBER-SECURITY DIRECTIVE

On 12 September 2014, the European Central Bank (ECB) published an opinion on the European Commission's proposed Directive concerning measures to ensure a high common level of network and information security (NIS) across the EU (Cyber-Security Directive).

The ECB generally supports the aim of the proposed Directive. However, it makes a number of observations, including the following:

- The proposed Directive should be without prejudice to the existing regime for the Eurosystem's oversight of payment and settlement systems, which includes appropriate NIS arrangements. The ECB has a particular interest in enhanced security in payment and settlement systems to promote the smooth operation of payment systems and help maintain confidence in the euro and the functioning of the EU economy;
- The assessment of security arrangements and incident notifications for payment and settlement systems and payment service providers is one of the core competencies of prudential supervisors and central banks. Responsibility for developing oversight requirements in the payment and settlement areas should remain with these authorities, and should not be subject to potentially conflicting requirements imposed by other national authorities; and
- Provisions in the proposed Directive should not prejudice the standards in other pieces of EU legislation, particularly in European Markets Infrastructure Regulation. Also, provisions should not interfere with the tasks of the European Banking Authority, the European Securities and Markets Authority or any other prudential supervisor.

Members Survey

Complete the survey and your could WIN an iPad

The Membership and Professional Affairs Committee of the ACOI has compiled a membership satisfaction survey that we would like you to complete. As your feedback is important to us, we would appreciate it if you took a few minutes to complete it. Those who complete the survey will be in with a chance to win an iPad.

The closing date for completing the survey is November 3rd and the winner of the iPad will be announced in the December edition of ICQ.

To complete the survey
CLICK HERE

SCHEDULE & EVENTS

DATE	TOPIC	VENUE	TIME
16.10.2014	Careers Evening	The Hilton Hotel, Charlemont	18.00 Registration
23.10.2014	ACOI Annual Conference Irish Financial Services – Raising the bar on Compliance, Culture and Conduct	Radisson Blue, Golden Lane	08.00 Registration
04.11.2014	Update on the Arrears Landscape from a Regulatory Perspective	Chartered Accountants Hse	12.00 Registration 12.30-13.30 Seminar
12.11.2014	Compliance Officer – Champion of the Consumer	Chartered Accountants Hse	12.00 Registration 12.30-13.30 Seminar
18.11.2014	Prudential Regulation and Governance	Chartered Accountants Hse	12.00 Registration 12.30-13.30 Seminar
26.11.2014	November Graduation	Royal College of Physicians	All Day

UPSTREAM RISK MANAGEMENT WORKSHOP

On September 24th, the ACOI held a workshop entitled Upstream Risk Management – The Role of the Compliance Officer (Part 4/4). The panel of speakers included Valerie Bowens, Maureen Stanley and James Meagher. During the workshop, delegates received a global view on the need for financial institutions to manage upstream risk and the challenges for international firms and domestic institutions. The guest speakers also outlined the framework for managing upstream risk in an internationally active bank and the risks of failing to manage upstream regulatory developments. In addition they addressed the methodologies for managing individual upstream events and considering practical examples of managing an individual event right through to implementation.

SANCTION SCREENING SEMINAR

On September 16th the ACOI held a seminar on "Sanction Screening" with Mark Dunn, Lexis Nexis who spoke about the lessons learned regarding regulators' expectations in the use and management of screening software, the common issues encountered when implanting a screening solution. Mark also gave an overview of the essential content, features and tips when purchasing watch list screening services.

TOASTING & TASTING

The ACOI held a Beer and Cider Tasting Evening on September 18th in the Galway Bay Brewery-run Alfie Byrne's in The Conrad Hotel in Dublin. The event was a huge success and members sampled three craft beers and three craft ciders as well as tasty savoury bites. White Gypsy Beer and MacIvors Cider proved to the most popular tipples on the night.

Fergus Campion, Elaine Staveley

Aine Reilly, John Murphy, Jean Griffin, Niamh Bermingham

Éamon McDonagh

Pamela Doyle

Kathy Jacobs

Keith Rothwell, John Bowe

Michael Prendergast

David Pearse, Beatrice Van Den Belt, Sarah McWeeney, Paul Nash

Phillip Brennan

Judy Ryan

Colin McGuirk, Richard Dunne, Seamus O'Neill

Matthew McNamara, Brian Dooley

Valerie Bowens, Seán McCrave

Ken Sharkey

Neil Hennebry, Thomas Murphy

Cristina Belfiore

Pádraig Phelan, John Kernan

Cian Blackwell

A Career in Financial Services Compliance

ACOI
The Association of Compliance Officers in Ireland

Compliance, regulation and business ethics have become increasingly central to the workings of the financial services sector today as Ireland moves towards an environment that fosters open, transparent and accountable institutions.

Indeed, with recent economic data pointing to a brighter picture for Ireland's economy and the country moving with cautious optimism towards recovery, compliance professionals working in financial services will be in even greater demand.

For those working in compliance, the Association of Compliance Officers of Ireland (ACOI) is the ideal education partner to help you advance on the career ladder and enhance your expertise in this area through accredited and practical educational programmes. We offer courses from basic entry level right up to Masters level, and we are available to members at every step of their career ladder to advise and help them advance.

With this in mind, there are a number of courses offered by the ACOI that equip successful participants with skills for a career as a compliance and regulatory professional.

Of particular note at this time is the Professional Certificate and Diploma in Compliance (PDC), accredited at level 7 on the National Framework of Qualifications by UCD, which is currently accepting applicants for exams taking place in May.

The PDC seeks to give students a core understanding of the compliance function, which will help to equip them with the competences for a career as a compliance and regulatory professional. This programme is designed to enhance skills, judgement and ability to deal with practical issues in the management and practice of compliance in the financial services industry.

Of course, fostering a sustainable stream of effective compliance practitioners in our financial institutions necessitates that professionals are consistently and effectively educated, as they move through the ranks of their organisations.

The ACOI provides a host of advanced courses for professionals who are hoping to further advance their valuable skillset, such as the MSc/ Graduate Diploma in Compliance, Certificates in Data Protection and Financial Crime Prevention (accredited by UCD) and the MA in Ethics (run in conjunction with Dublin City University and the Mater Dei Institute). These courses will be offered to students once again later this year.

The important end goal of all of these courses is to promote and foster the continual placement of compliance, ethics, transparency and accountability at the centre of all financial services institutions, in the most effective manner.

Rightfully, it is anticipated that the importance of compliance will continue into the future and graduates of these programmes can enjoy the prospect of blossoming career opportunities in this vital function.

ACOI Education Suite 2014-2015

All ACOI qualifications are designed to enhance candidates' skills, judgement and ability to deal with practical issues in the management and practice of compliance in the Financial Services industry in Ireland.

- Professional Certificate and Diploma in Compliance
- Professional Certificate in Financial Crime Prevention
- Professional Certificate in Data Protection
- MA in Ethics (Corporate Responsibility)
- Graduate Diploma/MSc in Compliance

To enquire about any of our courses or to register today please contact **ACOI** on **01 669 8507** Email: **info@acoi.ie** Web: **www.acoi.ie**