ICQ
IRISH COMPLIANCE QUARTERLY
Autumn. 2016

DATA PROTECTION
The US-EU Privacy Shield

FINTECH
Ireland's Opportunity

THE BREXIT BLUES

FORMER TAOISEACH JOHN BRUTON ON IRELAND POST BREXIT

SKILLS SERIES
Leadership

PROTECTED DISCLOSURES
Whistleblowing

ACOI
The Association of Compliance Officers in Ireland

CONTENTS

ICQ is published by:
The Association of Compliance Officers in Ireland (ACOI), Lower Ground Floor, 5 Fitzwilliam Square, Dublin 2.
T: 01 - 779 0200.
Production Team: Kathy Jacobs, ACOI Director and Finbarr Murphy, Director of Education and Professional Development.
Editorial and Production: Adworld Ventures Ltd.

FOREWORD

Irish Compliance Quarterly

Welcome to the Autumn 2016 Edition of ICQ.

I am delighted to welcome 2 members who have volunteered to join the ICQ Editorial Group, Seán Wade and Áine Hickey. Seán and Áine will be well known to many in ACOI as Seán is a founding member and former Chairman, and Áine is a graduate in our MSc program and has contributed in recent times at ACOI events and ICQ. I look forward to working with Seán and Áine over the coming months to develop our publication.

With the dust settling on the result of the UK's Referendum on EU Membership and with endless commentary across every media outlet, we at ICQ decided that members may be interested in a view of the situation from an authoritative source close to home and with an Irish perspective. We are delighted that John Bruton spared us some time to give us his assessment. This one will run and run . . .

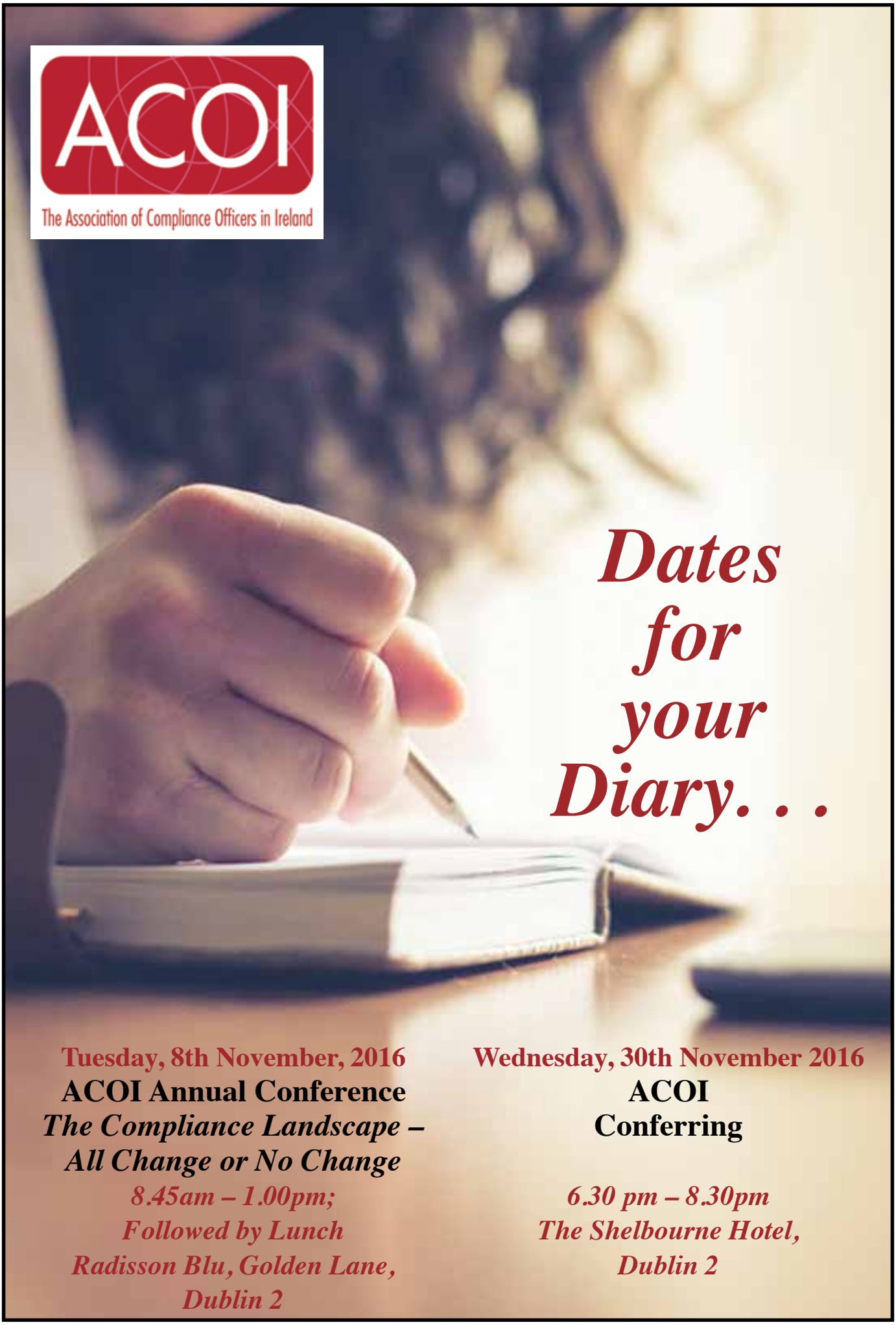
While one would be mistaken for thinking that 'Brexit' was the only event of note going on, the world of Compliance has kept turning and we are again grateful to our working groups and contributors for keeping us informed. We do hope that you are finding our Soft Skills Series of benefit. It is difficult to change habits of a lifetime, but if we find the motivation to make even one modification or alternative in our behaviour or habits it could improve or perhaps transform our effectiveness as a compliance professional. Hopefully something in our series will provide that inspiration to make at least one change.

As the end of the year is approaching, we will all be anxious to ensure that we are on track to meet all our respective CPD obligations. Be sure to check out what ACOI is offering to help you get over the line from our lunchtime seminars and workshop programs. Not only will you 'tick the box' (sorry!) for your qualification, but you will benefit from the expertise of our outstanding line-up of contributors and of course have the opportunity to network among your industry peers. Also, if you cannot make it to our events in person, do keep an eye on the ACOI website as we publish the presentations from the events in the Library section. In fact some of the presentations make for excellent reference material for your compliance role.

We at ICQ hope you find this latest edition of interest, and please get in touch with your feedback or suggestions for future editions. We look forward to seeing you at upcoming events to fulfil that CPD.

Yours in compliance.
Kathy Jacobs

Kathy Jacobs
ACOI Director


ACOI
The Association of Compliance Officers in Ireland
Dates for your Diary. . .
Tuesday, 8th November, 2016
ACOI Annual Conference
The Compliance Landscape – All Change or No Change
8.45am – 1.00pm;
Followed by Lunch
Radisson Blu, Golden Lane, Dublin 2
Wednesday, 30th November 2016
ACOI
Conferring
6.30 pm – 8.30pm
The Shelbourne Hotel, Dublin 2

CEO Update

With the summer holidays a fading memory, autumn is well upon us. The ACOI financial year end was 31st July so I thought it a good opportunity to reflect on last year. It was a good year for the Association with membership growing by 320 members to 2,527 members at year end. The Association held 32 events (63 CPD hours) and events such as the Conference, the AGM, the Careers and Events evening and the Dinner all proved popular and attracted great numbers.

We ran soft skills events on networking and project management and had a very interesting evening in the Westin Hotel in July discussing Diversity. The Building Blocks series, a bi-monthly series of six workshops continued to be very popular. We would like to thank all those who presented at these events. The experience that is shared is an essential part of what ACOI does, providing a forum for networking for members, keeping members abreast of relevant industry developments and providing useful assistance to members in their careers.

The Association established a Money Laundering Reporting Officer Forum which attracted great interest and we continue our involvement in the Private Sector Consultative Forum set up to prepare for the FATF review, which will be upon us very soon.

The Association offers accredited academic programmes. PDC, Professional Certificate and Diploma in Compliance are on offer three times a year. On successful completion of the Diploma, members are invited to take up the LCOI designation. We have the MSc in Compliance and two professional certificates in Data Protection and Financial Crime Prevention leading to the designation Certified Data Protection Officer, CDPO and Certified Financial Crime Prevention practitioner, CFCPP. The CDPO is on offer in October 2016 and February 2017 recognising the increasing demand and interest in data protection with the upcoming GDPR legislation in May 2018. All the above programmes are offered through our educational partner The Institute of Banking. Our MA in Ethics (Corporate Responsibility) is offered through DCU. Detail on all programmes offered is available on our website, www.acoi.ie or you can contact Finbarr Murphy, Director of Education and Professional Development.

We have new programmes: we worked with Chartered Accountants Ireland on the Diploma in Risk Management, Governance and Compliance. This programme commenced in September 2016 and is fully booked for the first offerings. It is a six module programme offered through weekend classes in Dublin and has a distance learning option.

We collaborated with Institute of Banking on the Professional Certificate in Conduct Risk, Culture and Operational Risk; a two module Certificate which starts in October 2016.

We have 12 events planned for the remainder of 2016, so there is still plenty of time to meet your CPD obligations. Our Annual Conference is coming up on 8th November next and I would encourage you to book early to attend, it also attracts CPD hours! Our conferring is on 30th November in the Shelbourne Hotel. This was a wonderful evening last year so if you have successfully completed our programmes during the year, you will soon receive an invitation to come and join us on the evening and be presented with your academic parchment and/or designation.

On staffing, just to let you know, Caroline Hollick-Ward returned from maternity leave in May and we are delighted to congratulate her on the birth of Regan. Clarissa Hills who was Acting Membership and Events Manager is staying on with the Association in the role of Operations Manager. Laura Tobin has moved on from the Association, we will miss Laura but wish her well in her new job.

Evelyn Cregan
CEO

A Political view on Brexit

Now that the UK has voted to leave the EU, there are so many imponderables but the ramifications for Ireland and the Irish economy are still significant. Former Taoiseach and staunch EU advocate John Bruton outlines his views on what lies ahead in an interview with ICQ.

With Brexit set to dominate much of Ireland's and the EU's economic and political agenda for the next few years, the uncertainty it has unleashed throughout Europe, and Ireland in particular, will present the Government and the economy with more challenges than opportunities, according to former Taoiseach John Bruton.

As Taoiseach between 1994 - 1997, Mr Bruton presided over an extraordinary period of growth for the Irish economy leading to the emergence of the so-called Celtic Tiger which saw Ireland become one of the fastest growing economies in the world.

In 1993, the year before he took office, the Irish economy grew by 2.7%. During his time as Taoiseach, however, the economy grew at an annual average rate of 8.7%, peaking at 11.1% in 1997.

A seasoned veteran of the political world, he is also staunchly pro-European and presided over a successful Irish EU Presidency in 1996 and was instrumental in shaping the Stability and Growth Pact, which governs the management of the single European currency, the Euro. He was also one of two Irish representatives to the European Convention which drafted the European Constitution and after resigning from Dáil Eireann in 2004, he was appointed as the EU's ambassador to Washington.

The decision of the UK to vote in favour of Brexit is, not surprisingly, a deeply disappointing one for somebody who has devoted a considerable part of this political life championing the European cause.

"I was very surprised and saddened," he says. "I expected that there would be some sort of resurgence by the Remain campaign towards the end but that didn't happen. Instead the electorate opted for an adventure to an unknown destination," he says. "I think there was a lot of discontent among those who have benefited less from globalisation than others. We all have benefited from globalisation, but some less than others," he says.

While the soul-searching and the fallout from Brexit continues to reverberate and analysts blame the media and the British electoral system, the electorate must share some of the blame.

"I've always found a great lack of curiosity among English people when it comes to the European Union and how it works," he says.

Some might attribute this to the media or indeed the EU for failing to get its message across to the electorate at such a crucial stage in the development of the European Union.

"Ultimately it's the fault of the citizens and in a democracy they have to take ultimate responsibility – you can't just blame politicians and the media. Everyone has a responsibility to inform themselves. But I also feel that many English people didn't feel the need to get to know what the European Union was all about and they were perfectly satisfied with that.

"I know there are lots of people in Ireland who don't know a lot about the European Union but they would feel that they want to be in it whereas in Britain I don't think they really want to be in it. I think there has always been a distance between Britain and Europe from the outset but I never thought that this would lead to it leaving the European Union because I thought the economic arguments would win out. But obviously they didn't," says Mr Bruton.

"Now of course people are learning about the economic arguments but it's rather late in the day," he adds.

"I think some of this has also to do with English history because from the 16th century right up until the 19th century, the objective English foreign policy was to ensure that Europe was never united and that there was always a balance of power in Europe on which Britain could use its own weight to achieve its own independent goals. And I also think there, is in English public opinion a sense of this and that the origin of their state, in many ways, is to be found in a rebellion against Rome! Also in the minds of many English people, the European Union has become somehow confused with France and Spain as if it was just France and Spain – which it isn't. The European Union is now a much more diverse religiously balanced entity. But the old sentiment about Europe that was shaped earlier – when it was just six countries dominated by France and Italy – remained and I think this partly explains some of this and why Britain was never able to sell Europe to its citizens at an emotional level," says Mr Bruton.

As the British Prime Minister Teresa May has said, "Brexit means Brexit," and the EU and Britain now have to contend with the very difficult and, likely to be, contentious issue of an orderly withdrawal from the European Union, something which Mr Bruton says is likely to be difficult.

"I would hope that Britain will take its time in going through every possible complexity and will, as anyone entering any negotiation should, study carefully the needs of the person on the other side of the table as well as the needs of each of the 27 countries that are going to be represented," he says.

"What are the needs of the European Union as an institution for its survival? All of these are British interests too because if the Union fails that's bad for Britain too, even if it is no longer part of it. So I'm hoping that Britain will take as much time as it likes to work out a proposal that would obviously serve British interests but could be shown to benefit the other countries and the Union as a whole. That's going to require an enormous amount of intellectual effort on Britain's part but I think if Britain comes forward with a proposal – and I don't think they should trigger Article 50 until they have their proposal ready – that is demonstrably well reasoned and if its pro-European, as opposed to being anti-European, then the atmosphere in the negotiations will be constructive. If this is the case, then they could get a deal relatively quickly.

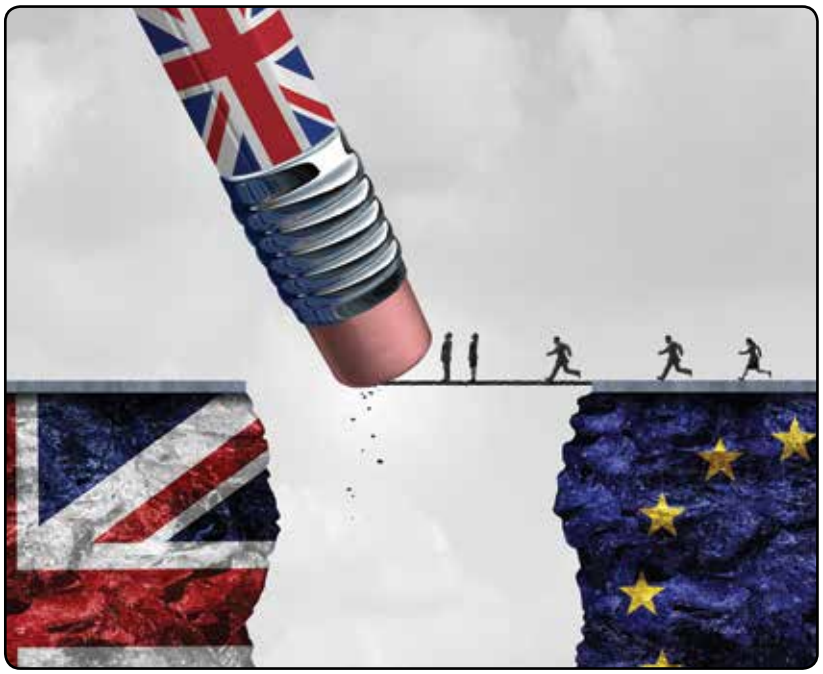
"If, on the other hand, Britain moves forward quickly with Article 50 and puts on the table a series of demands that involve in Boris Johnson's words 'having their cake and eating it' that proposal will engender such hostility that the negotiations for the actual exit could go on and on. So I would be in favour of Britain not tabling the Article 50 letter until they are quite ready and if that means not until the end of next year or the year after so be it," he says.

But the negotiations will be tough and to pile too much pressure on Britain to exit quickly is not the best way forward says Mr Bruton.

"There is pressure on the British which I don't agree with. Telling them to give the keys back right away may have been emotionally satisfying but it's not intelligent. The British public administration is caught completely flat footed by what the British public have done, they are not ready and asking somebody who is not ready to enter negotiations is asking for trouble," he says.

"And in any event, the longer the time its taking the more the British public have an opportunity to mull over all of this and if they have a general election in the meantime, that could be an occasion for further discussion but as of now there is no point talking about Britain reversing its decision. I don't think that's feasible at this point or at any point in the medium term.

"There is another point which is interesting: there is a school of thought



within European Union circles – based on legal analysis – which suggests that once the Article 50 letter is sent it's not possible for Britain to reverse that and if it wanted back at some stage, it would have to re-apply to join.

"There is also another separate legal issue that has been raised by the European Council in its statement on 29th June where it said that it would negotiate with Britain on a new relationship but as a third country which implied Britain must become a third country, by withdrawing from the EU, before it can have a trade agreement with the EU. This could mean that the UK would have to be out of the EU, before it knew what terms it might get on trade. This would be a very hard line EU position. If that's what is meant, it could be contrary to Article 50 of the Lisbon Treaty, which says a withdrawal treaty has to take account of the framework of the withdrawing country's 'future relationship' with the EU. So there could be two negotiations – one on withdrawal and one on the framework of the future relationship," he says.

This is not good for Ireland, he adds. "Ireland cannot afford to wait until the UK is already a third country before border, travel, and residency issues between Ireland and UK are sorted out. We need these issues sorted out before the UK leaves."

Arguably one of the greatest achievements of the EU down through the years has been the creation of a robust and consumer friendly regulatory regime for the financial services industry and Ireland has benefited significantly from this, says Mr Bruton.

"I think the EU regulatory regime has been, in a way, the foundation of the Irish international financial industry, because by being an early adaptor and promoter of the UCITs model we would be able to become the location for a disproportionate amount of fund administration in Ireland and that continues. And the EU regulatory system provides a passport for anyone anywhere in the European Union to sell services, so long as they comply with the requirements of the passport. And that's something that we must preserve," he adds.

While there is every possibility that Britain may retain the best parts of the regulatory regime that has been created in financial services – and tweak it as it sees fit – there may be stumbling blocks.

"There is a possibility that what might happen and I think that third country jurisdictions can be recognised by the European Union as having equivalent protections. For instance, in insurance, Bermuda is recognised as having equivalence to the EU in terms of solvency requirements. That's a possibility that could be explored but that sort of thing requires goodwill and if the EU felt that the UK's financial services sector was acting in a way that was predatory against the interest of EU operators, they mightn't get the agreement they are looking for. So it's a political decision to give it, he says.

Mr Bruton has likened Brexit to the unravelling of the stitching on a patchwork quilt and then re- stitching some parts of the quilt together, while making a new quilt of the rest.

"The UK is, at the moment, stitched into thousands of regulations and international treaties, which it made as a member of the EU over the last 43 years. Each piece of stitching will have to be reviewed both on its own merits and, for the effect, rearranging it might have on other parts of the quilt," he says.

Some of those patches have implications for the Irish financial

services sector and the regulatory regime that will apply to Britain and how it sits within Europe post-Brexit but also the implications of financial services companies moving some of their existing operations out of London and into Dublin.

"I think there's a number of things we need to consider. First of all, the CBI is going to have to satisfy itself and satisfy the European supervisory authorities, that it has the ability to supervise any institutions that may move their headquarters to Dublin. I think that the CBI, because of its very questionable performance in the lead up to the financial crisis, has gone to the extremes by being hyper cautious. So, if we are to attract major activity from London to Dublin, the CBI will have to re-examine its role," he says.

"We have also got to look at our own tax system. There are strong arguments for Ireland having one of the most progressive income tax systems in Europe which has created a sense of social solidarity in Ireland. While you do hear complaints about whether you're better off or less well off, it's nothing like the tension that exists in Britain and the reason for that, is of course, that their social welfare system is much less generous and their tax system is much less progressive than the Irish one.

"Although you wouldn't think that when listening to much of the debate in Ireland because it doesn't come through in the media very often – but it is the case. On the other hand, if we are going to attract very high earners from other countries to come and operate their headquarters here and become residents in Ireland, they are going to look to at what the tax package France, the Netherlands or Germany would look like compared to Ireland, what would be the tax package they'd have in the Netherlands and not just their companies but for themselves too. So, in a way Ireland needs to have a debate about all of this and soon. I'm not offering advice as to which way we should go, but we do need to discuss it. We shouldn't think that as far as attracting financial institutions from London are concerned, we can have our cake and eat it. We have to decide which it is we want – the cake or the eating," says Mr Bruton.

While Britain leaving the EU is obviously a huge concern for all members, the show must go on, says Mr Bruton.

"Perhaps we need to stop talking in terms of the so-called European dream and talk about a European Union that is big enough to be able to democratically control, in the interest of consumers, economic forces in the world, which no individual country is big enough to control. Remember the EU is the only genuinely democratic multinational organisation that has its own parliament whose decisions are made with a democratic mandate. The EU is big enough to take on the likes of Google unlike the UK or France. But the EU is essentially a body that's standing up for the small man or woman, the small business and it stands up against monopolies and vested interests, whether they are in individual countries or internationally," he says.

"And I think the EU needs to present itself in that role – the champion of the consumer- and it needs to talk in those terms, rather than talking about deeper European integration. Deeper European integration is only a means to an end: the end is being able to defend the small man and woman against great economic forces and of course to preserve the peace.

"I think the EU needs a new narrative, a new explanation of what it is. Because clearly this narrative we have at the moment didn't work in Britain and it mightn't work in other countries. Also I think the EU is already democratic but it can become even more democratic. Yes, every decision that the EU makes has to be approved by a Council of Ministers which represents 27 democratic governments and a parliament which represents an electorate of 500 million people. But perhaps we need to consider as well that the presidents and the commission should be elected by the people. In other words, every four or five years, if you don't like what Jean Claude Juncker is doing, you can throw him out and put in someone else. Now that doesn't mean that you necessarily give him any more powers than the present commissioner has at the moment. We have a president here in this country who essentially has no power, but people attach a lot of importance to the fact that they elected the president.

"So if we want to build a European conversation, if we want to create any sort of European loyalty or allegiance but one which isn't contrary to national allegiance but instead complements it, then we need to do that through elections, because elections are one of the ways in which people feel that they have a say in matters," he concludes.

John Bruton was interviewed on 3rd August 2016. ICQ

Suspicious Activity Reports and Fraud

At the launch of the ACOI's Money Laundering Reporting Officers Forum several keynote speakers discussed suspicious transaction reports and what to do with them when a fraud or possible fraud is detected.

The ACOI launched the Money Laundering Reporting Officers (MLRO) Forum in May 2016. The guest speakers included Detective Chief Superintendent Patrick Lordan Head of the Garda Bureau of Fraud Investigations (GBFI) speaking on behalf of the Financial Intelligence Unit (FIU), Mairéad Butler, a MLRO practitioner from Rabobank, who outlined some of the current challenges facing this role and Joseph Shannon from Compliance Ireland.

The topic of fraud reporting was raised during this meeting. This was as a result of feedback received by some attendees on the back of some Central Bank Inspections. There followed a discussion around the issue of whether fraud should be filed as a Suspicious Transaction Report (STR). Given the discussion and debate around this topic, the AML Working Group wanted to share the points raised with the wider ACOI community members.

The MLRO Forum will discuss and consider AML, CFT and FS as it pertains to identifying and reporting suspicious activities and not generally.

So firstly, what is fraud?

Under the Criminal Justice (Theft and Fraud Offences) Act, (2001),[1] (sections 42(c) and 45(1)(a)) the definition of a fraudster and associated money launder is:

42. A person who –

(c) obtains the benefit of, or derives any pecuniary advantage from, any such fraud,

45. (1) It is an offence for a person to commit fraud affecting the Communities' financial interests or to commit the offence of money laundering, or to participate in, instigate or attempt any such fraud or offence, outside the State if

(a) the benefit of the fraud or offence is obtained, or a pecuniary advantage is derived from it, by a person within the State, or

The definition of Money Laundering under the Criminal Justice Act (1994)[2] is:
"A person shall be guilty of an offence if he – (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of drug trafficking or other criminal activity, or (b) converts or transfers that property or removes it from the State."

This definition was refined further in the Criminal Justice Act (2010).[3]

Fraud and money laundering is further dealt with under the Third Money Laundering Directive (2005),[4] where it states:

"Although initially limited to drugs offences, there has been a trend in recent years towards a much wider definition of money laundering based on a broader range of predicate offences. A wider range of predicate offences facilitates the reporting of suspicious transactions and international cooperation in this area. Therefore, the definition of serious crime should be brought into line with the definition of serious crime in Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime".

The inclusion of fraud as a predicate offence was supported by FATF[5] when they included fraud amongst other crimes:

"Including terrorism, including terrorist financing; trafficking in human beings and migrant smuggling; sexual exploitation, including sexual exploitation of children; illicit trafficking in narcotic drugs and psychotropic substances; illicit arms trafficking; illicit trafficking in stolen and other goods; corruption and bribery; counterfeiting currency; counterfeiting and piracy of products; environmental crime; murder, grievous bodily injury; kidnapping, illegal restraint and hostage-taking; robbery or theft; smuggling; (including in relation to customs and excise duties and taxes); tax crimes (related to direct taxes and indirect taxes); extortion; forgery; piracy; and insider trading and market manipulation".

The Garda Bureau of Fraud Investigation ("GBFI") is divided into six operational units with a Detective Inspector allocated to each specialist area:

- Fraud Assessment Unit & Commercial Fraud Investigation Unit;
- Financial Intelligence Unit;
- Money Laundering Investigation Unit
- Cheque, Payment Card, Counterfeit Currency and Advance Fee Fraud Investigation Unit;
- Computer Crime Investigation Unit;
- Corporate Enforcement – Detectives from GBFI are seconded to the Office of the Director of Corporate Enforcement (ODCE).

Source – An Garda Síochána website

During the launch, a question was posed as to whether a fraud/attempted fraud should be reported to the FIU as a STR. One of the examples considered was when there is an attempt by a fraudster to request the financial institution to make a payment to a fraudster's account either from a customer account or from the financial institution's own account.

Detective Chief Superintendent Lordan clarified that **where a fraud (or attempted fraud) occurs, it should be reported to your local Garda station.** Where required a section 19 report, should be made on the matter. It is not necessary for you to report these frauds to the FIU as an STR

The logic is simple in the first instance the money laundering has not yet occurred i.e. the money in the customer financial institution account is not from the proceeds of crime. Therefore, this does not come under the remit of the FIU and as such, the crime/attempted crime should be reported in the usual way to your local Garda station. Some of these cases may be referred by the local Garda station to the GBFI.

Detective Chief Superintendent Lordan explained that the GBFI is not in a position to investigate every referred case of suspected fraud. For optimum resource utilisation, investigations are focused on major and complex fraud based on the following criteria

- Monetary loss;
- Investigations involving a significant international dimension;
- Investigations involving widespread public concern;
- Investigations requiring specialised knowledge
- Investigations involving complex issues of law or procedure.

Source – An Garda Síochána website

It is only when the fraud has been successful and the transaction has been completed and the funds have been received in the fraudster's

account that the FIU's chain has been started. In that instance, it would be the responsibility of the financial institution transferring and / or receiving the funds to report any suspicions by raising an STR to the FIU.

Detective Chief Superintendent Lordan reminded those present **that where a fraud /attempted fraud is suspected of being money laundering or terrorist financing, then the financial institution should make an STR report to the FIU.**

He also explained that the FIU only have a finite level of resources with which to manage the alerts, which come through to their office to ensure that each report is given the appropriate consideration. For the full year of 2000, there were 1,803 STRs, 15 years later in 2015 this has increased to 21,682 STRs.

The Guidelines (2012)[6] noted, "occasionally, there may be situations where a report should be made through usual channels together with a STR to the FIU and Revenue Commissioners. For example, the designated person may be the subject of a crime e.g. fraud or phishing. In this case, the double reporting may occur where the fraud is reported through the fraud reporting system but there will also be proceeds of crime and should be reported through the STR process".

This dual reporting recommendation is further supported by the Central Bank (2015)[7,8,9,10] in each of their four Sectorial Reviews; where the same wording is used for each of them. "It is important to note that in normal circumstances where a "suspicious" or "unusual" transaction has been identified, a firm may not know whether or not there is an underlying predicate offence. However, in situations whereby the underlying predicate offence is identified, that underlying offence (e.g. theft, fraud, etc.) should be separately reported (in addition to the STR) to An Garda Síochána [Garda Bureau of Fraud Investigation or local Garda Station depending on the nature/complexity of same] to ensure that same can be investigated. If the firm is not the injured party/complainant, then a report pursuant to Section 19 Criminal Justice Act 2011 should be considered in this regard. This is to ensure that An Garda Síochána can investigate the predicate offence as it is precluded from so doing on foot of an STR alone".

However, some of the STRs reported contain an element of defensive filing of STRs, where a financial institution files an STR just to be sure, without providing the necessary explanation as to why they are suspicious about a transaction.

There is a balance between fulfilling our regulatory responsibilities in reporting STRs to the FIU and our responsibility for ensuring that frauds are reported to the correct branch of An Garda Síochána.

So what should your firm do?

You should report frauds/attempted frauds to your local Garda Station where you:

- Become aware that a fraudulent activity has occurred;
- Become aware that an unsuccessful fraud has been attempted;
- Are a victim of phishing, such as a CEO fraud;
- Are a victim of a Denial of Service cyber-attack.

Where the proceeds of a fraud / attempted fraud are suspected of being laundered or used for terrorist financing, an STR should be filed with the FIU and the Revenue Commissioners.

Remember, the FIU are looking for quality STRs, which set out all the relevant information to explain why the financial institution has a suspicion.

Brian Kavanagh, ACOI AML Working Group and AML & Financial Crime Compliance Manager, Elavon.

Please note this is not intended as complete and definitive advice. You should seek professional opinion as and when required.

1 The Criminal Justice (Theft and Fraud Offences) Act, 2001 Section 40 (2)
2 The Criminal Justice Act (1994) Section 31
3 The Criminal Justice (Money Laundering and Terrorist Financing) Act (2010) Part 2
4 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
5 INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION The FATF Recommendations (2012)
6 Guidelines on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, Part 1 (2012), referencing S.42(1) & S 43 (1)
7 Report on Anti-Money Laundering/ Countering the Financing of Terrorism and Financial Sanctions Compliance in the Irish Banking Sector (2015)
8 Report on Anti-Money Laundering/ Countering the Financing of Terrorism and Financial Sanctions Compliance in the Irish Funds Sector (2015)
9 Report on Anti-Money Laundering/ Countering the Financing of Terrorism and Financial Sanctions Compliance in the Irish Credit Union Sector (2015)
10 Report on Anti-Money Laundering/ Countering the Financing of Terrorism and Financial Sanctions Compliance in the Life Insurance Sector in Ireland (2016)

Another Busy Year for the ODPC

Data Protection Commissioner Helen Dixon issued her second Annual Report in June 2016 and Rob Corbet, Partner in Arthur Cox and member of the ACOI Data Protection and Technology Working Group reviews the key points.

Data Protection Commissioner Helen Dixon issued her second Annual Report in June 2016 and Rob Corbet, Partner in Arthur Cox and member of the ACOI Data Protection and Technology Working Group reviews the key points.

This year, the Annual Report of the Data Protection Commissioner, Helen Dixon, was published in the midst of a hive of other data protection activity. The "Privacy Shield" grabbed the headlines when it was finally adopted as a replacement for the EU-US Safe Harbour regime in July while the DPC issued surprise High Court proceedings in June seeking a reference to the Court of Justice in relation to the use by Facebook Ireland of "Standard Contractual Clauses" for data transfers on foot of the ongoing complaints made by Max Schrems. It will be recalled that Mr Schrems previously challenged the use of the "Safe Harbour" mechanism used by Facebook Ireland to transfer personal data to the United States and this challenge ultimately led to the EU Court of Justice invalidating the Safe Harbour programme.

Many organisations are also busy working their way through the requirements of the General Data Protection Regulation (GDPR) which will become law across the EU on 25th May 2018 and this will significantly change the data protection landscape.

Against the backdrop of these macro developments, the Annual Report for 2015 was published on 21st June 2016. It remains a significant event as it presents the ODPC with a yearly opportunity to highlight key messages to organisations around data protection compliance while also providing an insight into how the resources of the ODPC have been deployed in the previous year. It is therefore a valuable resource for the compliance community and below is a flavour of some of the insights and trends which arise from the 2015 Report.

Increased DPC Resources

The Report notes the significant growth in ODPC resources, with a doubling of staff, the opening of its Dublin office and a near fourfold increase in budget in recent years. The Commissioner notes that this has enabled the ODPC to deliver clear improvements in response times, both for data subjects who raise complaints and for organisations seeking guidance in terms of implementing projects with implications for data-privacy rights. Further resources will be committed to the office in preparation for the arrival of the GDPR on 25th May 2018.

The DPC has been deploying these additional resources strategically. For example, a Special Investigations Unit (SIU) was established to carry out investigations on its own initiative,

separately to most investigations which are complaints-driven. Many ACOI members in the financial services industry will be aware that an initial focus of the SIU was in the area of private investigators. Large tech-companies also come in for specific mention, in particular LinkedIn and Facebook who actively engaged with the ODPC in relation to the introduction of certain privacy-related product features.

The Office also faced significant challenges in responding to Court of Justice rulings in the Schrems Safe Harbour case and the Digital Rights Ireland case which invalidated the Data Retention Directive.

Complaints and Investigations

The volume of complaints received by the ODPC in 2015 (932) is broadly in line with that in the previous year. Again access rights topped the charts with 60% of the complaints with direct marketing complaints coming in well behind at 11%. 94% of all complaints received were resolved under the amicable resolution process provided for in s.10 of the Data Protection Acts (DPAs). The Office received 14,427 email enquiries and 860 requests for specific guidance by public and private sector organisations.

Data Breaches

The gradual upward trend in data-breach notifications under the ODPC Code of Practice on Personal Data Breaches continued with 2,376 notices being submitted to the ODPC. When data breach notifications become legally mandatory under the GDPR from May 2018 it will be interesting to see how this impacts the numbers.

Enforced Subject Access Request

Section 4(13) of the DPAs commenced in 2014. This Section makes it unlawful for employers to require employees or candidates for employment to make an access request or to provide them with information obtained under such a request. The section was intended to prevent employers insisting upon employees producing criminal records or other personal data sourced from third party databases for the purpose of enabling the employer to make recruitment decisions. The ODPC launched an investigation into compliance with Section 4(13) from a criminal-records-check-perspective. While the ODPC was satisfied that no institution sought to deliberately breach the provisions of the DPAs regarding enforced subject access requests, it concluded that a number of organisations across the spectrum of recruitment, financial institutions and retail were in contravention. The ODPC will continue to prosecute organisations who engage in "vetting by the back-door".

Privacy Audits

The ODPC carried out 51 privacy audits last year as against 38 privacy

audits in 2014. Under half of the 51 audits were "dawn raids" arising from specific complaints or investigations carried out under Section 24 of the DPAs. The ODPC focused on recruitment practices, the deployment of CCTV in a range of shopping centre and retail outlets and utilities companies while in the public sector, audits were carried out on Dublin City Council's Franchise Section and on the Road Transport Operator Licensing Unit.

Arising from the audits, the ODPC has highlighted the following "top 10" themes:

- Lack of data-retention policy.
- Lack of signage of policy for CCTV systems.
- Excessive use of CCTV systems.
- Lack of audit trails to identify inappropriate access.
- Poor call-handling security procedures potentially allowing for 'blagging'.
- Illegal use of enforced subject access requests.
- Lack of clarity in relation to data controller/ data-processor contracts.
- Clear identification of data controller where a debt collector has been engaged.
- Excessive use of biometric time and attendance systems.
- Excessive use of body-worn cameras.

Financial Services

The Report identifies a number of issues of specific interest to regulated sectors, in particular those in financial services. For example, the Report notes that a consultation was undertaken by a variety of stakeholders on the legal basis necessary to underpin the potential establishment of a national anti-fraud database for the banking sector; several banks and insurance companies were included in the list of companies audited in 2015 while two banks (Danske and AIB) are named in the Case Studies in relation to complaints upheld by the ODPC in relation to data disclosure and data accuracy issues.

Emerging Trends

The Report provides an insight into some emerging issues. For example, the ODPC received 23 'Right to be Forgotten' complaints on foot of the Google Spain Case of which seven were upheld and 16 were rejected. The focus on body-worn cameras is also illustrative of changing technologies and how they immediately impact on the role of privacy regulators.

Binding Corporate Rules

While developments in relation to Standard Contractual Clauses and Privacy Shield are ongoing, it is interesting to note that the ODPC reports that it is acting as a lead reviewer in four Binding Corporate Rules applications although details of the companies involved will not be released until the BCRs have been approved. As BCRs will continue to be permitted under the GDPR and as they seem to be under less scrutiny than other data transfer mechanisms, it is interesting to note the gradual uptake in activity in this area.

Global Privacy Sweep

The DPC took part in the annual global Privacy Sweep between 11th and 15th May 2015 which this year focused on practices of websites and mobile applications aimed at young people. Results from this global study found that 41% of the websites and apps surveyed raised major concerns, specifically relating to the level of personal data collected and then shared with third parties.

However, the Report did identify some good practice areas, with certain websites and apps providing effective protective controls, such as parental dashboards and pre-set avatars and/or usernames to prevent children from inadvertently sharing their own personal information. Of the sites and apps reviewed 71% did not offer an easy route to deleting account information. The Irish sweep identified five sites/apps that raised particular concerns for the ODPC. The Report stated that in one case the DPC alerted the Information Commissioner's Office (ICO1) in the UK of their findings.

What's Next?

The Government's legislative programme for the remaining part of 2016 includes a proposal to publish the Heads of Data Protection Bill as part of Ireland's GDPR implementation programme. That legislation will need to address the change in status of the ODPC to become Ireland's "Supervisory Authority" under the GDPR. Whether it will include other changes to the ODPC's role remains to be seen.

Rob Corbet, Member of the ACOI Data Protection and Technology Working Group and Partner in Arthur Cox. ICQ

1 ICO - UK's independent body set up to uphold information rights

The ODPC issued its 2015 Annual Report on 21st June 2016. The Summer Edition of ICQ had been issued, hence the reason why it is appearing in the autumn 2016 Edition. Source: https://www.dataprotection.ie/docs/21-06-2016-Commissioner-publishes-Annual-Report-2015/1576.htm

EU-US Privacy Shield:

An update for Data Protection Officers

The new Privacy Shield replaces the old Safe Harbor exchange of personal data but what does it mean for data protection officers?

The EU-US Privacy Shield (or Privacy Shield) is the new method of enabling the exchange of personal data between the United States and the European Union, enacted on July 12, 2016. The previous method - known as "Safe Harbor" permitted American companies involved in data processing in the EU to self-certify that their processing was undertaken in accordance with European legal provisions on data protection.

Why the change?

Following the decision of the European Court of Justice in October 2015 in the Schrems case, the Safe Harbor process was invalidated on the following grounds (1) in approving the Safe Harbor regime the European Commission had failed to ensure that the US provided an equivalent level of protection of fundamental rights to that available in the EU and (2) the Safe Harbor process potentially deprived data subjects of their rights of access to local Data Protection Supervisory Authorities, who have authority to independently review data controllers within their local jurisdictions.

So what happens now?

The intention behind the Privacy Shield is that it is a compliant replacement for Safe Harbor. The US Department of Commerce (DoC) launched a new website on July 26 providing individuals and companies with additional information regarding Privacy Shield. It also provides information about complying with, and self-certifying to, Privacy Shield's principles. Applications for self-certification began on August 1.

There are four key pillars to the Privacy Shield.

1. Obligations on companies

US companies must register annually to be included on the Privacy Shield and self-certify that their procedures are in compliance with seven Privacy Shield principles, known as Privacy Principles – which are similar in nature to those which existed under Safe Harbor.

a) **Notice:** Organisations must provide information to data subjects on the key elements relating to the processing of their personal data, including the type of data collected, the purposes of the processing, the right of access and choice, conditions for onward transfers and liability. There are obligations around publication of privacy policies, links to the US DoC's website being available in addition to links to the website of their chosen independent alternative dispute resolution provider.

b) **Choice:** Data subjects can opt out of the transfer of their data to third parties, or the use of their data for materially different purposes than those to which they originally consented. Data subjects will be required to opt in to processing of sensitive data.

c) **Security**
Organisations creating, maintaining using or disseminating personal data must take all reasonable and appropriate security measures taking into account the risks involved in the processing and the nature of the data. If sub-processors are used, the primary data processor must ensure that the sub-processor guarantees the same level of protection.

d) **Data integrity and purpose limitation:** Personal data must be limited to data which is relevant for the purpose of the processing, reliable for its intended use, accurate, complete and up to date.

e) **Access**: Data subjects have the right to obtain confirmation from an organisation as to whether the organisation is processing their personal data. This right can only be restricted in very limited circumstances. Data subjects must be permitted to correct, amend or delete personal information where it is inaccurate or has been processed in violation of Privacy Shield Principles.

f) **Accountability for onward transfer:** Onward transfers can only happen for limited and

specified purposes and on the basis of a contract, or comparable arrangement, where that contract provides the same levels of protections as those provided by the Privacy Principles.

g) **Recourse, enforcement and liability:** Organisations relying on the Privacy Shield to transfer personal data must ensure that robust mechanisms exist to ensure compliance with the Privacy Principles, while also providing recourse to EU data subjects whose personal data have been processed in a non-compliant manner – to include effective remedies.

2. US Government Access

The US government has given the EU written assurances that any access to the personal data of Europeans by US public authorities will be subject to clear limitations and oversight and that there will be no indiscriminate monitoring of personal data of European citizens.

3. Redress under the Privacy Shield

A number of redress mechanisms exist. A party may lodge a complaint with the company itself and a response must issue within 45 days. A company can voluntarily commit to comply with advice received from an EU Data Protection Authority (DPA), but if the data in question involves human resources data then the advice must be complied with. Parties can complain directly to their local DPA, who will then refer it to the DoC or to the Federal Trade Commission if necessary for resolution. A further avenue for redress is under the alternative dispute resolution procedure, the use of which must be agreed to by companies self-certifying under the Privacy Shield. As a final resort there is also the possibility of arbitration by the Privacy Shield Panel, which can make binding decisions against US self-certified companies.

There are also mechanisms to allow Europeans challenge perceived unlawful usage of their personal data by US authorities for national security purposes. The Privacy Shield provides for an Ombudsperson in the Department of State, independent of the security agencies whose function it is to inform a complainant whether their complaint has been properly investigated and the relevant law complied with, or in the event of non-compliance that the breach has been remedied. Further options for redress will be provided by the US Judicial Redress Act, as once commenced, Europeans will then have access to the US courts to bring civil actions against US government agencies for breaches of the Privacy Act 1974, which laid out principles relating to limits which must be observed by security agencies when dealing with personal data.

4. Monitoring

A joint annual review mechanism is provided for under Privacy Shield which will enable both EU and US authorities to review its efficacy. This mechanism will place significant focus on the access to the personal data of Europeans by US security agencies.

What does this mean in practice?

The DoC's website is live and accepting applications for self-certification. The DoC will also maintain a public register of organisations that are included in the Privacy Shield, similar to the one currently maintained by the Irish DPA. Organisations will be removed from this register for persistent breaches of the Privacy Principles, and if removed the reasons for the removal will be made publicly available. In addition, if removed an organisation will have to return or delete the personal data received under Privacy Shield.

Uncertain road ahead?

The trade in transatlantic digital services is worth in the region of $250 billion dollars, so agreeing on a revised mechanism that facilitates the transfer of personal data was a key priority for both the EU and the US. That said, criticisms of it have already emerged. The Article 29 Working Party[1] issued a statement on 14th August raising concerns on the lack of specific rules on automated decisions and a lack of a general right to object. They have also raised questions about the applicability of the Privacy Shield to data processors, the independence and powers of the new Ombudsman mechanism and the lack of concrete assurances that bulk data collection practices are not occurring. Other commentators express the view that Privacy Shield is likely to be challenged in the same way as Safe Harbor was in the Schrems case and expect it too to be set aside in the future. What is certain though is that given the financial value associated with the personal data transfers involved, this topic will continue to be a hot topic on both sides of the Atlantic for the foreseeable future.

Further information can be found at www.privacyshield.gov

Mary Colhoun, Member of the ACOI Data Protection and Technology Working Group and Director of Data Protection, eir ICQ

1 The Article 29 Data Protection Working Party was set up under the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. – http://ec.europa.eu/justice/data-protection/article-29/index_en.htm

The Endless Possibilities of Fintech

Ireland is well positioned to take advantages of the disruption taking place in the financial services sector with a strong and emerging Fintech and Regtech sector.

Fintech is an increasingly hot topic in financial services. It comprises of two strands, (1) traditional financial services companies using technology to deliver and improve their offerings; and (2) technology companies providing innovative financial services directly to their customers.

Ireland is emerging as a hub for the Fintech sector, owing to its mix of technology companies and financial services providers operating in close proximity. In its IFS 2020 Report, the Irish Government has recognised the potential for the growth of Fintech in Ireland, with the goal of creating 5,000 jobs in the sector by the year 2020. How the industry deals with a combination of market, technical and regulatory challenges will determine whether this target is met.

Regulatory Challenges for Fintech Operators

While Fintech offers exciting opportunities, it also gives rise to difficult regulatory issues. As a 'disruptive[1]' industry, new developments often do not fit neatly within existing regulatory frameworks and policies. In this respect, there is a tension between protecting users from potential risks, and nurturing the growth of the Fintech industry at the same time.

Undoubtedly, Fintech has captured the attention of regulatory authorities. In Bernard Sheridan, Director of Consumer Protection at the Central Bank of Ireland's address at the European Tech Summit he commented:
"As new technologies change the everyday provision and delivery of financial services for consumers and firms, it becomes more challenging for regulators to monitor what is going on as the regulatory rulebooks and supervisory tools struggle to keep pace with developments. There is uncertainty around the wider long-term impact and implications of Fintech and with uncertainty comes increased risks and with increased risks comes an increased interest in the Fintech space [by regulatory bodies]" (May 5, 2016 www.centralbank.ie)

Technology companies, which are used to moving quickly, can find themselves in an unfamiliar, heavily regulated environment, having to learn to work with regulators who take time to consider innovations.

Having said that, some EU regulation has stimulated growth in this sector. The enactment of the Payment Services Directive in 2009 and the E-money Directive in 2011 has facilitated the growth of payment services from non-bank firms who have the ability to provide those services across Europe using the so called "passport". These rules also standardise services which are exempt from regulation. In the payments sector for example, firms which provide technology to aid or facilitate the payment process, so called "technical service providers", do not require any authorisation provided they do not handle client money. Similarly, online marketplace platforms do not need an authorisation to accept customer monies where they do so as agent of their seller clients, this is the so-called "commercial agent" exemption. E-money issuers often avail of the so called "limited network" exemption to allow them issue E-money (e.g. gift cards) without the need for authorisation.

The Impact of Payment Services Directive 2

The new payment services directive ("PSD 2"), which is due to come into force on January 13 2018, is intended to further support innovation by providing for new forms of regulated service which can avail of the EU passport but at the same time some of the exemptions which have been used extensively will be pared back in scope. The result will be more activities and more firms will be subject to financial regulation and authorisation requirements.

The first new type of service provider to be recognised by PSD 2 is a "Payment Initiation Service Provider". This is a firm which initiates a payment order requested by the customer, in relation to the customer's account held at a payment service provider ("PSP"), typically a bank account. Payments will be able to be pulled from a customers' bank account without the need for the customer to have a credit or debit card. Such service providers already exist in

Europe, for example Sofort in Germany or iDEAL in the Netherlands and the intention of PSD 2 is to allow such services to be provided everywhere in the EU.

The second new type of service provider is an "Account Information Services Provider". This refers to a service where customers can be offered consolidated information on multiple payment accounts held by them across more than one PSP. They are commonly known as 'account aggregators' and each PSP, typically banks, will be required to allow these account aggregators access their systems in order to be able to provide the aggregation service.

As previously mentioned, PSD 2 narrows the scope of some frequently used exemptions such as the commercial agent exemption and the limited network exemption with the result that more services and firms will need to be authorised by the Central Bank.

In addition to promoting new services and broadening the range of regulated activities PSD 2 also seeks to address security concerns of customers making payments online. New legal obligations for "strong customer authentication" will apply to all regulated payment transactions. The concept of strong customer authentication is based on knowledge (something only the user knows), possession (something only the consumer has) and inherence (something the user is).

Data Security

Data protection rules are also due to be enhanced with the introduction of the EU General Data Protection Regulation (GDPR), expected to be enacted in 2018. The existing data protection regime poses structural and security challenges for those involved in financial services, in particular where there is convergence with technologies such as online and cloud. Furthermore, recent case law in Europe has emphasised the need for consideration of the rights of the consumer when developing products and services. The GDPR reinforces this individual rights-based focus, with some of the key changes to apply under the GDPR including the expansion of EU data protection rules to non-EU based data controllers who have EU based customers, more specific consent provisions and a one stop shop from a regulatory perspective which will provide clarity for consumers (data subjects) as to the appropriate regulatory authority with which they will should deal. Sanctions for non-compliance and enforcement will also be increased.

The interplay between new rules, such as these under PSD 2, and enhancements to existing requirements, such as through the

GDPR, will have a marked effect on how Fintech product and service offerings develop into the future.

The Emergence of Regtech

Finally, Regtech has emerged recently as a focus area within the Fintech space, and can be described as the application of technology in managing regulatory requirements. Examples include utilising vendor and customised software tools to track the multiplicity of regulatory obligations that exist in financial services, or indeed any business operating in a regulated or partially regulated environment, such as the use by asset managers of technology to pre-check trades against UCITS investment restrictions.

Regulators are moving to rely more heavily on data mining to supervise firms more efficiently and effectively. This has led to an ever increasing amount of information being reported to regulators. Producing, managing and reporting large volumes of data requires a robust technical solution. This can be a challenge for regulated firms, but also represents an opportunity for software providers. There has been a significant increase in firms providing solutions for financial institutions. In many cases the data requested originates from an EU-wide requirement, or an SEC rule in the US, resulting in technical solutions which are scalable and exportable.

The constant changes in the regulatory environment present both challenges and opportunities for emerging, 'disruptive' Fintech firms operating in the financial services space. Ireland as an existing Fintech hub is well placed to expand on these opportunities through continuing innovation. To fully capitalise on the Fintech boom, firms need to understand the new rules and regulatory requirements, and to engage with the right partners to develop solutions which meet the needs of individual customers.

Joe Beashel, Member of ACOI and Partner and Head of Regulatory Risk Management and Compliance, Matheson. ICQ

1 Clayton Christensen first coined the term a disruptive innovation. He describes it as a process by which a product or service takes root initially in simple applications at the bottom of a market and then relentlessly moves up market, eventually displacing established competitors.

Source: http://www.claytonchristensen.com/key-concepts/

The Directors Compliance Statement Under the Companies Act 2014: What You Need to Know

ICQ reports on an ACOI-hosted event in June 2016 that dealt with the Directors Compliance Statement with speakers Dr Tom Courtney, Chairperson of the Company Law Review Group and Partner in Arthur Cox and Professor Niamh Brennan, University College Dublin.

The Directors Compliance Statement is a new paragraph which must be inserted in the Directors' Report of certain companies whereby directors acknowledge responsibility for ensuring the company complies with its relevant obligations and give certain confirmations as to measures taken to secure compliance with those obligations.

Dr Courtney outlined the companies in scope being all PLCs (except investment companies) and LTDs, Designated Activity Company (DACs), Company limited by guarantee (CLG) – where the balance sheet exceeds €12.5m and the turnover exceeds €25m. Directors must, in the Directors' Report, state the following:

Professor Brennan outlined strategies to give assurance to non-executive directors (NEDs) in order for them to feel comfortable to agree to the Directors Compliance Statement. In order for a NED to attest that there are appropriate arrangements or structures in place, a company could consider a flow chart documenting the hierarchy of controls, reporting levels, assurance mechanisms, and front line responsibility. Professor Brennan suggested that companies also consider asking managers to firstly attest that appropriate arrangements and structures are in place for their area in order to give the Board assurance. Professor Brennan also recommended that a Board consider requesting that certain people attend a Board meeting to discuss this matter including general legal counsel, tax advisors, compliance officers and internal auditors.

New Requirement	**Comment**
Acknowledge their responsibility for securing compliance with the company's relevant obligations*	This is not necessarily something new in regard to law; this requirement is merely the directors acknowledging a responsibility
Confirm that a compliance policy statement (appropriate to the company) is in place (or if not done, explaining why not)	The policy statement does not appear in the directors' report: the requirement is only to confirm it has been done, or say why it has not been done.
Confirm that appropriate arrangements or structures are in place designed to secure material compliance with the company's relevant obligations (or if not done, explaining why not)	There may be scope for this happening in the context of an existing broader compliance or audit review
Confirm a review of the arrangements or structures has taken place during the financial year (or if not done, explaining why not)	There may be scope for this happening in the context of an existing broader compliance or audit review

**Relevant obligations means the company's obligations i) Under the Companies Act 2014 where a failure to comply would be a category 1 or category 2 offence, a serious market abuse offence, serious prospectus offence or serious transparency offence and ii) Tax law (customs acts, excise duty, Tax Acts, CGT, CAT, Stamp Duties etc.).*

Following the event, attendees completed a survey indicating their readiness and plans for this new requirement. Over half the respondents had either significantly considered the above requirements or were ready to implement the requirements. 60% of respondents are considering giving directors training or a briefing on the requirements. Just under half of the respondents will consider requiring managers to attest to the efficacy of the controls in their area to give the Board assurance. Only 12% of respondents foresaw any resistance from directors in signing the statement. The respondents named some benefits of the new requirements as a greater focus on control, more accountability for managers/first line of defence and promoting a greater awareness of the obligations that directors are expected to comply with.

Elaine Staveley, Member of the ACOI Prudential Regulation and Governance Working Group and Head of Risk and Compliance at 'Bastow Charleton Wealth Management'. ICQ

The Technical Side of Prudential Regulation: A Payment Institution's Perspective

With increased competition in the banking industry likely to come from payment institutions, what are the technical implications of prudential regulation for these payment institutions?

The CBI and Prudential Supervision
One of the regulatory objectives of the Central Bank of Ireland (CBI) is Prudential Supervision, which they define as 'to carry out assertive, risk-based supervision of institutions and markets, in order to foster a robust and competitive financial sector and to ensure the stability of the financial system'. While it may be difficult to define 'prudential regulation', this has not stopped a flurry of new prudential requirements originating both internationally and domestically over the past few years.

The many faces of Prudential Regulation
In the insurance industry, firms will all be well versed in Solvency II, the regime for the prudential regulation of European insurance companies that came into force on January 1 2016. It is hoped that this will modernise the existing regulatory framework, with the objective of providing an enhanced and more consistent level of protection for policyholders across Europe. Solvency II introduces features to improve a firm's understanding and management of its risks, which should result in improved resilience to shocks.

For the banking industry the equivalent is the Capital Requirements Regulation (CRR) and Capital Requirements Directive IV (CRD IV), an EU legislative package that contains prudential rules for banks, building societies and investment firms. The aim of CRR/CRD IV is to address the weaknesses of Basel II regulations which were identified during the financial crisis; including to minimise the risk of firms failing by ensuring that firms hold enough high quality financial resources to cover the risks associated with their business. CRR/CRD IV came into effect on January 1 2014.

But what about the financial institutions that fall outside Solvency II and CRD IV, like payment institutions? A 'payment institution' is an entity that has been granted authorisation under the European Communities (Payment Services) Regulation 2009 (which implement the Payment Services Directive (PSD) to provide and execute payment services in Ireland (and overseas via its passport).

While this may have been an area in regulation that has not received much attention, it has been noted in the industry that much competition for the banking industry will come through payment institutions. The Payment Services Directive 2 (PSD 2) which was published in November 2015, (transposition date is expected to be January 2018), assisted this specifically due to the new requirement that 'Member States shall ensure that payment institutions have access to credit institutions' payment accounts services on an objective, non-discriminatory and proportionate basis. Such access shall be sufficiently extensive as to allow payment institutions to provide payment services in an unhindered and efficient manner. PSD 2 brings with it new prudential requirements also, but what about the current prudential hurdles faced by payment institutions?

A Payment Institution's Perspective
When the PSD was implemented in 2009 the CBI simultaneously issued a document entitled 'Prudential requirements for payment institutions authorised under S.I. no. 383 of 2009 – European Communities (Payment Services) Regulations, 2009', which set out prudential requirements for payment institutions authorised in Ireland and supplement the prudential requirements already in the PSD. The latest update to this occurred in June 2015 to reflect the CBI's current Fitness and Probity regime and the deletion of the section relating to Anti-Money Laundering.

As of April 2016, a total of 12 Payment Institutions have been granted an authorisation by the CBI and are on the CBI Register of Payment Institutions. Whilst this number may not seem

significant, as opposed to the 1,000 authorised payment institutions in the UK, it should be noted that it is through the use of agents that many of these money transfer services are provided to consumers, both in Ireland and across the E.U, and to date there are over 20,000 agents on the CBI Register. An agent is a natural or legal person who acts on behalf of a payment institution in providing payment services. This could be a bank or a corner shop but when the payment institution is supervised by the CBI, all their agents must be registered with the CBI regardless of where they are based, ie Ireland, UK, France etc.

Below is a high level summary of the key prudential requirements for payment institutions:

Capital – A payment institution authorised under the Payment Services Regulations is subject to both an initial capital requirement and an on-going capital requirement. During the application for authorisation, the CBI will advise of the amount of initial capital, the on-going calculations are described below. Once authorised, the payment institution is required to submit a report to the CBI on an annual or more frequent basis, as advised, outlining its ability to comply with this requirement.

Own Funds – On an on-going basis a payment institution must ensure that it has sufficient capital ("own funds") in its own right to meet the applicable capital requirement. The Payment Services Regulations provide three methods for the calculation of "own funds" - Method A is 10% of the previous year's fixed overheads; Method B is calculated by a formula based on the level of payment transactions in the previous year; and Method C is calculated by a formula based on the level of income of the firm. A scaling factor is applied in both B and C based on the services the institution is authorised to provide. However, should a payment institution form part of a group it must ensure that the own funds held by the payment institution to meet the capital requirements imposed by virtue of its authorisation under the Payment Services Regulations are not used elsewhere in the group to meet regulatory capital requirements. Further to this, only fully paid-up funds may be taken into account; the loans involved must have an original maturity of at least five years; the extent to which they rank as own funds shall be gradually reduced over the last five years.

Safeguarding Users' Funds – Every payment institution authorised in the State must satisfy the CBI that it has adequate arrangements in place to safeguard the funds of payment service users. Users' funds consist of funds which a payment institution, an agent, branch or third party service provider acting on behalf of a payment institution has received in the course of carrying out payment services and which the payment institution, branch, agent or third-party service provider holds on behalf of a payment service user. This includes funds received from payment service users and funds received from other payment service providers which have not yet been paid out. A payment institution is required to safeguard all users' funds and to prevent the use of users' funds for the payment institution's own account.

It is also possible that a payment institution does not know the exact portion of the funds to be used for payment services so it may make a reasonable estimate. Such an estimate should be based on historical data and a payment institution should be in a position to justify its estimate accordingly.

How to safeguard users' funds – A payment institution can safeguard users' funds either by:

a) Segregation: Ensuring such funds shall not at any time be comingled with the funds of any natural or legal person other than payment service users on whose behalf the funds are held and ensuring such funds are insulated against the claims of other creditors of the payment institution in the event of an insolvency; or

b) Insurance Policy/Comparable Guarantee: Ensuring such funds are covered by an insurance policy or comparable guarantee from an insurance company or a credit institution which does not belong to the same group as the payment institution itself for an amount equivalent to that which would have been segregated in the absence of the insurance policy or comparable guarantee and payable in the event that the payment institution is unable to meet its financial obligations.

Irrespective of the method chosen a payment institution must exercise due skill, care and diligence in the selection and periodic review of a credit institution or custodian or insurer used to safeguard users' funds and must take into account the expertise and market reputation of the entity and any legal or regulatory requirements or market practices that could adversely affect payment service users' rights. Additionally, if users' funds are held, records and accounts as necessary should be retained, to enable them to distinguish funds held for one user from funds held for any other user and from the funds of the payment institution.

Reconciliations: To ensure the accuracy of its records a payment institution must as often as necessary carry out an internal reconciliation of all records and accounts of entitlements of payment service users with the records and accounts of amounts safeguarded. A payment institution must carry out a reconciliation of its internal records of amounts held for payment service users with third party statements of users' funds held. This reconciliation should be performed daily by the end of the following business day. In order to complete the reconciliation a payment institution should reconcile the balance on each user's account as recorded by the payment institution with the balance on that account as set out in the statement or similar document issued by the relevant party. Where such reconciliations are carried out electronically a payment institution should retain a hard copy of the reconciliation signed and dated in accordance with the four-eye principle. The payment institution should notify the CBI in writing within one business day of the completion of the reconciliation of any differences (other than timing) which are material (while not specifically defined by these regulations, material should be taken to mean of considerable importance, size, or worth dependent on the size/scale of the organisation) or recurrent in nature. A payment institution must notify the CBI immediately where it has been unable or has failed to perform the reconciliation within the timeframe permitted.

Relationship with the Central Bank of Ireland: In addition to the requirements set out in the Payment Services Regulations a payment institution is required to consult with the CBI prior to engaging in any significant new activities including, but not limited to, the provision of additional payment services (i.e. electronic money transfer). As with all regulated financial institutions in Ireland, a payment institution is required to be open and cooperative in its dealing with the CBI.

Annual Accounts: The payment institution is required to submit to the CBI, in a timely manner, and in any case not later than six months after the end of the relevant reporting period annual audited financial statements in respect of the payment institution.

Reporting Requirements: Each payment institution is required to submit, at the frequency specified to the payment institution by the CBI, and within 20 business days of the end of the relevant reporting period a report setting out various details specified by the CBI, including but not limited to, details of profit and loss in conjunction with and the number of agents appointed and terminated.

Being an authorised Payment Institution also carries an obligation to comply with numerous requirements specifically for the use of agents, outsourcing, fitness and probity and passporting, but that is an article for another day.

The Working Group welcome any insights or feedback that you may have in this regard that could be captured in future articles/papers and/or CPD events, send to clarissa.hills@acoi.ie

Niamh O'Mahoney, Member of the ACOI Prudential Regulation and Governance Working Group and Senior Analyst, Regulatory Compliance Function, Western Union Payment Services Ireland Ltd. ICQ

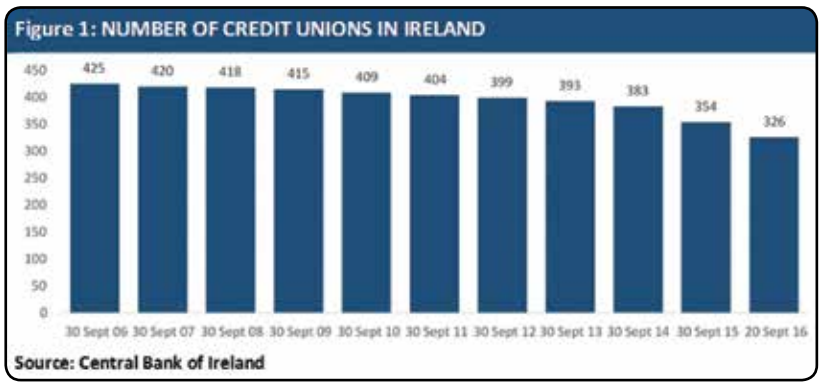
New Process for Credit Union Mergers

Since 2013, the Credit Union Restructuring Board (ReBo) has served as the statutory body responsible for overseeing the voluntary restructuring of credit unions. March 31,2016 was the final date for ReBo acceptance of voluntary restructuring proposals. Any credit union seeking to pursue a voluntary restructuring solution now needs to contact the Registry of Credit Unions (RCU) within the Central Bank. RCU recently published an explanatory note on this legal process. Ellen Farrell of ReBo and Chair of the ACOI's Credit Union Working Group provides an overview of this legal process.

BACKGROUND

The credit union movement has been in Ireland for over 50 years. Each credit union is owned by its members, who save together and lend to each other. To be eligible to join an Irish credit union you must be within its common bond, such as a community common bond, where members live or work in a specific location. In the credit union sector, Board of Directors are unpaid volunteers, who are elected by the members to represent them.

In 2011 the Government established the Commission on Credit Unions to review the future of the credit union Movement. The Commission Report[1] recognised the need for consolidation within the sector. Following the Credit Union and Co-operation with Overseas Regulators Act 2012 (the Act), ReBo was established in 2013 to oversee voluntary restructuring within the credit union movement, with a €250 million fund. ReBo has assisted in accelerating the pace of restructuring (figure 1). As of July 2016, 214 credit unions with over €7 billion in assets were engaged with ReBo at varying stages of the restructuring process.[2] The Credit Union Advisory Committee (CUAC) 2016 report highlighted the significant impact ReBo has had on progressing restructuring within the sector[3] but also that restructuring is not an end in itself, CUs need to develop their business models. ReBo expects to spend just €20 million of the €250 million fund. While ReBo is drawing to its conclusion, due to the significant challenges facing the credit union sector voluntary mergers are expected to continue through the legal method of a transfer of engagements. These financial and governance challenges include a steadily decreasing loan to asset ratio, increasing costs and difficulty attracting and retaining skilled volunteer Directors. Credit unions seeking to complete transfers of engagements will be expected to clearly demonstrate how the proposed combination will help to address these business challenges.



TRANSFER OF ENGAGMENTS (TOE) PROCESS

A transfer of engagements is a voluntary process whereby all assets, liabilities and undertakings of one or more credit unions ["Transferor(s)"] are transferred to another credit union ["Transferee"]. While every project is different, in general each transfer of engagement will comprise of the following eight stages. Typically the overall legal process can take between six - nine months, with the timeline being dependent upon individual circumstances, scale, complexity and availability of due diligence providers. Each proposal is considered on a case by case basis. As will be agreed with RCU at the outset of the process, various submissions will need to be made at certain stages to the RCU for review and approval to proceed to the next stage. Issues may be encountered at any stage, which could cause the TOE to be paused or discontinued.

STAGE 1 – INITIATION PHASE
The first step is for the Board of Directors of the credit union to decide to pursue a merger strategy. Then they can start the process of finding a suitable credit union partner by either engaging directly with other credit unions or engaging with the RCU to facilitate this process. The board of directors should assess the need to appoint a steering committee to represent the credit union at merger discussion meetings.

Entering into a merger transaction is a significant decision. The credit union board of directors should ensure that all material aspects of the merger, both positive and negative, have been considered. The board should be in the position to confirm that the proposed restructure project is in the best interests of their membership. Credit unions will need to exchange information with each other to perform a fact find/compatibility review and discuss any potential deal breakers early in the process, to satisfy each credit union that there are no insurmountable impediments to the proposed merger. Potential deal breakers can include board representation and management structure, loan rates, services and the credit union name.

Credit unions should contact the RCU once they are satisfied that they have identified a suitable partner and indicate their intentions to proceed with a TOE. The RCU will seek to meet with representatives of both credit unions to give an overview of the process and establish indicative timelines for the legal process. At this stage credit unions will be required to set out the rationale for the proposed transfer and may be required to provide a high-level business case detailing how the combined credit union would operate post the proposed transfer of engagements.

STAGE 2 – DUE DILIGENCE PHASE 1 – ASSET REVIEW
Upon satisfactorily completing the Initiation phase, the RCU will issue e terms of reference. The Asset Review (AR) of the credit unions will cover loan book, investments, fixed assets and governance relating to assets. An external independent consulting firm will need to be appointed by the CUs to complete the Due Diligence (DD) on each of the CUs. A project manager (PM) may also need to be appointed by the CUs to oversee the process and to liaise on the credit unions behalf with the RCU. The AR reports are to be submitted to RCU, who will complete their review and will revert to the PM/ credit unions with queries. Credit unions can contact ReBo for a list of DD providers that were on their selection panel, alternatively RCU can provide a list of providers on a 'no objections' basis.

STAGE 3 – DUE DILIGENCE PHASE 2
Phase two Due Diligence involves a review of financial performance, governance, operations, products, controls, compliance, IT, HR, and legal matters. RCU may issue terms of reference for Due Diligence phases 1 and 2 at the same time, but RCU do not recommend that phase 2 should commence until satisfactorily completing the Asset Review Stage and any subsequent queries.

STAGE 4 – DETAILED BUSINESS CASE AND INTEGRATION PROJECT PLAN
Upon satisfactorily completing the Due Diligence phases, the credit unions can prepare a Detailed Business Case* which outlines the basis for the proposed TOE, benefits and synergies the TOE should create, a strategic plan to include the proposed governance and management structure with financial projections, including any associated assumptions. The Business Case strategic plan should support the achievement of these financial projections.

The process of combining credit unions is complex, requiring a

comprehensive integration project plan* to be submitted, documenting milestones and their associated tasks against an appropriate timeline.

STAGE 5 – APPROVAL PHASE

Under Section 129 of the Credit Union Act, 1997, credit unions seeking to complete a TOE shall do so either by Special Resolution voted by Members or in circumstances where the RCU considers it expedient by Board Resolution passed by the Board of Directors.

Special Resolution Process –

Notification of the member meeting must include a Section 130 pack (as set out in section 130(3) of the Credit Union Act) and is required to be provided to the RCU, the auditor and members between 7-21 days prior to meeting. A Special Resolution must be approved by at least 75% of the members present at AGM/SGM. Once Special Resolutions are passed by both credit unions, the boards can make an application to RCU for confirmation of the TOE.

Board Resolution Process – The board of directors of each credit union in the merger must first apply in writing to RCU, to seek consent for permission to proceed by board resolution. If consent is given then the boards of the transferee and transferor credit unions should schedule meetings to pass board resolution to proceed with the TOE. Once board resolution is passed by both credit unions, tan application can be made to RCU for confirmation of the TOE. Within seven days of the board resolution being passed, a Section 130 pack* must be provided to the RCU, the auditor and members. Draft Section 130 packs must be submitted to RCU for review prior to issuing to members.

STAGE 6 – APPLICATION FOR CONFIRMATION OF TOE

When credit unions are submitting their application for confirmation of the TOE, the following documents should be included;

- The application confirmation of the TOE**
- The Instrument of Transfer of Engagements*
- Copies of the passed resolutions (Special Resolution/Board Resolution) **
- Copies of the proposed newspaper notices**

The credit unions are required to publish advertisement notices in two daily national newspapers, within seven days of the date of the application for confirmation of the TOE. Following the publication of these newspaper notices, a 21 day member representation period commences, as per section 131(2) of the Act. After the deadline for representation has elapsed, RCU will inform the CUs of any representations received and allocate CUs to comment. The RCU will then consider the TOE application and will either confirm the application, subject to any conditions it considers appropriate or refuse to confirm the application subject to section 131(6)(b) of the Credit Union Act, 1997.

STAGE 7 – CONFIRMATION OF TOE

Before RCU will confirm the TOE application, the credit union will need to have confirmed they are operationally fully prepared to affect the transfer. The credit unions are required to making this confirmation by submitting a Confirmation of Operational Readiness**. RCU will confirm the TOE by issuing the transferee credit union with a certificate of confirmation of the transfer and specify the effective date.

STAGE 8 – CANCELLATION OF THE TRANSFEROR(S) REGISTRATIONS

Once all assets have been transferred from the transferor(s) to the transferee, the transferee credit union will need to confirm this in writing to RCU by submitting a Certificate for Lodgement in Respect of an Instrument of Transfer of Engagements**. On receipt of this certification the RCU shall cancel the registration of transferor(s) credit union.

RCU is available to meet with any credit union that wishes to discuss or seek further information in relation to the transfer of engagement process. RCU can be contacted by phone (01-2244629 or 01-2244198) or by email at rcu@centralbank.ie.

Ellen Farrell, Chair of ACOI Credit Union Working Group and Restructuring Manager, ReBo. ICQ

*Templates can be found on http://www.rebo.ie/restructuring/forms-templates/

**Templates can be found on http://www.centralbank.ie/regulation/industrysectors/creditunions/Documents/Transfer%20of%20Engagements%20Explanatory%20Note%20and%20Related%20Forms%20May%202012.pdf

1 Report of the commission on Credit Unions, March 2012, available at http://www.finance.gov.ie/ga/what-we-do/banking-financial-services/credit-unions/credit-union-commission/commission-credit-unions

2 ReBo Communiqué July 2016, Restructuring Update, page 2, http://www.rebo.ie/wp-content/uploads/2014/07/July-2016-Communique.pdf

3 Credit Union Advisory Committee (CUAC) Report, June 2016, available at http://www.finance.gov.ie/sites/default/files/CUAC%20Review%20of%20Implementation%20of%20the%20Recommendations%20in%20the%20Commission%20on%20Credit%20Unions%20Report.pdf

The Protected Disclosures Act: Two Years On

The Protected Disclosures Act (PDA) was passed in July 2014 and became effective immediately. After two years in operation, Philip Brennan, Honorary Fellow & former Chairperson of the ACOI, shares his perspective on how the whole area of employee disclosure has moved on and some thoughts on how Compliance Officers should be monitoring disclosure polices and schemes for compliance with PDA.

In truth, PDA got off to a slow start. Many large private sector employers already had Employee Disclosure or Whistleblowing Schemes in place. However, it took some time before the penny dropped that significant updating was necessary to address the requirements of the new legislation. Equally, many smaller employers and those putting Employee Disclosure Schemes in place for the first time were slow to act – perhaps not surprisingly, as it was a new concept requiring new policies and procedures.

Some adopted a 'wait and see' approach. I remember going to see one prospective client who, having checked with the chairman of his audit committee, asked me to call back in 6 months when it was clearer what others were doing – if anything! Indeed, many private sector employers are only now, two years later, updating their schemes or putting new ones in place.

While it is not mandatory under PDA for private sector employers to have such schemes in place, it is strongly advisable. I have no doubt that an employer appearing before the Workplace Relations Commission or the courts in the future, accused of penalising an employee for making a protected disclosure or otherwise not complying with PDA, would be starting from behind in their defence if they had no Employee Disclosure Scheme, or an outdated one, in place.

Public Sector

Unlike the private sector, however, public service employers are required by Section 21 PDA to establish and maintain written procedures for 'workers' to make protected disclosures. Section 21 (3) states that the Minister for Public Expenditure & Reform may issue guidance for the purpose of assisting public bodies in doing this. Following an extensive consultation period, which commenced in September 2015, final guidance was put in place in recent months which can be found at http://www.per.gov.ie/en/protected-disclosures-act-2014/. While directed principally at public bodies, it is an extremely useful document for Compliance Officers overseeing the implementation or monitoring the adequacy of private sector schemes.

The public service also recently published a Request for Information in advance of tendering to put a framework in place for outsourcing the oversight of Protected Disclosure Schemes in public bodies. This also covered training, the conduct of independent investigations of wrongdoing disclosed, the investigation of claims of penalisation and the provision of advice.

So it is clear that, despite a slow start in the public service, there is now also a strong commitment to putting

robust all-embracing schemes in place to encourage and protect public service employees who disclose workplace wrongdoing and to conduct independent investigation of matters disclosed.

Publicity

Many of the cases that hit the headlines early on, including the Garda penalty points issue and the Ansbacher disclosure, involved disclosure to the Public Accounts Committee (PAC), rather than employer focused disclosure. In fact, as the legislation bedded in, it looked as if disclosure to the PAC or disclosure to politicians, who subsequently made them public under Dáil privilege, was going to be the norm. However, following advice from the Attorney General, the PAC subsequently seems to have adopted its own protocols as to what the Committee can and indeed cannot do concerning the follow up of such disclosures.

Slowly, the focus has now moved to where it should be – the introduction and updating of professionally operated employer schemes and the use of those by employees. The Policing Authority is currently engaged in a detailed consultative process in an effort to get this right within the Gardaí in the future.

Case Law

It will take some time before a body of case law on the interpretation of PDA builds up. There have been two notable cases so far, both involving claims for so called Interim Relief under Section 11(2) and Schedule 1 of PDA – where, on successful application to the Circuit Court, an employer is required to reverse a decision to dismiss an employee on an interim basis until such time as their Unfair Dismissals case is heard by the Workplace Relations Commission.

The first case involved the former CEO of Marymount Hospice in Cork who was dismissed from his position on February 2015. Judge James O'Donoghue in the Circuit Court refused his claim because, despite accepting without reservation his sincerity, the court found that objectively, based on the facts presented, his beliefs and disclosures were not "reasonable", as required by PDA. The plaintiff, therefore, failed on the first test for qualification as a protected disclosure, so the issue of interim relief did not apply.

The plaintiffs, in a more recent case of Lifeline Ambulances, however, made a successful application for interim relief. Judge Francis Comerford in the Circuit Court ruled that there were substantial grounds for contending that the dismissal of two senior managers was wholly or mainly due to their submission to the Revenue Commissioners of a disclosure of alleged wrongdoing by their employer.

I have no doubt that there are many other cases in the pipeline. Over the coming years, it is likely that a significant body of precedent will be built up from court decisions of this nature.

Annual Report by Public Bodies

Section 22 of PDA requires that every public body must prepare and publish, not later than 30th June each year, a report in relation to the immediately preceding year on the operation of PDA. To date, the only such reports that I have seen have been from the Central Bank Ireland (CBI) and they are instructive.

The CBI has reported that it received 44 protected disclosures between July 2015 and June 2016. This compares to just one protected disclosure reported between July 2014 and June 2015. It is not clear how this figure breaks down as between disclosures from employees of the CBI itself, disclosures to the CBI as a 'prescribed body' under PDA for financial regulation from employees of other sectors, or mandatory disclosures by the holders of Pre-Approved Controlled Functions (PCFs) in regulated firms. However, it is very clear that the incidence of disclosure to the CBI has increased dramatically – something Compliance Officers in financial services firms should take very seriously.

Of course much of the activity on Employee Disclosure and Disclosure Schemes takes place behind the scenes in both public and private bodies. My view is that, after a slow start, schemes are being updated, awareness is growing and, based on the significant increase in investigation work, employees – where they have confidence in the scheme put in place and the Board/Management's support for it - are more inclined to raise concerns they have about suspected wrongdoing. But there is still a long way to go.

What Compliance Officers Should be looking out for

Two years down the road, Compliance Officers should now be monitoring and reporting to Senior Management and Boards on their firm's compliance with PDA. This is important, not alone from the perspective of how the firm has responded to PDA, but also on how the culture of transparency and support for employee disclosure is evolving.

From a Compliance Officer's perspective, a strong and effective Employee Disclosure Scheme means that everyone in the firm is helping to monitor compliance with regulatory

and ethical standards – something you should be pushing strongly for, particularly in an environment of scarce monitoring resources.

I understand that the CBI is also taking an increasing interest in the nature and effectiveness of Employee Disclosure Schemes in regulated firms – a very sensible move in my view.

Here are a few pointers I would recommend to Compliance Officers when considering the effectiveness of your firm's Scheme.

- Has your firm's Disclosure Policy and Procedures (Scheme) been updated for PDA?
- Does your firm's Scheme go beyond PDA – e.g. does it cover breaches of internal procedure or compliance with your firm's Code of Ethics/Conduct?
- Does your firm's Scheme have the unequivocal support and demonstrable backing of Senior Management and the Board?
- Do all levels of management understand their responsibilities to protect disclosers from penalisation and how to respond if a worker raises an issue with them (even though they may not refer to it as a protected disclosure) – have they been trained?
- Has the firm an effective process in place to protect the identity of disclosers?
- Do all levels of management understand their responsibilities to protect disclosers from reprisal by colleagues and the need for ongoing vigilance in this area?
- Are the procedures for making disclosures readily available to all workers, including part time workers and new entrants?
- Are the Disclosure Policy and Procedures easy to understand?
- Have employees received training on the Scheme and is there a plan for ongoing refreshment of that training?
- Does the firm's Scheme offer workers more than one avenue for disclosure? – my recommendation is that there should be three – line manager, a senior independent manager outside the line (such as the Compliance Officer) and an independent professional third party recipient outside the firm who will protect the identity of the discloser.
- Have employees been made aware of the other avenues for protected disclosures provided for in PDA and the different criteria for qualification for protection in each case?
- Does your firm operate or subcontract the operation of an independent helpline for employee queries regarding protected disclosures?
- Does your firm have a case management system in place to log and oversee disclosures made across the firm?
- Does your firm give feedback to disclosers – if not, disclosers may think the firm is not acting on their disclosure and be tempted to disclose again outside the firm.
- Are disclosures risk rated and prioritised accordingly by the firm?
- Is there a documented process in place for conducting investigations of wrongdoing disclosed?
- Does the firm have experienced, trained investigators who are available, if called on, to conduct timely, independent investigations of employee disclosures of wrongdoing?
- Does the firm have an outsourced service provider who can perform such investigation work, where the firm does not have the available resources or expertise to do this in-house, or where there is a potential conflict of interest?
- Does management or the investigator prepare a 'root cause' analysis following each investigation of wrongdoing and learn from the experience?
- Does management report on the levels of employee disclosure and the outcome of the investigation of employee disclosure to the Board?
- Is the firm's HR Department aware of the protections which may be available to workers in the event of dismissal or other forms of penalisation, and do they know the questions to ask of management in order to mitigate the risk of a successful claim by an employee?
- Are PCFs aware of the mandatory requirement for them to disclose certain breaches of financial regulation to the CBI?
- Does the Compliance Department provide independent assurance to the Board on the operation of the Disclosure Scheme and the Investigation process?

I will conclude by answering a question I am frequently asked by firms – How do we know our Employee Disclosure Scheme is effective? The answer, in my view, lies not in the number of disclosures received (e.g. is a small number good or is a large number good?). The answer lies in looking at breaches of laws, regulations, codes and procedures that arise or are discovered in the normal course of business, often through Compliance monitoring, and asking the question – Should this have been escalated earlier via the Employee Disclosure Scheme?

Philip Brennan, Honorary Fellow and a former Chairman of ACOI and is Founder and Managing Director of Raiseaconcern (www.raiseaconcern.com). ICQ

Ensuring an Ethical Approach to Banking Practice

The banking crisis of 2007/2009 could possibly have been averted if the banking industry had a greater understanding of ethics and how they should be applied in banking.

Ed McDonald was in the first group of graduates of the MA in Ethics (Corporate Responsibility) at DCU, graduating from the programme in 2015. He is now a Fellow of the Association of Compliance Officers in Ireland (FCOI). Ed's research focused on the ethical aspects of why the banking crisis of 2007/2009 happened and if it could have been averted or at least been more moderate if the banking industry had a stronger understanding and application of ethics.

The thesis explored the role of ethics in decision making in banking and proposes that one ethical theory in particular, the Virtue Ethics theory (as developed by Aristotle), could be adapted as a model for guiding bank decision-making and behaviour. The Stanford Encyclopaedia of Philosophy defines virtue ethics as currently one of three major approaches in normative ethics. It may, initially, be identified as the one that emphasises the virtues, or moral character, in contrast to the approach which emphasises duties or rules (deontology) or that which emphasises the consequences of actions (consequentialism).

Ed has held varied positions in marketing and advertising. He has, among others, been CEO of the Association of Advertisers in Ireland, a Director of the Advertising Standards Authority in Ireland, and CEO of The Marketing Institute. As well as the MA in Ethics (Corporate Responsibility), Ed holds a Master in Business Studies (MBS) degree and a BA in Economics and Philosophy, the Diploma in Arbitration Law (UCD) and the CDip AF in Accounting and Finance. He is a Fellow of a number of bodies – FCOI, FMII and was also awarded the FCIArb in 1999.

What was researched and why

The Irish banking crisis provoked considerable criticism about why it happened and its subsequent impact on society, though there had also been ethical concerns about parts of the global finance sector previously. Indeed, some authors noted that in the US, '[…] finance was at the forefront of ethical concern in the 1980s and 1990s because of a range of scandals and bail-outs, executive compensation packages and companies that had clean audit opinions but subsequently collapsed, and these 'convinced many observers that Wall Street was consumed by greed.'[1] This also applied to banks and financial services in a number of other countries where bail-outs were implemented. Various commentaries have suggested that the crisis reflected aggressive business

cultures, that it was a breach of trust by banks, that it was driven by greed and that it involved some reckless lending and investment behaviour as well as intolerance of alternative and contrary viewpoints.

Many commentaries have been written about the crisis in Ireland but there has been limited focus on the ethical aspects of why the crisis happened, why banks made the decisions that they did. Government-sponsored studies of the crisis contained words to describe aspects of the crisis that resonated with concepts in ethics and various international studies identified corporate ethical practices being of significant importance in the area of financial services. The rationale for the research arose out of a sense of inquiry as to what had caused poor judgements to be made in the management of banking in Ireland, the influencing values the banks held and the cultures they promoted. While the research focused solely on the role of banks, it does not imply that the banks were solely responsible for the crisis.

How it was researched

A case study methodology was employed to research this, namely the financial crisis. The uniqueness of the banking crisis seemed to present a case study opportunity to assess the role of a clear ethics theory as a behavioural and decision-making framework for banking. Burns (2000) stated that; 'The case study is the preferred strategy when "how", "who", "why" or "what" questions are being asked, or when the investigator has little control over events, or when the focus is on a contemporary phenomenon within a real life context.[5] The research methods were a combination of interviews and literature analysis.

The first part of the research was based on a wide-ranging literature search. This review was extensive, covering approximately 90 publications which included Government reports, research studies and authoritative books on ethics, corporate culture, leadership and banking, by renowned writers. These topics were selected because they all seemed to be inter-related and relevant to banking organisations. Particularly important among these literature sources were the reports that came to be referred to simply as The Honohan, Nyberg, Wright and Regling-Watson Reports,[2] regular updates on The Oireachtas Banking Inquiry 2015,[3] as well as The DIRT Report of 2001,[4] and also reports on investigations into the UK banking crisis. These reports featured words and terms that regularly feature in treatises on ethics though they did not refer specifically to ethical concepts. The practical insights from these reports were complemented by reviews of publications that analysed and reflected ethical concepts and theories and the rationale behind them, especially Virtue Ethics.

The interviews formed the basis for the combined qualitative and case study research approach. It involved 21 interviews with a range of banking persons (including persons at top levels or with a role in oversight), independent professional and academic commentators, and financial media commentators who would be regarded as knowledgeable about the banking industry. Interviewees were provided in advance with a written outline of the thesis subject and rationale, and an indicative range of topic aspects for conversation. The nature of the dissertation question was one that required discussion on varied aspects with appropriate parties. The interviews allowed the interviewees express their views and choose to concentrate on particular aspects. This was necessary as it was pre-agreed that the interview time span would be for not more than one hour.

Research outcomes

The literature review on finance and banking highlighted extensive criticism of banking practices and speculation of behaviours that caused the crisis. Various studies[6] noted, as one of them stated, that 'at the heart of the UK financial crisis and the litany of scandals which have subsequently come to light (is) culture, and that the daily practices in it, (the way of doing things), are not readily visible, even to organisational participants themselves, let alone researchers.' Other parts of the literature review showed that numerous writers on ethics describe virtues as being human qualities and dispositions, inclinations on how to act generally in a situation. They are traits of character and exhibit the most excellent way to do things. Solomon (1993) said; ''A virtue . . . is an excellence. It is not, however, a very specialised skill or talent […] but an exemplary way of getting along with other people.'[7] This understanding of virtue is important because it requires us to make our decisions on seeking the best, the most excellent, decision. Rae (2009) noted that 'Good business actually requires not just trust, but some other important virtues. Hard work, diligence, thrift, initiative, creativity, promise keeping, and truthfulness

are just a few other virtues that are at the root of successful individuals and companies.'[8] Accordingly, key skills required by banking practitioners seem to include the ability to assess risk carefully, make sound judgements, act prudently and consider the implications of their choices, all of which feature in Virtue ethics.

Many organisations and banks now give prominence to their Codes of Conduct and speak of the importance of integrity and caring for their customers. Key to such Codes however is how people are trained in, and have ingrained in them, the Code's objectives and clear values.

Aristotle as translated by Ross (1925) strongly linked the words character, virtue, training and deliberation in describing human action and development, and argued that we need to deliberate and reflect so as to set our moral beliefs.

Interviewees generally observed that nobody set out to do damage to the banking system, and that banks would have considered themselves to be acting ethically. Problems in banking practice were more to do with increased competition between banks and that this evolved over time. What went wrong seemed to be industry-wide and it 'just happened'. Some interviewees observed that banks' ethos changed in the past 40 years and that they became more focused on profit rather than on service to their communities and clients. A number of the interviewees compared banking to a utility, specifically, to electricity. Electricity is a necessary element in society and has to be provided by some body. It was noted that electricity production carries potentially high risks in terms of safety and therefore has to be carefully managed. A major explosion could result in crucial damages. Likewise, managing finance can be high-risk and also needs to be carefully managed. Collectively, the banks failed to do this and a major explosion – the banking crisis – occurred. Safety standards (regulatory compliance and ethical standards) had fallen short.

Those who spoke about it in the interviews said that there is a need to consider contrarian views, and indeed, to encourage contrarian views. A contrarian viewpoint is not necessarily one that is opposed to the welfare or apparent success of the bank; indeed, if properly received and assessed it might actually contribute to success. It would seem that some of the contrarian views reported to have been expressed might have protected the banks concerned. Obviously, the contrarian view has to be sustained in reasonable argument.

Conclusion

It seems that many of the problems that arose in the crisis were related to what one could aptly call "virtues" or dispositions, people's action and

behaviour choices. Many of the issues mentioned in the interviews and official Government reports relate to aspects that could be called "virtues". Trust is a virtue, as are respect (for views of others), experience (capacity to consider all relevant factors), judgement (ability to adjudicate on issues), tolerance and balance (for alternative viewpoints), discipline (asking the right questions, respecting standards), fairness (consideration of others and society), and prudence (a traditional key banking attribute). In this regard it is notable that Peter Nyberg said that 'Ireland's systemic banking crisis would have been impossible without a widespread suspension of prudence and care by those responsible for bank management as well as by those charged with ensuring responsible financial conduct.'

This research contends that banks would have benefitted from a more clearly focused concentration on their driving cultures, behaviours, ethics and values, through the application of the Virtue Ethics theory. Ethical decision-making is not easily reducible to being black or white and always patently clear. The Virtue Ethics theory is not based on rules. It requires one to make a judgement, considering all relevant facts. Its application suits the practice of banking as a model for behaviour, decision-making and actions. But it requires that one has been trained in the theory and applies the principles. Aristotle readily recognises the importance of and role of emotions, habits and reason in what we do, but that we must properly critique the use and application of them. He was well aware of the importance of new developments and new discoveries in how we think and make decisions and how we need to adapt to them. Business and banking, as we know them, were not features of his day, but his words are still relevant as he summarised his own theories: 'So much for our outline sketch for the good. It looks as if we have to draw an outline first, and fill it in later. It would seem to be open to anyone to take things further and to articulate the good parts of the sketch. And time is a good discoverer or ally in such things.'[9]

It would be a useful exercise for boards and management to review a list of Virtues, and consider which of them most apply to banking practice. Corporate culture is a powerful influencing factor and it must be ethically cultivated. Codes of Ethics and Conduct are helpful but they need elaboration which is not easy to incorporate in a written code statement. There is a need for banks to more clearly define their ethical values and how a staff member would practise them as distinct from a written Code of single words (such as honesty, integrity, etc). Just as for desired technical or professional skills, actual training of people in Ethics and the bank's ethical values is essential.

Ed McDonald, Fellow of the Association of Compliance Officers in Ireland (FCOI) and Graduate of the MA in Ethics (Corporate Responsibility). ICQ

1. Milton Snoeyenbos, Robert Almeder and James Humber, Business Ethics, 3rd edition, (Amherst, New York: Prometheus Books, 2001), p. 393.
2. These are the official Government-sponsored reports into the Irish banking crisis of 2007-2009 and the lead-in to the crisis.
3. A number of persons (bankers, politicians, regulatory officials and economic analysts) appearing before the Oireachtas Banking Inquiry held in Dublin stated that they made (unspecified) judgement mistakes in assessing banking, lending, investment and economic factors. The interviews with these people are all accessible on the Oireachtas Banking Inquiry website, https://inquiries.oireachtas.ie/banking/ and https://inquiries.oireachtas.ie/banking/evidence/ – a joint Committee of the upper and lower houses of the Irish parliament.
4. The DIRT Inquiry from 1999 to 2001 produced three reports on its investigations, the Final Report of 3rd April 2001 noting that the 'proximate cause of the investigation (was) the tax evasion engaged in by residents, assisted by licensed deposit takers who had a duty in law to collect this tax and for whom, after 1987 DIRT also was a self-assessment tax. This was law-breaking on a large scale that went on for years and cost the exchequer untold hundreds of millions of pounds', http://www.oireachtas.ie/viewdoc.asp?fn=/documents/ParliamentaryInquiries/DIRT-Report-3/default.htm# 'The ideas of community and integrity', Final Report of the Parliamentary Inquiry, 3rd April 2001, accessed 21st July 2015.
5. R. B. Burns, Introduction to Research Methods, 4th Edition, International Edition, (London: Sage Publications Ltd., 2000), p. 460.
6. Three publications as follows: (a) Andre Spicer et al, A Report on the culture of British retail banking, (London: Cass Business School, City University London, in association with New City Agenda, 2014), Preface; (b) Simon Ashby, Tommaso Palermo and Michael Power, Risk culture in financial organisations: An interim report, Plymouth University in association with London School of Economics and Politics, Nov. 2012, p. 7;and (c) Dan Awrey, William Blair, and David Kershaw, 'Between Law and Markets: Is there a Role for Culture and Ethics in Financial Regulation?' 2012, London School of Economics and Political Science (Law Dept.), LSE Working Papers 14/2012, p.43.
7. Robert C. Solomon, 'Business Ethics', in A Companion to Ethics, edited by Peter Singer, (Malden, MA: Blackwell Publishing, 1993), pp. 354-365, (p. 354).
8. Scott B. Rae, Moral Choices: An Introduction to Ethics, 3rd edition, (Grand Rapids, Michigan, USA: Zondervan, 2009), p.346.
9. Aristotle, Ethica Nicomachea, as translated in Ross, 1925, I, 1098a, 20-26.

A Helping Hand

As the new academic year begins, Finbarr Murphy, Director of Education and Professional Development with the ACOI, offers useful tips and guidelines for members studying for one of the Association's exams.

Knowledge and competence is the cornerstone of any profession. In today's highly regulated and competitive world being qualified can demonstrate to regulators and customers a commitment and level of competence in your field. To work, study and maintain a balanced family and social life requires a lot of planning and commitment on the part of any student. The ACOI and its education partners acknowledge this, hence the flexible design of our education programmes.

As we start a new academic year and many of our members embark for the first time to study one of our programmes or continue with their studies this article aims to make you aware or reacquaint you with some of the learning and exam supports available to you in your education journey.

Learning Supports

Prior to registration

If you have a physical disability, mental health condition, significant ongoing illness or specific learning difficulty support can be provided once you notify one of our education partners.

Once registered

Whether you are studying on a distance learning programme or lecture-led programme once registered you should read all

programme documentation carefully. By reading such documentation such as the student handbook and attending induction you are completing an essential part of familiarising yourself with the college you are studying with, meeting your peers and an opportunity to get answers early in the process.

Learning Plan/Study Plan
This document has various different names depending on the institutions involved. Before even opening a page in the module manual, text book or accompanying notes you should read and assimilate what is contained in this document. This outlines very important information, a description of the module and the learning outcomes of the module, all of which you will assessed on. Other information includes contact details of people associated with the module, the assessment strategy and a study tracker suggesting how you cover the content in the time you have to the exam. Being equipped with that information enables you to critically read and use the learning materials associated with that particular module.

Manual/Textbook
This is the principal study support. Reading this in the context of knowing the learning outcomes will ensure you derive maximum benefit from this. Also do not get stuck on any particular point. Seek clarification from a colleague, the Programme Manager or lecturer.

Exam Supports
Preparing for, taking and the ensuing post exam analysis can be stressful for many. Having been a student and setting and correcting exams, my advice to you is to try to remain calm. I admit that is easier said than done, but the following steps can relieve some of the anxiety.

Seek assistance early – If for any reason you require additional assistance in accessing learning materials, physical access to venues and assistance to complete assessments (continual and exams) engage early with our education partners, The Institute of Banking in Ireland, DCU and Chartered Accountants Ireland. They are committed to ensuring that all students can become independent learners and engage fully in their chosen programme of study.

Each institution has a policy and dedicated resources to assist students in these regards. For example, a scribe can be assigned to draft your exam answers as you dictate them in the case of not being able to write, you can be allocated additional time if for medical reasons you need to attend to matters which impacts your ability to complete the exam in the allotted time. This also may necessitate sitting the exam in a different exam venue.

Know the exam regulations and where your exam venue is located – Some people create unnecessary angst by not knowing basic information like the duration of the exam, format of the exam, and where they are to take the exam. Extra time is not given to students that turn up late or to at the wrong venue. An exam paper may not even be available there.

Plan how you will get to the venue and how long it will take you to get there taking into account the rules around how exams are officiated, e.g. what documentation you must bring with you etc. Learning Plans contain details on the format and duration of your exam. The exam attendance notification contains the venue and time of the exam sitting.

Practice – online tests and writing essay type answers in an environment that replicates the exam as much as possible, i.e. adhering to the same time, not having access to materials. This simple step gives you a better gauge of your level of preparedness. Also reviewing any report from past exam cohorts who took the exam can highlight areas that people found difficult in the past.

Exam Preparation Webinar and Face-to-Face Preparation Session
In the case of the Professional Certificate and Professional Diploma in Compliance an interactive examination preparation webinar is offered to students typically one month prior to the exam, where students can pose questions to subject matter experts. The session is recorded and available to be viewed 24/7 after the delivery of this live webinar. As many students have different learning styles, the ACOI and the Institute of Banking will also offer, subject to demand, a face-to-face exam preparation session for 90 minutes to consider poorly performing questions in the areas identified from previous exam sittings.

Avoid post exam analysis
This can create avoidable anxiety if a person is overly confident and because of the force of their conviction can lead you to second guess the responses you made. In the unfortunate event of being unsuccessful you have a few options.

In the case of MCQ based exams you can analyse the report available of the questions to which you gave incorrect responses. This should be reviewed in conjunction with the Learning Plan which contains the exam rubric (number of questions per chapter). This review will show you where you need to concentrate your efforts in the next sitting.

Seek a formal redress, recheck or review of your answer book or exam script **–** there are costs involved in these activities. A recheck is just an arithmetic check that all marks have been accounted for. A review is a much more involved process whereby the examiner produces a report on the rationale for the grade achieved. This is only available for written style exam papers.

Post Qualification

The ACOI, along with its education partners, provide the only university accredited compliance programmes in Ireland. Attaining such a qualification will always stand to you but ensuring your knowledge is afresh is through the networking opportunities the ACOI provide through its CPD and skills-based events.

We encourage all graduates to take-up the accompanying designation attached to our qualifications. By embracing an ethos of life-long learning and keeping abreast of this dynamic field you are making a statement that you have attained a level of technical competence across a broad range of regulatory disciplines. Once you keep up to date, your technical competence to do the job will be a given. Accepting and maintaining your designatory status ensures you are a respected, trusted and valuable professional in your organisation.

ACOI is approached periodically by employers seeking individuals for contract, temporary or permanent job opportunities within the compliance profession. The ACOI maintains a register of compliance professionals, in order to provide a referral service to members who may be available for such work. This service is provided free of charge as a benefit to ACOI members only.

Another way we try to assist our members is by hosting an Education and Careers evening to facilitate members meeting their peers and our education partners but more importantly to discuss their career options with corporates and recruitment firms that have live vacancies.

All the resources and efforts of the ACOI have the sole aim of supporting you and putting the education and professional development of our members first.

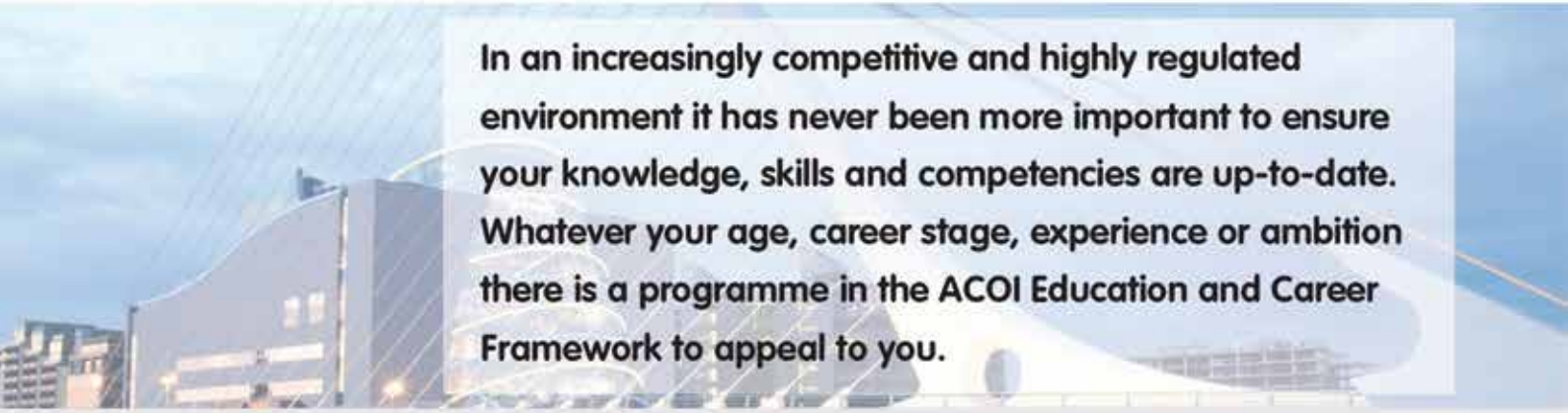
Other education related news

The General Data Protection Regulation (GDPR) is the new EU data protection framework and one step closer to realising the goal of a Single Digital Market in the EU. This contains many additional obligations which the market and our members will require to meet.

The ACOI and its education partner the Institute of banking are delighted to announce the additional offering of the Professional Certificate in Data Protection prior to year-end to meet this need. The closing date for receipt of applications is 30th September. Lectures commence on 15th Saturday October. Please note demand ordinarily exceeds the supply.

For further details about the programme please contact me on finbarr.murphy@acoi.ie or call me at 01 779 0202. ICQ

PROGRESSING YOUR EDUCATION AND CAREER WITH THE ACOI



In an increasingly competitive and highly regulated environment it has never been more important to ensure your knowledge, skills and competencies are up-to-date. Whatever your age, career stage, experience or ambition there is a programme in the ACOI Education and Career Framework to appeal to you.

ACOI EDUCATION/CAREER FRAMEWORK

ACCREDITED QUALIFICATION/DESIGNATION

NFQ Level 7

Professional Diploma in Compliance (PDC1 to PDC4)

Professional Certificate in Compliance (PDC1 & PDC2)

NFQ Level 8

Professional Certificate in Conduct Risk, Culture and Operational Risk Management (2 modules)

Also receive PRMIA Operational Risk Manager Certificate

NFQ Level 9

Specialise

- Professional Certificate in Financial Crime Prevention CFCPP
- Professional Certificate in Data Protection CDPO

Lead

- MSc in Compliance (7 modules + Applied Project) FCOI
- MA in Ethics (Corporate Responsibility) (6 modules + Thesis) FCOI
- Diploma in Risk Management, Internal Audit & Compliance – offered jointly with Chartered Accountants Ireland

START, CONTEXT, GET QUALIFIED — ADVANCE — SPECIALISE, LEAD

CAREER STAGE

Post-qualification the ACOI offer a comprehensive schedule of seminars and workshops to meet all your continuing professional development (CPD) and continuing professional education (CPE) requirements.

Psychology of Leadership for Compliance Officers

The psychology of leadership is wonderfully fascinating and complex. So many facets influence what determines the success of a leader and there is no one-size-fits-all. However, there are key factors that many leaders do have including followers, a plan and the ability to make things happen. Is this you already or do you need some pointers, asks Fiona Kearns?

What challenges do you face as a Compliance Professional?

- Convincing the CEO to promote compliance?
- Getting colleagues to consult with you early on when launching a new product?
- Seeking buy in when introducing new policies?

These challenges provide the opportunity for you to demonstrate leadership within the organisation. Old-fashioned authoritative leadership may not work for you but a style more akin to that of a servant-leader can effectively deliver results.

Leadership is not about direct reports: Understanding your own Style

Leadership is not just about the number of people who report into you. As a compliance professional, you may have no direct reports but this does not stop you from being a leader. Indeed, it makes it very important to establish yourself as a credible leader. So, what does it take to be a credible leader? As a compliance professional, you will be viewed as the resident expert and you need to demonstrate that expertise by presenting yourself confidently. You will need to communicate clearly and with authority. You're not 'kinda sure' about something, you're either sure or not. Be specific, accurate and use direct language to communicate key information.

Develop your Leadership Skills: Learning the Language of Leadership

Start to develop your leadership skills by listening to your colleagues at all levels in the organisation and hearing what's important on a daily basis. If you don't currently have natural access to colleagues, find ways of connecting at coffee or lunch. Be curious, interested and patient. Leaders build relationships and trust. Be genuine. By listening and building relationships, you will be able to understand the needs of the individuals and be useful to them in achieving their goals. It won't mean everyone will suddenly agree on everything but it will provide more understanding and improved outcomes. Remember, you all work for the one organisation so you do have common goals although it may not seem that way all the time. If you're not sure what a colleague's priorities are, ask them! Chances are no-one has bothered up to now and that alone will mark you out as a leader.

Meeting the Challenges: Demonstrating Confidence and Competence

What's the advantage for the CEO in promoting compliance: cost, reputation and regulation?

- Position your contribution as helping with these priorities.

Why don't colleagues consult with you: don't know you, seen as restrictive, and problem-oriented?

- Demonstrate how you can help them get to market more quickly.

What stops you getting buy-in: your reputation, assumptions, dislike of change?

- Signpost and build relationship before its needed, show people how it'll help them, explain and acknowledge requirements that aren't palatable, yet necessary.

Be Human. Be Yourself. You are not a Rule-book.

In every aspect of developing yourself and your leadership skills, consider what the great leaders you know think, do and say. Do they value people? Do they say what needs to be said but in an effective way? Do they make things happen? How can you incorporate those skills into your role? The best leaders, I've encountered encourage, empower and make you an integral part of a big plan.

For more information visit www.fionakearns.ie ICQ

ACOI Events

Snapshot of events run in the last

14.06.2016: Building Blocks Series 3/6 Culture and Conduct
L-R: Gillian Kelly, KPMG and Denise Whelan, CACEIS.

28.06.2016: Forging a more effective and influencal Compliance Function
L-R: Trisha Gibbons, PwC, Evelyn Cregan, ACOI and Iarla Power, PwC.

06.07.2016: Financial Services Ombudsman Update
L – R: Margaret Colgan, Ulster Bank and Ger Deering, Financial Services Ombudsman.

21.07.2016: Pensions Update
L – R: Brian MacDonald, New Ireland, Andrew Nugent, Deputy Head of Compliance, Tom Dunphy, Head of Compliance of The Pensions Authority and Brendan McWeeney, Harvest Financial Services Ltd.

13.07.16: Diversity within Risk And Compliance
L – R: Sinéad Ovenden, PWC, Alastair Blair, Accenture Ireland and Sarah Boodey, AIG:

MEMBER

Profile: Julie Graham

Member: Julie Graham

Julie Graham is a Compliance Assistant for Atradius Reinsurance Limited. She is new to the financial services sector having spent over two years in property compliance. Julie is currently studying towards the Professional Diploma in Compliance (PDC).

What did you want to do when you left school?

When I was in 5th and 6th year I had a few ideas of what I wanted to do, at first it was to become a social worker. After a while I decided I wasn't going to go to university at all and I was going to do a make-up artistry course. After some persuasion I decided to do an Arts degree and graduated with honours, leaving behind the idea of doing Jennifer Lawrence's make-up for her next block buster!

How did you enter into the world of compliance?

Following a few of years of working in retail and the hospitality trade, trying to figure out what I wanted to do, I was approached by a friend who encouraged me to look at and apply for a compliance role. I was intrigued by the role and felt this was something I would enjoy and found the world of compliance really interesting.

What do you consider are the challenges ahead for your industry?

The major challenge I see is the consistent implementation of upstream regulation which makes our industry compelling and no day is ever the same.

How would you describe your management style?

As I am still quite new in compliance I have not yet had experience in management. Hopefully one day I will reach that stage of my career. I would say being open and trying to have a sense of humour with a topic that others see as less joyous is the way to go.

What's the most valuable advice that you have been given?

To always manage the expectations of others and be positive about all tasks you undertake.

An accomplishment you are most proud of?

Professionally, I would have to say deciding to go back to study while working full time and finally finding my niche. From a personal perspective, I am proud that I didn't let fear get in my way when I made the decision to kick start my career a little later than others.

What are you currently reading, watching and listening too?

At the moment I am reading (studying) the ACOI PDC 2 Manual!! When I can, I love to sit down and catch up on the latest Grey's Anatomy season or for a total escape and guilty pleasure . . . Big Brother. I have an Electric Picnic playlist that I am working my way through.

How do you relax and unwind?

I love to relax by leaving the city for the weekend to go to my parent's house in Co. Mayo, sitting out on the deck (if it's not raining) and staring out on to the lake opposite their house.

What's your favourite restaurant?

My favourite restaurant is the Heifer and Hen Italian restaurant in Ballina, Co. Mayo. Great fresh food every time and the service is outstanding! The best baked cheesecake I have ever tasted.

Where is your favourite place in Ireland?

My favourite place is where I grew up and went to school, Killiney and Dalkey. The walk along the Killiney coast line and grabbing a fresh coffee from one of the many cafés in Dalkey. Heaven on a summer's day.

An interesting fact about you?

As I mentioned I grew up in Killiney, Co. Dublin and I moved full time to Co. Mayo when I was 19 and lived there for just over five years before moving back to Dublin. Quite a tricky situation when Dublin and Mayo are playing in the All Irelands! ICQ

A&L Goodbody financial Services Regulation & Compliance Bulletin

June: Available on the acoi.ie website – http://www.acoi.ie/library/ezine-articles/

July: See below

August: Available on the acoi.ie website – http://www.acoi.ie/library/ezine-articles/

Banking – DOMESTIC

- CBI issues second Tracker Mortgage Examination status update
- CBI publishes Addendum to the Consumer Protection Code relating to variable rate mortgage holders
- CBI publishes Irish responses to July 2016 Bank Lending Survey

Banking – EUROPEAN

- European Banking Authority (EBA) publishes final draft Regulatory Technical Standards on the separation of payment card schemes and processing of entities
- EBA publishes Regulatory Technical Standard on preferential treatment
- EBA publishes 2016 stress test
- EBA launches consultation on the treatment of connected clients for large exposures under the Capital Requirements Regulation
- EBA launches consultation on the appropriate basis for the target level of national resolution financing arrangements
- EBA provides updates on non-performing loans in the EU banking sector
- EBA launches data collection exercise for investment firms
- EBA publishes final draft Regulatory Technical Standards on the assessment methodology for the use of the Capital Requirements Regulation's minimum Internal Ratings Based Approach requirements
- Single Resolution Board publishes its first Annual Report
- Single Resolution Board announces fund contributions

Insurance – DOMESTIC

- CBI publishes revised Insurance Quarterly newsletter
- Insurance Ireland reiterates concerns over claims costs related to rising motor premiums
- Insurance Ireland statement on open-ended proposal for insurers in liquidation
- Insurance Ireland welcomes concept of universal pension for Ireland

Insurance – EUROPEAN

- EIOPA launches consultation on policy proposals regarding the implementation of IDD
- European Commission calls for technical advice from EIOPA
- PRIIPs KID – in the spotlight
- European Commission – Delegated Regulation on product intervention supplementing PRIIPs
- UK Supreme Court permits setting aside of settlement in light of fraudulent misrepresentation

EIOPA – final report on identification and calibration of infrastructure corporates

- Insurance Europe mock-up of standardised insurance product information
- Insurance Europe comments on EIOPA's proposed UFR methodology
- EIOPA to launch EU–wide thematic review on market conduct
- Insurance Europe updates online consumer focus tool
- EIOPA Q&A on Solvency II regulation
- EIOPA release updated XBRL tool for undertakings
- EIOPA publishes monthly technical information
- Chairman of EIOPA – interview with insurance focuses
- Insurance Europe comments on IAIS paper on increasing access to insurance markets
- Insurance Europe comments on limitation periods for motor claims
- Feedback statement to EIOPA consumer trends report
- Insurance Europe – response to European Commission's services passport consultation
- Insurance Europe publishes 'European Insurance in Figures'
- EIOPA signs up to IAIS MmoU

- Insurance representative bodies support for insurance inclusion in TTIP
- Insurance Europe – comments on proposed global insurance capital standard

Investment Firms – DOMESTIC

- Irish Minister for Finance launches public consultation on the transposition of the Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR)
- CBI publishes review finding that investment firms often go beyond requirements for client reporting
- Irish Stock Exchange publishes rulebooks reflecting changes to EU Market Abuse Legislation
- Irish Stock Exchange announces a listing figure of over 35,000 securities

Investment Firms – EUROPEAN

- Delay of implementation of MiFID II and MiFIR rules confirmed
- EU Commission adopts Delegated Regulations implementing Regulatory Technical Standards in respect of MiFID and MiFIR.

Funds – DOMESTIC

- New Market Abuse Regime

Funds – EUROPEAN

- UCITS V Regulation
- AIFMD passport
- ESMA work on Asset Segregation and Custody Services under AIFMD and the UCITS Directive
- ESMA Q&A on the application of AIFMD
- ESMA Q&A on application of UCITS Directive
- EuVECA Regulation and EuSEF Regulation amendments

Cross Sectorial – DOMESTIC

- Central Bank of Ireland welcomes IMF assessment of the stability of the Irish financial sector
- Central Bank of Ireland publishes third quarterly bulletin of 2016
- Central Bank of Ireland publishes SME Market Report for Q1 2016
- Central Bank of Ireland publishes discussion paper on the Payment of Commission to Intermediaries
- Irish Minister for Finance welcomes figures showing growth in the Irish economy
- Irish Minister for Finance publishes Credit Union Advisory Committee Review

Cross Sectorial – EUROPEAN

- Michel Barnier appointed as Chief Negotiator in charge of the preparation and conduct of the negotiations with the UK under Article 50 of the TEU
- European Securities and Markets Authority launches consultation on proposed central clearing delay for small financial counterparties
- Outgoing Commissioner Jonathan Hill delivers speech to EU Parliament on the Capital Markets Union
- EU Commission proposes new rules to support investment in venture capital and social enterprises
- European Commission publishes its Green Paper on Retail Financial Services
- European Commission publishes a document setting out the EU's revised financial services offer made in the context of the TTIP

The Association of Compliance Officers in Ireland,
Lower Ground Floor,
5 Fitzwilliam Square,
Dublin 2,
Ireland.

For all membership and events enquiries,
please contact:
Phone: +353 - 1 - 779 0200
Email: info@acoi.ie

For all education-related queries,
please contact:
Phone: +353 - 1 - 779 0202
Email: finbarr.murphy@acoi.ie

www.acoi.ie