

ICQ

IRISH COMPLIANCE
QUARTERLY *Autumn 2017*

A Compliance
Officer's role
in Corporate
Governance

Outsourcing in
the Funds Sector

A view
on CPRA

Source of Wealth/
Source of Funds



Improving Governance & Risk Culture

The Art of
Persuasion

THE REGULATOR'S ROLE

ANSWERS TO FAQs

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For more information on the ACOI visit www.acoi.ie

WELCOME to the AUTUMN 2017 Edition of ICQ

I hope all ACOI members are looking forward to another informative and interesting read of the ICQ, the flagship publication from the ACOI for its members.

In this edition, the cover feature is from Ciaran Walker, Consultant, Eversheds Sutherland and former Central Banker. Ciaran outlines the address he made to the Federal Reserve Bank of Minneapolis Conference, on the theme of "New directions in finance: Ethics, culture and the public dimensions of finance." Ciaran's research was titled, "The Role of the Regulator in Improving Banks' Governance and Risk Culture: A European Perspective".

Other articles consider Source of Wealth ('SOW') and Source of Funds ('SOF') and the importance of having robust policies and processes in place for identification of same, and increased regulatory expectation in outsourcing arrangements in fund administration. We also read a practitioner's perspective on The Central Bank's Consumer Protection Risk Assessment Framework, and evolving expectations from various stakeholders on the Compliance Officers' role in corporate governance.

We do hope that you are finding our Soft Skills Series of benefit. The need to be persuasive is discussed as a key attribute of being an

effective Compliance Officer. Members of the ACOI come from various backgrounds, with a wide variety of skills and capabilities. In this edition Anna Mulhall of KPMG provides her personal insight into her career to date. The education update is a summary of "Frequently Asked Questions", which have been posed to Finbarr Murphy, the ACOI Director of Education and Professional Development. Whatever the motivation is for you to consider additional study in the field of compliance, there is a programme on the ACOI Professional Development Framework that will appeal to you. Contact Finbarr to discuss further.

The ACOI Annual Conference taking place on Friday, 10th November 2017 in The Westin Hotel will be an opportunity to hear from the people who influence and inform the environment in which we all work - Regulators, politicians, policy makers and senior practitioners. It also enables you to network among your industry peers.

Finally, if anyone has an interesting idea for ICQ, or wish to make a contribution, please do approach Finbarr to discuss further.

Yours in Compliance,

ACOI Editorial Committee

September 2017 ICQ



2017 CONFERENCE

Compliance and your Reputation

Hear from **Ed Sibley**, Central Bank of Ireland, on what's **good practice** and from **Keith Packer**, formerly British Airways World Cargo, on what happens, **when things go very wrong!**

Visit www.acoi.ie to see the full speaker line up

[CLICK HERE TO REGISTER](#)

The Westin Hotel, Dublin 2

Friday, 10th November

8am Networking | 9am Conference | 1pm Lunch

Welcome to the 17/18 membership year which commenced on the 1st August. It is perhaps an appropriate time to take stock of the last 12 months in the ACOI.

I would like to thank the many volunteers who generously donated their time and expertise to provide ACOI members the range of services, including our CPD events, ICQ articles, flagship events and to all who contributed behind the scenes in our Working Groups, Committees and Council. The ACOI could not function without this support. We hope the networking opportunities our events provide have given you opportunities to meet colleagues and your peers.

In the 2016/17 year, the ACOI ran 35 Seminars, 11 Workshops, 5 Flagship events. We hope we have supported you in your role as a compliance practitioner and we go into the new membership year with this same focus. Our Working Groups & Committees are always open to suggestions for event topics. If you have a subject you think we should cover – please call us or drop us a comment through the members area of the website. You can find the comment box in the “dates for your diary” section on all Working Group pages. For more information on CPD events you can contact Caroline Hollick Ward, your Membership & Events Manager.

ACOI Designations continue to attract a healthy uptake from existing and new members. At our Education and Careers Evening held on 22nd June in the Marker

Hotel, we heard from recruiters that it is becoming increasingly important to employers that their employees hold relevant professional qualifications and continue to keep their knowledge current. The ACOI's designations of LCOI, FCOI, CDPO and CFCPP are awarded to members who successfully complete the relevant academic programme offered through our academic partner, The Institute of Banking, a college of UCD and our partner DCU. In the 2016/17 year, over 600 members completed academic programmes leading to these designations. We also offer the Diploma in Risk Management, Internal Audit and Compliance with Chartered Accountants Ireland. We hope to see the number of members completing academic programmes continue to grow in 2017/18. For more information on any of these offerings you can contact Dr Finbarr Murphy, your Director of Education and Professional Development.

Last year we ran the inaugural Niall Gallagher Professional Diploma in Compliance Scholarship Award. This Scholarship will run again this year and we will be announcing details shortly. It will be open to members and non-members to apply.

The current events schedule is available on our website where you can check out all our upcoming events between now and December – there are 13 events scheduled for the remainder of the year, more than enough to meet your CPD requirements.

I would like to draw your attention to the ACOI 2017 Conference, being held

on the 10th November in the Westin Hotel. We will hear from Ed Sibley, the newly appointed Deputy Governor, Prudential Regulation. This year's Conference includes a great variety of speakers with perspectives from government, regulators, advisors and practitioners, both local and global. Come and listen to Keith Packer, former commercial general manager for the British Airway's World Cargo business who will be 'taking the lid off' what happens when you are not compliant. Read on to see who else we have joining us on the day!

The other special event in the ACOI calendar is our Conferring Ceremony in the Shelbourne Hotel on the Wednesday 6th December next. This evening celebrates members who are being awarded ACOI designations and all graduates of related academic programmes. We look forward to acknowledging their achievements with their family & friends and special guests of the ACOI.

I hope you enjoy this edition of , if you have any suggestions for upcoming articles, please contact Clarissa Hills, your Operations Manager. **ICQ**

Yours in Compliance,

Evelyn Cregan,
CEO



ICQ

COVER

Story



Improving Governance & Risk Culture

THE REGULATOR'S ROLE

The following article is a version of a conference paper **Ciaran Walker** delivered, on 21 April 2017, at a conference organised by the Federal Reserve Bank of Minneapolis, on the theme of “New directions in finance: Ethics, culture and the public dimensions of finance.”

INTRODUCTION

T

he work of financial regulators in jurisdictions across the globe has provided significant insights into the scale of unethical behaviours and excessive risk-taking in the financial services industry in recent years.

In the words of the Bank of England’s then Deputy Director, Minouche Shafik, who describes the issue as one of ‘ethical drift’ in the financial services industry: “the wave of misconduct which has emerged in the aftermath of the financial crisis suggests that ‘this time is different’. The magnitude of the misconduct fines is indicative of the scale of the problem: since 2009, UK banks have paid almost £35 billion in fines and redress costs, roughly equivalent to the private capital they have raised in the same period. The global picture is even more unsettling – the roughly \$275 billion in legal costs for global banks since 2008 translates into more than \$5 trillion of reduced lending capacity to the real economy. Never before has misconduct occurred so systematically, in such a scale and across multiple jurisdictions. Clearly it was not the case of a few bad apples, but something was rotten in the entire barrel.”

“The magnitude of the misconduct fines is indicative of the scale of the problem: since 2009, UK banks have paid almost £35 billion in fines and redress costs, roughly equivalent to the private capital they have raised in the same period.”

Similarly, in the US, Bill Dudley, the President of the New York Fed noted in a January 2017 speech: “The LIBOR and FX collusions were not occasional atonalities in an otherwise harmonious financial system. They were not two remote tail risks that both happened to materialize, or just a bad coincidence. There have been too many examples of other misconduct to list. Wells Fargo is the most recent example, but serious misconduct is not confined to a single jurisdiction or a business model. The evidence, which now stretches over a decade, has only reaffirmed my initial belief that there is an industry-wide problem.”

With regard to personal misconduct, in a detailed review of professional standards and culture in the banking industry in the UK, the UK Parliamentary Commission on Banking Standards reported in 2013 that “Bankers prioritised short term gain over their customers and shareholders and recklessly failed to prevent wrongdoing. It was a culture, in places, suffused with corruption.” Similarly, the 2011 US Financial Crisis Inquiry Report stated: “We witnessed an erosion of standards of responsibility and ethics that exacerbated the financial crisis.”



In summary, the failings within the financial services industry were not confined to a limited number of individuals or firms; the issues related to failings in the culture of many firms in the industry. As noted in 2014 by the Financial Stability Board, the entity set up by the G20 to promote reform of international financial regulation, "Weaknesses in risk culture were a root cause of the global financial crisis, as they led to failures in compliance." In Ireland, for example, the Central Bank of Ireland's then Director of Banking Supervision, Ed Sibley, has stated that "It is clear that cultural issues are frequently linked with firm failures and this was certainly the case in the banking failures in Ireland."

Furthermore, the problem of unethical conduct in the financial services industry persists. The UK Banking Standards Board (a UK industry body set up to promote high standards of behaviour and competence in the industry) published, in March 2017, the results of its survey of 22,000 staff in 22 banks and building societies in the UK. Amongst its survey findings were: 27% of respondents either strongly agreed or agreed with the statement "If I raised concerns about the way we work, I would be worried about the negative consequences for me"; 12% either strongly agreed or agreed with the statement "In my organisation I see instances where unethical behaviour is rewarded" and 13% either strongly agreed or agreed with the statement "It is difficult to make career progression in my organisation without flexing my ethical standards". In addressing the problems of unethical behaviours and excessive risk-taking, regulators

have significantly increased their enforcement activity and levels of fines imposed on financial services firms, as indicated above. Nevertheless, despite the significant recent increase in the level of fines, some regulators are sceptical that this has led to a material improvement in behaviours in the industry. As noted in a recent UK Financial Conduct Authority (FCA) paper entitled "Behaviour and compliance in organisations": "The evidence that we have suggests that there are limitations on the extent to which greater compliance can be achieved by increasing fines and the probability of detection. For example, there is a tendency of certain firms to carry on breaking rules in spite of continuing to accrue large fines."

This FCA paper provides some useful behavioural economics insights on this issue, noting that individuals may be influenced by behavioural biases (such as confidence bias, confirmation bias) so that they may not be sufficiently deterred by the risk of sanctions from engaging in unethical behaviour. To address this, regulators internationally are increasingly turning their supervisory focus on firms' governance and culture, in an effort to address underlying causes of potential issues before they arise rather than merely dealing with the symptoms of these issues once they have materialised.

The New York Fed's Bill Dudley recently noted that "The manipulations of LIBOR and foreign exchange rates prompted the New York Fed's work on culture". Also, the Dutch regulator, De Nederlandsche Bank (DNB) has made very influential contributions to debates on this issue internationally and useful

regulatory guidance has been provided, for example, by the 2015 G30 report "Banking conduct and culture: a call for sustained and comprehensive reform" and the Financial Stability Board's 2014 "Framework for assessing risk culture".

Regulators have broadly taken the view that there is no one-size-fits-all cultural paradigm to which all financial services firms should aspire. Rather, it is a matter for firms to define for themselves their own culture and values. Furthermore, the concepts of "culture" and "values" are rather nebulous and do not readily sit within the comfort-zone of regulators, who are more comfortable with fact-based, data-driven, regulatory oversight of firms.

The question therefore arises as to what is the proper and most effective role of the regulator in encouraging firms to ensure that their respective internal cultures do not give risk to the level of unethical/illegal practices and excessive risk-taking that has been all too familiar in the financial services industry in recent years.

On this broad topic, after a consideration of what we mean by a firm's culture and why it matters to the regulator, I propose to address the following specific issues relating to the role of the regulator in supervising a firm's culture:

First, the key role of the CEO and board of a firm in ensuring that a firm has an appropriate culture and the role of the regulator in facilitating this, in particular in relation to:

- the regulator's use of its powers to review the fitness and probity of individuals;

"According to Schein, culture exists simultaneously on three levels: on the surface are artefacts, under which are values and at the core are basic assumptions."

- its role in encouraging firms' boards to devote sufficient time and resources to addressing the issue of culture and to track progress relating to their culture.

Second, the role of the regulator in tackling a culture of wilful blindness to illegal or unethical conduct within firms.

What do we mean by 'culture' and why does it matter to regulators?

The concept of a firm's 'culture' has usefully been described by the UK Financial Conduct Authority's Director of Supervision, Jonathan Davidson, in a recent speech as: "the typical, habitual behaviours and mindsets that characterise a particular organisation. The behaviours are the 'way things get done around here'; they are the way that we act, speak and make decisions without thinking consciously about it. And sitting underneath these behaviours or habits are mindsets inside people's heads; the beliefs or values that people feel are important. We can't see these mindsets but they are a main determinant of behaviour from the trading floor to the Board. The mindsets themselves

are influenced by the incentives inherent within each firm."

Also, as stated by the Dutch regulator, the DNB, in its ground-breaking book 'Supervision of behaviour and culture; foundations, practice and future developments': "For employees, organisational culture is the social glue that holds the organisation together by providing appropriate standards for the ways employees should behave. As a consequence, culture reduces employees' uncertainty and anxiety about appropriate and expected behaviours".

Identifying and supervising a firm's culture, however, is not at all straightforward. As noted by Andrew Bailey, then CEO of the UK Prudential Regulation Authority,

"As supervisors, we cannot go into a firm and say 'show us your culture'".

The DNB has relied on the work of organisational psychologists such as Edgar Schein to develop a framework for assessing a firm's culture.

According to Schein, culture exists simultaneously on three levels: on the surface are artefacts, under which are values and at the core are basic assumptions. Based on Schein's work, the DNB uses the metaphor of an iceberg to describe its approach to assessing a firm's culture. The visible part of the iceberg is the behaviours, in particular around decision-making, leadership and communication, which are readily observable.



Under these behaviours in the metaphor are a firm's group dynamics (interaction within a group or between groups e.g. is there an atmosphere where people can address 'bad' behaviour?) and, below that is the mindset i.e. deeply held beliefs and values that often guide group dynamics and individual behaviour. Both the group dynamics and mindset are beneath the metaphorical water-line and only indirectly observable. The work of the DNB is particularly helpful in setting out in considerable detail a role for regulators in supervising firms' culture.

The interest of regulators in firms' culture is well explained in the following terms in a speech by Danièle Nouy, Chair of the Supervisory Board of the European Central Bank's Single Supervisory Mechanism: "Culture and ethics are at the heart of banks' decisions in terms of risk-taking and safe and sound management practices. This means that understanding culture – what one does 'when nobody is watching' can help us to recognise, and even predict, some behaviours."

Also, according to Ed Sibley, then Director of Banking Supervision at the Central Bank of Ireland, in a November 2016 speech: "The culture within an institution is a key factor in determining its safety and soundness, as it is key to the effectiveness of its governance arrangements. It drives the values and beliefs which govern how individuals treat others, perform their tasks, take decisions, assess risk, and perhaps most importantly, do the right thing to ensure they operate in a safe and sound manner. It is the

"There is general agreement amongst financial regulators that embedding an appropriate culture in an organisation depends to a crucial extent on the CEO and top leaders of the organisation."

foundation upon which a strong governance framework is built."

The DNB has stated that its own regulatory interest in financial services firms' culture is based on three premises.

- The first is that increasing rules and regulations alone is not sufficient to prevent a financial crisis. In this regard, it is interesting to note that the rules relating to capital and liquidity were not sufficient to prevent the recent financial crisis; indeed, as noted in a recent LSE paper, just 15 days prior to entering bankruptcy, Lehman Brothers reported a Tier 1 capital ratio of 11%, some 7% higher than the minimum requirement under Basel II; also, Northern Rock was, on paper, the best capitalised major UK bank just prior to its demise.
- The DNB's second premise is that the public's trust in the financial sector has been damaged as a result of recent events, including the financial crisis and that this is having a negative effect on the real economy; a demonstrable culture of integrity is a key element in improving public trust in the sector.

- The third DNB premise is that an appropriate banking culture is, in any event, an integral part of a soundly-functioning banking operator and is therefore important to get right.

"If the CEO does not demonstrably 'get' culture, it will not be embedded"

There is general agreement amongst financial regulators that embedding an appropriate culture in an organisation depends to a crucial extent on the CEO and top leaders of the organisation.

The DNB, in its work, states that one of the assumptions on which it bases its supervisory work on culture and behaviour is that the leaders of an organisation are the 'primary' lever for addressing this aspect of supervision because of, first, the impact of the board on performance and, second, the impact of leaders on organisational change.

This point was expressed succinctly by Sir David Walker, former Chairman of Barclays in a May 2016 speech addressing banking culture and conduct: "I will highlight four themes that are in my view essential to success in embedding the right conduct and values that, together, create the entity's culture. First, the role of the board is critical. It begins with the board's responsibility for appointment and monitoring of the CEO – described by one expert commentator as a 'sacred trust'. The CEO's role is to execute the board's strategy for the entity in the widest sense, clearly including its financial performance. But the specific

role of the CEO in embedding the targeted conduct and values from the top to the bottom of the organisation is indispensable. If the CEO, and the senior executive team that he or she leads, is inadequate in discharging this obligation, the right culture is very unlikely to emerge. Put bluntly, if the CEO does not demonstrably 'get' culture, it will not be embedded."

The importance of the CEO and executive team clearly setting out the values and conduct to be complied with by all employees, the need for a clear and consistent values-driven 'tone from the top' and for the CEO and executive team to be highly visible in championing the espoused values and conduct ('walking the talk') is emphasised in, for example, the 2015 G30 paper entitled "Banking conduct and culture: A call for sustained and comprehensive reform" and the Financial Stability Board's 2014 "Framework for assessing risk culture"; as stated in the latter paper: "The board and senior management are the starting point for setting the financial institution's core values and expectations for the risk culture of the institution, and their behaviour must reflect the values being espoused."

Role of the regulator in ensuring that the CEO/board 'get' culture

Governance is intimately linked with the culture of a firm. As stated in the Basel Committee on Banking Supervision's "Guidelines on corporate governance principles for banks" ("Basel Committee Guidelines on Governance"): "A fundamental component of good governance is

a corporate culture of reinforcing appropriate norms for responsible and ethical behaviour. These norms are especially critical in terms of a bank's risk awareness, risk-taking behaviour and risk management (ie the bank's 'risk culture')."

The Basel Committee Guidelines on Governance (at paras. 29-31) set out standards that banks should be expected to meet in relation to having appropriate processes and procedures in place, that can be reviewed by a regulator.

Within the European Union, the European Banking Authority ("EBA") has adopted Guidelines on Internal Governance (and is currently consulting on a revised version of these Guidelines). The EBA is mandated by Art 74 of the Fourth Capital Requirements Directive, Directive 2013/36/EU ("CRD IV") to adopt such EBA Guidelines and relevant European Union national authorities comply by incorporating these Guidelines into national practice as appropriate (e.g. by amending their legal framework or supervisory processes).

The EBA's draft revised Guidelines on Internal Governance expand upon the more general requirements in the current Guidelines (which require firms to have clear policies on how its standards relating to corporate values are to be met); the draft revised Guidelines require firms to have clear and documented policies in place for how their standards on corporate values and a code of conduct should be met, including documents relating to:

- The promotion of high ethical and professional standards (e.g. a code of conduct);

- Promoting risk awareness, including through conveying the expectation that activities do not go beyond the defined risk appetite and limit defined by the firm;
- Defining acceptable and unacceptable behaviours;
- Ensuring that staff are aware of potential internal and external disciplinary and other legal actions that may follow misconduct and unacceptable behaviours.

Whilst having the above processes and procedures are useful, in terms of setting out expectations regarding a firm's culture, they are only useful if there is a sufficient commitment to them within the firm. In the Edgar Schein structure for analysis of culture, as described above, the governance processes and procedures can be described as artefacts of the firm. It would also be very important to consider the underlying values of the firm, as evidenced for example by the commitment of time, resources and expertise to ensuring these espoused values are 'lived' within the firm.

In terms of the role of the regulator in ensuring that firms 'live' their espoused values, the following can be noted.

Fit and proper requirements

Regulators have an important 'gatekeeper' function in ensuring that only those individuals who have the appropriate level of fitness and probity are permitted to hold senior positions in the financial services industry. Within the EU, for example, Art 91 of CRD IV provides that the members of the management body of credit institutions and investment firms "shall at all times be of sufficiently





good reputation and possess sufficient knowledge, skills and experience to perform their duties. The overall composition of the management body shall reflect an adequately broad range of experience."

In October 2016, the European Banking Authority (EBA) and European Securities and Markets Association (ESMA) published draft "Guidelines on the assessment of the suitability of members of the management body and key function holders". Relevant competent national authorities and financial institutions in the European Union are required to make every effort to comply with such guidelines, when finally adopted. Interestingly, in interpreting the CRD IV requirement on members of management bodies of credit institutions and investment firms to have sufficient knowledge and experience, para. 55 of these draft Guidelines provides, *inter alia*: "Members of the management body should be able to contribute to the

implementation of an appropriate culture, corporate values and behaviours within the management body and the institution"

This expectation on members of the management body is an interesting new development; the current EBA guidelines, issued in 2012, place no equivalent express expectation on members of the management body. In 2012, the EBA rejected a proposal that the reputation criterion be extended to the effect that evidence should be requested from individuals of their positive contribution to enhancing and sustaining a culture of customer-focused, ethical professionalism within credit institutions or similar organisations and to give positive weight to memberships of relevant professional bodies – the EBA's view was that the proposal went "far beyond" the requirements of the then Directive in force.

Despite the importance of an appropriate culture in financial

institutions and the key leadership role that the CEO and senior leadership play in ensuring an appropriate culture is in place, the focus of regulators in exercising their fitness and probity 'gatekeeper' function can often be on the technical abilities of the individuals in question and whether there has been any administrative or judicial proceeding against the individual or complaint that may call into question the individual's probity. Little attention is paid, in practice, by regulators to the question of whether the individual being considered for a senior position has the leadership skills and commitment "to be able to contribute to the implementation of an appropriate culture, corporate values and behaviours."

An example of this relates to the Single Supervisory Mechanism (which is composed of the ECB and relevant national financial regulators in each of the 19 participating European Union member states, out of the current total of 28 member states), which commenced on 4 November 2014. The ECB has the exclusive 'gatekeeper' role to determine whether the members of the management board of a co-called 'significant institution' (essentially, the largest banks in the Euro area; currently, some 124 banks have been deemed to be 'significant institutions') are sufficiently fit and proper to have these senior leadership roles – and the exclusive jurisdiction to prohibit individuals from these roles if they are not deemed to meet the requisite standards of fitness and probity.

In November 2016, the ECB published its draft "Guide to fit and proper assessments". As noted in this draft, the ECB also complies, for this purpose, with applicable EBA

guidelines. This draft document makes no specific reference to culture, values or leadership. It gives no indication that the ability to contribute to the implementation of “an appropriate culture, corporate values and behaviours” would be a desirable (still less a necessary) attribute of a CEO or member of the board of any of the largest banks in the Euro area.

It will be interesting to see how, if at all, these draft guidelines will be amended following the issuing of the revised EBA guidelines in due course.

It would seem that regulators have a very important role in signalling to regulated firms the importance that must be attached to ensuring that leaders are put in place in firms who can lead and role-model continuous improvements in culture and values. The fitness and probity process is one of the important means through which this can be done.

It is true that, as noted in the EBA draft guidelines, primary responsibility rests with firms to select and nominate suitable individuals who meet the fitness and probity standards. The ECB has a more limited ‘gatekeeper’ role ie to “prevent individuals who would pose a risk to the proper functioning of the management body from entering in the first place or from continuing in their role when an issue regarding their fitness and propriety has arisen.”

Nevertheless, if no real effort is made by regulators to address the question of whether the applicants for CEO/board roles in the major banks have the leadership, skills and commitment to the “implementation of an appropriate culture, corporate values and behaviours”, as part of

the fit and proper application process, it would appear that an important opportunity to reduce potential risks in banks is being missed. This is not, though, to ignore the differences between a fitness and probity review of and individual and a supervisory review of culture and behaviours, particularly at board level.

Is there a need for firms to have an effective sub-committee of the Board monitoring their firm’s culture?

For firms to show effective leadership in ensuring that they have an effective and appropriate culture in place, sufficient CEO and Board-level expertise, time and resources need to be devoted to this.

Board-level attention-deficit to issues relating to culture has, however, proven to be a major problem in practice. This issue is well explained by Sir David Walker (former Chairman of Barclays) in a May 2016 speech.

Commenting on the causes of the unethical practices in the financial services industry, he identified three factors: a short-term focus (combined with pressures to manage balance sheets ‘efficiently’ i.e. with high leverage), the perversity of financial incentives for individuals and, thirdly: “and ultimately probably the most significant explanatory variable, was the board level attention deficit in respect of both financial risk and conduct. Only one-third of global SIFIs had a dedicated board-level



“For firms to show effective leadership in ensuring that they have an effective and appropriate culture in place, sufficient CEO and Board-level expertise, time and resources need to be devoted to this.”

financial risk committee at the time of the crisis and dedicated board focus on conduct, behaviour and ethics generally appears to have been still less. As a consequence, there was inadequate explicit guidance to executives on board expectations as to conduct and values and chief executives and heads of business units were relatively undistracted in their drive for short-term performance. This group board and leadership deficit appears to have been magnified in some cases where key business decisions were dominated in an unbalanced way by the short-term interests of the best performing business units rather than the longer-term interests of the group as a whole.”

In light of this, Sir David recommends that: “given the scale of the challenge of strengthening and sustaining a strong culture as the new norm, the board should in my view constitute a dedicated committee to guide and oversee progress. The committee should have regular dipstick intelligence on progress, supplemented to the extent possible by provision for direct encounter with customer experience.”



This recommendation is broadly reflected in a recent G30 report, which states that “unless the board can commit sufficient time and attention to these matters, the task should be delegated to a dedicated sub-committee of the board.” Also, the Basel Committee Guidelines on Governance (at para. 77) recommends that an ‘Ethics and compliance’ committee of a bank’s board be established.

These recommendations are, however, merely that. Indeed, the EBA draft Guidelines on corporate governance, discussed above, merely state (at para. 5.1) that firms “may” establish other specialised committees of the board “e.g. ethics, conduct and compliance committee”.

The G30 report recognises that “most boards struggle in addressing culture” (p.31). Their challenges include difficulty in defining the underlying concepts, lack of clear metrics, diffuse responsibilities across the executive team, lack of sufficient time to consider culture issues properly. There is also the fact that, until very recently, the issue of culture has not been to the fore in supervisory engagements between banks and their regulators and, as noted in the G30 report, only a small number of regulators have formally integrated cultural considerations into their supervisory approach (p.43) – if most regulators are not reviewing firms’ culture in a structured and rigorous way, this clearly reduces the incentive on banks to focus their attention on culture.

Also, as noted in the G30 report, oversight responsibility within banks

“The Director of Insurance Supervision of the Central Bank of Ireland stated: “You need to find a way of measuring your culture and tracking cultural change as “To measure is to know and what gets measured gets done.”

for culture can fall between the Risk and Human Resources committees of boards or between Conduct and Values committees and the Human Resources committee. This alone can create confusion as to who within firms is responsible for driving ‘culture’.

Accordingly, regulators have a role in encouraging or requiring firms to devote appropriate Board-level expertise, time and commitment to addressing issues of culture, including possibly through the creation of a dedicated sub-committee of the Board to lead on these issues. This is an important governance and risk issue that regulators clearly have the powers to address.

In its June 2016 report following its thematic review of governance and risk appetite in the ‘significant institutions’ in the SSM, for example, the ECB noted a number of governance failings and stated that these would be addressed in individual decisions to firms requiring them to take specific actions (so-called Supervisory Review and Evaluation Procedure, or SREP decisions) and in future fit and proper assessments,

as appropriate. It also noted that most ‘significant institutions’ are still “far from international best practices” regarding internal governance (Ref 1)

It may be that, in the future, regulators may become more intrusive to require firms to take specific measures to address board-level attention-deficit in relation to issues of firm culture.

The need to ‘measure’ culture

It is difficult to maintain a focus on culture and values in firms, particularly at board level, given the nebulous nature of these terms and particularly if firms do not have in place a clear system explaining what they mean by these terms and how they measure the firm’s progress in relation to them.

In its recent report, the G30 recommended that: “Boards (and/or the relevant committees) should regularly receive monitoring information on culture and values and build a reputation, values and conduct dashboard to monitor progress and facilitate debate and challenge between the board and the executive.”

Similarly, in a January 2017 speech, the Director of Insurance Supervision of the Central Bank of Ireland stated: “you need to find a way of measuring your culture and tracking cultural change as “To measure is to know and what gets measured gets done.” We would expect a company to have KPIs for financial performance and KRIs for risk appetite, likewise time and effort should be put into considering how you could develop measures for your culture”.

Financial regulators internationally have clearly signalled their expectation that firms take proper steps to ensure that they have an appropriate governance and risk culture throughout their organisation – and not merely the artefacts (such as written policies and procedures) that might suggest they do.

Financial firms will therefore have to address how to monitor their governance and risk cultures. As stated by Rick Ketchum, recent CEO at the US Financial Industry Regulatory Authority, “the emphasis that a firm puts on measuring compliance with [its] cultural values tells you a lot about their level of commitment to making sure that employee behavioural norms are consistent with the proverbial ‘tone-from-the-top’ — or whether company value statements are mere window-dressing.”

Financial regulators have an important role in championing the importance of tracking culture and also engaging publicly with the question of providing how this can be done effectively.

A number of firms, including this author’s firm, offer financial services firms innovative means by which they can review and track their culture, including their governance and risk culture.

Addressing the problem of wilful blindness

A number of commentators have noted the significance of wilful blindness as a factor in the erosion of ethical standards in the financial services industry. Thus, in a May 2016 speech, Sir David Walker, former Chairman of Barclays,

stated that within the major banks a combination of three identified factors seemed to have been present in this ethical erosion; one of these three factors was a ‘go-go’ short-term focused environment, in which “inconvenient corners were cut and wilful blindness crept in.”

Similarly, in a recent speech, Bill Dudley, President of the New York Fed stated that, in the context of bankers’ ethics, “What’s missing is not so much a personal commitment to good conduct, but rather a commitment to call out bad conduct observed in others”; he found that a common element of frauds in the financial services sector has been a failure by colleagues to call out bad conduct: “this is so telling of a culture that condones or promotes misconduct.”

Also, the 2013 final report of the UK Parliamentary Commission on Banking Standards identified as one of the key problems in the banking industry: “Too many bankers, especially at the most senior levels, have operated in an environment with insufficient personal responsibility. Top bankers dodged accountability for failings on their watch by claiming ignorance or hiding behind collective decision-making.”

Most financial services firms will have in place various processes and procedures that are designed to facilitate internal whistle-blowing. This, however, tells us virtually nothing about whether the firm has a culture which encourages calling-out unethical/illegal behaviours or, indeed, discourages/sanctions failures to speak-out when these practices occur.

In this regard, it is interesting to note the recent testimony of the

Wells Fargo CEO before the US Senate Banking Committee in relation to the accounts scandal, to the effect that the “wrongful” sales practices uncovered (involving charging customers for the creation of millions of new bank accounts, without the customers even being aware of the accounts) “goes against everything regarding our core principles, our ethics and our culture. It...is not representative of Wells Fargo as an institution.” This testimony contrasts with the various lawsuits that have been brought by various former Wells Fargo employees, who claim that they were fired from Wells Fargo because they blew the whistle internally on the scandal some time ago.

Similarly, as noted above, the UK Banking Standards Board (an industry body set up to promote high standards of behaviour and competence in the industry), on 14 March 2017, published the results of its survey of 22,000 staff in 22 banks and building societies in the UK. Amongst its survey findings were that some 27% of respondents either strongly agreed or agreed with the statement “If I raised concerns about the way we work, I would be worried about the negative consequences for me”.

UK

This issue of wilful blindness has been addressed, to some extent, in the UK by the introduction in the UK of a new Senior Managers and Certification Regime (SMCR), following the publication of the 2013 final report of the UK Parliamentary Commission on Banking Standards and subsequent Banking Reform Act 2013. The new regime for “Senior Managers” commenced in March



2016. It focuses on the most senior individuals in firms who hold key roles or have overall responsibility for whole areas of relevant firms. Under this regime, firms need to ensure, in particular, that each Senior Manager has a Statement of Responsibilities setting out the areas for which they are personally accountable; that the firm produces a Firm Responsibilities Map that knits these together; that all Senior Managers are pre-approved by the regulator before carrying out their roles.

Also, under the Bank of England and Financial Services Act 2016, a 'duty of responsibility' is imposed (from May 2016) on "Senior Managers", under which the Financial Conduct Authority and the Prudential Regulation Authority can take action against Senior Managers if they are responsible for the management of any activities in their firm in relation to which their firm contravenes a regulatory requirement, and they do not take such steps as a person in their position could reasonably be expected to take to avoid the contravention occurring (or continuing).

Furthermore, the UK Prudential Regulation Authority and Financial Conduct Authority introduced, from September 2016, new requirements on various financial services firms, including larger banks, stipulating that they must appoint an appropriately senior internal "whistleblowers' champion" (normally expected to be a non-executive director), who will have responsibility for ensuring and overseeing the integrity, independence and effectiveness of the firm's policies and procedures on whistleblowing including those policies and procedures intended to protect whistleblowers from being victimised because they have disclosed reportable concerns.

"Firms need to ensure, in particular, that each Senior Manager has a Statement of Responsibilities setting out the areas for which they are personally accountable."

This UK approach is considerably more advanced than the approach taken in most other jurisdictions to tackle (if at all) the problem of wilful blindness.

Ireland

In Ireland, persons occupying senior roles (so-called Pre-approval Controlled Functions) are required, under section 38 Central Bank (Supervision and Enforcement) Act 2013 (2013 Act) to disclose to their regulator, the Central Bank of Ireland, information which they believe may be of material interest to the Central Bank of Ireland in relation to potential breaches, unless they have a "reasonable excuse" not to do so. Whilst the scope of this legal requirement has not yet been tested in the courts and the 2013 Act does not contain any explicit sanction for infringements of this requirement, it may have some impact on the culture of wilful blindness that may exist in some firms.

It may, for example, be the case that a failure by an individual to report a suspected breach to the Central Bank of Ireland may have a negative impact on any subsequent assessment of that individual's fitness and probity that may be carried out by the Central Bank of Ireland.

Thus, for example, in a May 2016 Decision from the Irish Financial Services Appeal Tribunal (IFSAT), upholding on appeal a decision of the Central Bank of Ireland refusing an authorisation to an individual to conduct a business as a financial services retail intermediary, IFSAT held that the failure of the individual in question to report in a timely manner suspected breaches to the Central Bank of Ireland was a ground to justify the refusal of the authorisation as the individual in question "fell short of the qualities of fitness" which the regulator was entitled to require of the individual.

It may be that the Central Bank of Ireland could, as part of an enforcement investigation into alleged breaches of relevant requirements by a firm, systematically assess whether any senior individuals breached their obligation under section 38 of the 2013 Act to report the matter or otherwise engaged in wilful blindness to an extent that they "fell short of the qualities of fitness" that would be expected of the individual.

Furthermore, under section 21 Central Bank Reform Act 2013, firms may not permit a person to perform a wide range of specified functions (so-called "Controlled Functions") unless they are satisfied "on reasonable grounds" that the individual complies with relevant standards of fitness and probity. Thus, once suspected breaches within a firm come to light, the firm should consider carrying out an investigation of whether individuals who knew about the suspected breaches and, by engaging in wilful blindness and not reporting the suspected breaches, "fell short of the qualities of fitness" expected of them. In this regard, para. 21.3 of the Central Bank of

Ireland's Guidance on the Fitness and Probity Standards provides that, where a firm becomes aware that there may be concerns about the fitness and probity of an individual, the firm is expected to investigate such concerns and take action without delay.

European Union

At European Union level, Art 91 CRD IV sets out high-level general requirements expected of members of the management body of credit institutions and investment firms. These requirements are supplemented by European Banking Authority Guidelines.

In October 2016, the European Banking Authority (EBA) and European Securities and Markets Association (ESMA) issued draft "Guidelines on the assessment of the suitability of members of the management body and key function holders". Para. 73 of these new draft Guidelines provides that members of the management body of firms "should uphold high standards of integrity and honesty"; it lists a number of factors to assist in the assessment of reputation, honesty and integrity, including "any other evidence that suggests that the person acts in a manner that is not in line with high standards of conduct."

It may be that, in due course, if a regulator obtains clear evidence of wilful blindness by a senior manager to a material breach of regulatory requirements or serious ethical failures within the individual's firm, the regulator could rely to these provisions (if finally adopted in their current form) to review that individual's fitness and probity for a senior role in the financial services industry.

CONCLUSIONS

It is clear that a financial services firm's culture, in particular its governance and risk culture, is a key factor in determining the firm's prudential soundness and the extent to which its activities give rise to material conduct risks. Accordingly, financial regulators clearly need to understand and supervise firms' culture in order to supervise these core risks.

It is, however, not possible for regulators to impose their desired culture on a financial services firm; there is no one-size-fits all culture for all financial services firms. Furthermore, in order to comprehensively assess

a firm's culture, regulators need to move beyond their comfort zone of data-driven analyses; as noted above, Andrew Bailey, then CEO of the UK Prudential Regulation Authority, has rightly stated that "As supervisors, we cannot go into a firm and say 'show us your culture'".

Nevertheless, as outlined in this paper, regulators have a range of tools that they can use to get firms to take their culture, in particular their governance and risk culture, more seriously and to get the leaders within firms to promote, exemplify and embed an appropriate culture throughout their organization – and to hold these leaders to account, under fitness & probity requirements, if they fail to do so.

Ciaran Walker, Consultant, Eversheds Sutherland. ICQ

REF 1: "SSM supervisory statement on governance and risk appetite", June 2016, at p.2; available at: <https://www.bankingsupervision.europa.eu/press/pr/date/2016/html/sr160621.en.html>

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SOURCE of FUNDS & SOURCE OF WEALTH

The following article aims to highlight the importance of Source of Wealth (SOW) and Source of Funds (SOF). The article will demonstrate that not having policies & procedures in place was a factor in The Central Bank of Ireland's (The Bank) settlements, as was a failure to scrutinise transactions. While mentioning the recent settlement agreements, this article will also review the references to SOW / SOF in The Bank's industry reports.

In the fight against financial crime and money laundering, The Bank has, in recent years, emphasised the importance of establishing the origin and means of transfer of funds, SOF, as well as the activities that have generated the total net worth of the customer, SOW.

SOF and SOW were referenced as issues of concern, in three of The Bank's most recent Settlement Agreements; with Bank of Ireland (30th May 2017), Allied Irish Bank (24th April 2017) and Drimnagh Credit Union (7th March 2017). This suggests that SOF and

SOW are areas which The Bank is not only focusing on, but uncovering failings on the part of regulated firms. It is important therefore for firms to review their procedures and processes, in the context of The Bank's recent publications.





Industry Reports

Until recently there was comparatively little discussion or regulatory focus on these concepts, however the Industry Reports published by The Bank across 2015 and 2016, did provide some additional insight. An analysis of the descriptions provided by The Bank in the glossaries to its Industry Reports prove interesting.

In its February 2015 "Report on Anti-Money Laundering/Countering the Financing of Terrorism and Financial Sanctions Compliance in the Irish Banking Sector" ('Banking Sector report') The Bank described SOF/ SOW as being "required to be provided prior to the approval of a non-resident PEP". The same description appeared in The Bank's May 2015 "Report on Anti-Money Laundering/Countering the Financing of Terrorism and Financial Sanctions Compliance in the Irish Credit Union Sector" (CU Sector report').

However, later in its November 2015 "Report on Anti-Money Laundering/Countering the Financing of Terrorism and Financial Sanctions Compliance in the Irish Funds Sector" ('Funds Sector report') The Bank expanded its description of SOF/ SOW to being "required to be provided prior to the approval of a non-resident PEPs and may also be required to the extent warranted by the risk of Money Laundering or Terrorist Financing". This is an important reminder that SOF/SOW requirements do not solely apply to non-resident politically exposed persons (PEPs).

Finally, in its March 2016 "Report on Anti-Money Laundering/Countering the Financing of Terrorism and Financial Sanctions Compliance in the Life Insurance Sector in Ireland" ('Life Sector report') The Bank expands the descriptions yet further. The Bank repeated the description it provided in the Funds Sector report, but added "For SOF, firms should seek to discover the origin and means of transfer for funds that are involved in the transaction" and "For SOW, firms should seek to discover the

activities that have generated the total net worth of the customer". Not unreasonably, a reader of the Industry Reports will tend to focus on the one relating to their particular sector, however much can be gleaned from reading the other reports also and this is encouraged by The Bank.

As well as the descriptions, other valuable learnings can be taken from the Industry Reports on the topic. The importance of having the necessary policies and procedures in place, that deal with the on-boarding process of PEPs, the application of Enhanced Due Diligence and obtaining senior management approval, was a common theme throughout the reports. The Banking, Funds and Life Sector reports all cite The Bank's observation of a "failure to sufficiently identify, verify and document SOF and SOW".

Settlement Agreements

The three Settlement Agreements mentioned above should not simply be seen as warnings of what can go wrong, but as valuable sources of practical "must dos", which firms should review and ensure are in place.

In another Settlement Agreement with Bray Credit Union (6th December 2016) we see that not only must a Credit Union "monitor dealings with its members" and "scrutinise their transactions to determine whether or not the transactions were consistent with (the) Credit Union's knowledge of those members and their business and pattern of transactions" but it must also document this and be in a position to demonstrate that this is done in practice. The Bank made virtually identical

observations in relation to Drimnagh Credit Union, but also specifically criticised the absence from files of “information in relation to occupation or source of funds” without which it would not be possible to determine whether transactions were consistent with the firm’s knowledge of the customer.

In its April 2017 Settlement Agreement with AIB, The Bank cited a failure under Section 54 of the Criminal Justice Act 2010 (CJA 2010), that “branch-based procedures did not expressly require branch staff to request information on source of wealth and source of funds from a prospective new PEP customer prior to the commencement of the business relationship”. The obvious warning being, that procedures must be in place that require staff to request information of SOW and SOF, prior to the commencement of the relationship; and that those procedures must be in place at branch level, for firms operating a branch network.

A failure to adopt the necessary policies and procedures under §54 of the CJA 2010, was again raised in the Bank’s May 2017 Settlement Agreement with Bank of Ireland (BOI). The Bank clarified that these should:

- Ensure SOF and SOW information is routinely requested from new non-resident PEPs and monitored when such PEPs are periodically reviewed;
- Ensure exceptions to the standard Customer Due Diligence (CDD) process are fully documented;
- Comply with §33(8) of the CJA 2010 where customers do not provide the required CDD information or documentation.

“By learning from the mistakes of the past, we can better prepare for the future. There must be adequate measures in place to establish the source of wealth and source of funds that are involved in business relationships or transactions”

By learning from the mistakes of the past, we can better prepare for the future. This future from a financial crime perspective is reflective of the 4th Money Laundering Directive, where under Article 20.b.2 when dealing with PEPs obliged entities must “take adequate measures to establish the source of wealth and source of funds that are involved in business relationships or transactions with such persons”. As we await the transposition of this Directive here in Ireland, we can see that determining SOW / SOF is still required and is used to assist in anti-bribery and anti-corruption controls to combat embezzlement (the theft of entrusted funds) and kickbacks by entrusted individuals.

Just a few of the practical steps which MLROs and senior management within firms might consider, include:

- Review AML and Sanctions frameworks to ensure that SOF / SOW are appropriately reflected; that roles and responsibilities are clearly defined and understood and that there is appropriate oversight and management information to monitor;

- Ensure that detailed operational procedures and documentation are in place at all necessary touchpoints, and that these are regularly reviewed and updated where necessary;
- Make sure training includes SOW / SOF for relevant staff; including clear examples as to what are and are not, valid explanations for SOW / SOF;
- Ensure Suspicious Transaction Reports make appropriate reference to information gathered under SOW / SOF compliance to demonstrate a ‘joined-up’ – as opposed to a ‘tick-box’ – approach to AML CDD;
- Reflect SOW / SOF in Risk Assessments;
- Conduct adequate monitoring within the first line of defence;
- Conduct independent testing, ensure mitigating steps are taken and matters are appropriately reported;
- Examine all The Bank’s sector reports to give you a fuller understanding of The Bank’s expectations, which may evolve only subtly;
- Utilise the findings from the published regulatory fines to test your firm’s processes and controls
- Ensure all Policies and Procedures and training documentation adequately and separately define SOF and SOW, and the differences between them.

Cormac ó Braonáin, Head of Compliance, Allianz Re Dublin and Brian Kavanagh, AML & Financial Crime Risk Manager, Elavon Financial Services, Members of AML Working Group. ICQ

INCREASING REGULATORY EXPECTATIONS

ON FUNDS ADMINISTRATOR'S

Outsourcing Arrangements

Outsourcing is always a topical issue among Fund Administrators and never more so

than in this year with the publication of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 ('the Regulations') and the Central Bank of Ireland ('The Bank') "Dear CEO" letter issued in March 2017 on the outsourcing of Fund Administration activities. This letter, the fifth such letter in as many years, caused quite a reaction as it was the first time that The Bank opined on the scale of outsourcing activities by Fund Administrators. In the letter, The Bank stated that the current level observed during the thematic review of five firms, being 48% to 61%, was likely to be at or close to the outer limit of what is appropriate for the funds industry. Going forward, The Bank will consider proposed outsourcing submissions

on the basis of the cumulative amount of activities carried out by Outsourcing Service Providers ('OSP').

The increased regulatory expectations warrant serious consideration by the industry. The potential impact will vary between firms depending on the nature, scale and complexity of its outsourcing relationships. This article seeks to avoid specific scenarios and instead will focus on the practical considerations Business Management and Compliance Officers can look at to ensure that for any future outsourcing proposals, firms consider The Bank's Dear CEO recommendations and remain in compliance. The firm should review each proposal as part of an ongoing assessment of the operational risk and the concentration risk associated with existing outsourcing arrangements. Additionally, it is essential to ensure that planned outsourcing arrangements comply with the requirements, outlined in





the Regulations. These provisions are incorporated into a Statutory Instrument; therefore, a breach of the Regulations may bring relevant firms within The Bank's administrative sanctions regime.

In the March 2017 "Dear CEO" letter, The Bank set out clear recommendations on issues to be considered by a firm during its decision making phase on outsourcing. Such issues include:

- all risks (including country and concentration risk),
- the strategic purposes/complexity of the proposal,
- determine whether the financial benefits outweigh the estimated costs to control the risks involved,
- how the proposal impacts the firm's overall strategy,
- the impact on employees,
- the nature of the client interaction with the OSP,
- potential information

- security implications,
- the extent to which activities are subject to specific laws and regulations,
- consistency to group policies,
- how the firm will conduct oversight of the OSP,
- risks to the level of service provided to clients,
- the scale of outsourcing already conducted.

These issues will usually be debated at an outsourcing forum/committee. All firms reviewed in The Bank's latest thematic review had a formalised outsourcing governance forum in place. There are no set requirements or guidelines given by The Bank on how this governance forum should be structured and each firm needs to consider how it can best operate within their organisational structure. Typically, the Compliance Officer will attend the meetings and is an important contributor

to discussions on regulatory and operational risks. The firm needs to define how any new initiatives are presented to this forum and whether this forum has the authority to approve such decisions.

Attendees should be provided with sufficient material to make an informed decision. In some global organisations, the initiative may be part of a broader business concept and the change programme may already be in progress before the potential impact on the Irish entity is fully identified. Therefore, it is critical that there are open channels of communication in place to ensure that Irish stakeholders are fully engaged in any potential changes which could impact the Irish entity's outsourcing model.

Any new proposal needs to be fully considered at a country level to ensure that all risks are fully disclosed and



“Compliance must ensure that the regulatory risk is considered at a country level and reliance is not placed on global organisational level risk assessments.”

that the forum is provided with clear unambiguous information in order that the proposal can be properly reviewed. This evaluation should be a collaborative effort between Business Management, as the risk owner, and Risk and Compliance, who will work with the operational teams to provide advice on any required changes to control processes and procedures. The operational team will need to explain the workflow currently in place in Ireland to allow Risk and Compliance to properly evaluate the potential impact on the risk profile of the firm. For example, the operational team will need to explain the current operating model and activities in order for Compliance to correctly identify any Irish regulations applicable to the activity which will influence any changes required to the regulatory training provided to the offshore operational teams.

Compliance must ensure that the regulatory risk is considered at a

country level and reliance is not placed on global organisational level risk assessments. The Bank's latest review identified that concentration risk in most firms was assessed from a global group perspective. It is important that each firm assesses the outsourcing proposals from a local operational and concentration risk perspective considering the impact of the proposed change on the firm's overall outsourcing model and whether the change is in line with the local firm's overall business strategy.

The Irish firm's motivation for the outsourcing proposal needs to be clear and articulated in the request for approval submitted to The Bank. In most cases the main driver is not purely cost related and the proposal may be to meet specific client or market requirements. Outsourcing to other locations allows Fund Administrators to offer a round the clock operating model to meet client

requirements in a way that could not be met solely by an Irish provider. Appropriate oversight of outsourcing relationships is a key regulatory risk for Fund Administrators utilising an outsourcing service model. The outsourcing regulations imposed on Irish Fund Administrators are onerous compared to other sectors of the financial service industry and other EU jurisdictions. As a result, the funds industry, particularly multi nationals utilising global operating models, is finding the regulatory expectations a challenge. Outsourcing will remain topical in the months ahead particularly as The Bank has indicated plans to undertake a review across all financial sectors.

ACOI Funds Working Group. ICQ





A PRACTITIONER'S VIEW

ON THE CENTRAL BANK'S CONSUMER PROTECTION RISK ASSESSMENT FRAMEWORK

On March 28th 2017, the Central Bank of Ireland (the Bank) issued the Consumer Protection Risk Assessment (CPRA) Model. The Bank defined "conduct risk" as the risk that a financial services firm poses to its customers from its direct interaction with them. In 2016, the Bank enhanced its model for assessing conduct risk, recognising that risks to consumers can stem from a firm's strategy, business model, culture, governance and other internal structures, its systems and processes or the behaviours of individuals at any level within the firm ("Consumer Protection Risk").

Since the concept of conduct risk was introduced, the Bank has assessed risk through the Probability and Impact System ("PRISM") Model, looking at the nature and scope of the products offered and the risks these products and other engagements with consumers present. The CPRA is the next iteration of this, introducing an enhanced model for assessing consumer protection risks in firms. The CPRA Model facilitates the Bank's assessment of the likelihood and impact of customer detriment crystallising or unfair consumer outcomes materialising. A firm must be able to demonstrate with concrete evidence that it understands the risks it poses to consumers. In

order to do this, firms must work towards development, implementation and embedding of a fit-for-purpose consumer protection risk management framework (the Framework). This Framework should identify, manage and mitigate the specific consumer protection risks that the firm's strategy, business model, internal processes, procedures and external operating environment pose to the consumer.

The Framework should focus on all aspects highlighted in the Industry Guidance (ref 1) document:

- Governance & Controls
- People & Culture, and
- Product Lifecycle:
 - Product Development,
 - Sales/Transaction Process, and
 - Post Sales Handling.

The Bank plan to assess the design and effectiveness of the Framework through targeted inspections in these areas. From the modules listed above, arguably a firm's culture is the most difficult to provide tangible evidence of. The Bank has indicated that they will assess the firm's 'intended culture' against expressed culture and how this is being reinforced and embedded in the firm through communicated values and behavioural drivers.

So, what does a good consumer-focussed culture look like in a firm?

- Clear ownership and accountability for consumer risk is defined across all staff members at all levels within the firm.
- Boards and senior management set out and own the tone of the organisation through their commitment to fair consumer outcomes and acting in the best interests of the consumer at every point in their relationship with the firm.
- Values and expected behaviours are communicated as part of recruitment, induction and reinforced throughout the staff member's career, including performance assessments.
- Product development, both design and test phases, is conducted with the consumers' interests in mind.
- Customer interactions are carried out with a view to help them make informed decisions in relation to products and services and that the products that are sold to them are suitable to their needs and objectives.
- Customer engagements, whether queries or complaints, are managed in a constructive fashion with a view to treating the consumer fairly.
- Customer appeals are handled in a fair manner.
- Staff members are aware of the escalation/whistleblowing processes when they identify potential wrongdoing.
- Remuneration structures are not designed in a way to promote excessive risk taking or potential mis-selling.

"Since firms will be at different stages on the evolutionary path in relation to CPRA, the Bank will not be likely to see consistent best practice across all firms for several years."

The Bank will expect a firm to evidence the above to demonstrate it has a consumer-focussed culture.

The introduction of the CPRA is a step-change for the supervisory inspection teams, insofar as, inspections used to be based on regulation. This is black and white and there is no element of subjectivity in the testing carried out. The firm either adheres to the requirement or it does not. The Bank has indicated that the testing carried out in relation to CPRA will be "intrusive". It is expected, however, to be more subjective. It will be interesting to see how this subjectivity evolves in the Bank assessment process.

Since firms will be at different stages on the evolutionary path in relation to CPRA, the Bank will not be likely to see consistent best practice across all firms for several years.

Compliance Officers need to ensure that CPRA is on the agenda in their firms, whether this is through enhancing a pre-existing conduct/consumer protection framework, assessing the existing risk appetite

statement, reviewing the adequacy of the metrics that are reported in relation to consumer protection risks or commencing a full scale CPRA implementation project.

The Industry Guidance document that issued in March states that "Where risks are identified which are deemed unacceptable, the Bank will typically impose a risk mitigation programme on the firm, explaining the nature of the risk identified and requiring it to perform outcome-focused action(s) to mitigate the risk within a prescribed timeframe. However, as is the case in all of the Bank's supervisory work, other supervisory tools may be used such as instructing a firm to cease a practice or modify a process, or use of regulatory powers, including, for example, the imposition of directions on firms".

In short, the full supervisory toolkit is available to the Bank where risks are identified. Since there is no specific timeframe for implementation for the Framework, it is likely that the outcomes of initial inspections (save for identification of gross deficiencies from a consumer risk perspective) will be risk mitigation programmes with the option for further escalation by the Bank, as required.

For now though, firms should have, at least, begun their journey to identifying their consumer protection risks and creating a robust consumer protection management framework.

Fiona Bourke, Compliance, KBC Bank Ireland plc and member of the Consumer Protection Working Group. ICQ

CORPORATE GOVERNANCE AND THE COMPLIANCE OFFICER'S ROLE

Evolving Expectations

On Thursday 29th June 2017, the ACOI Prudential Regulation and Governance Working Group (PR&G) held a lunchtime seminar dealing with corporate governance and the Compliance Officer's role, including evolving expectations.

It was found that this was of benefit to Compliance Officers in small/medium sized financial institutions who actively facilitate corporate governance compliance.

The Central Bank of Ireland and Corporate Governance

The Central Bank of Ireland (The Bank) defines corporate governance as "procedures, processes and attitudes according to which an organisation is directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among the different participants in the organization – such as the board, managers, shareholders and other stakeholders – and lays down the rules and procedures for decision-making" (Corporate Governance Requirements for Credit Institutions 2015 – Section 2). The Bank have published a number of codes which specifically address corporate governance requirements for regulated entities such as the Corporate Governance Code for

Credit Institutions, Corporate Governance Code for Insurance Undertakings, and the Corporate Governance Code for Captive Insurance and Captive Reinsurance Undertakings. While these codes may be mandatory for specific classes of regulated entities, they are generally viewed as best practice for other regulated entities which do not have specific governance codes. It is worth noting that a contravention of such codes could lead to The Bank using any of its regulatory powers to sanction a regulated entity, e.g. administrative sanctions, prosecution for an offence, suspension, removal or prohibition of an individual from carrying out a controlled function etc.

So, while corporate governance may often fall within a range of functions such as Compliance, Company Secretarial, Legal Department or Corporate Governance function, it is important to consider what specific role the Compliance Officer should play to ensure that good governance practices are embedded throughout the organization.

Evolving Regulatory Expectations

John Kernan, Senior Manager – Risk and Regulatory Team, Deloitte explored the different sources of corporate governance standards including the OECD G20 standards, Financial Stability Board (FSB) peer reviews, Basel Committee on Banking Supervision (BCBS) standards, European legislation, European Supervisory Authorities' guidelines, The Bank codes and voluntary industry codes (e.g. IFIA). There are many different standards, however, Compliance Officers should be aware that the principles of good corporate governance are universal and are not dependent on industry or sector. Many of regulators' key areas of focus are now manifesting themselves as specific detailed responsibilities and requirements in Corporate Governance standards (e.g. outsourcing, "know your structure"). At an EU level, strong corporate governance requirements are embedded in various level 1 regulations such as Solvency II, CRD IV and MiFiD II. In addition the



“ Being aware of the regulatory expectations is not enough – what are the practical outputs a Compliance Officer can drive to ensure good governance at a time where perhaps bad governance is easier to spot?”





Diagram 1.

European Supervisory Authorities such as the European Insurance and Occupational Pensions Authority (EIOPA) and the European Banking Authority (EBA) have issued specific guidelines on Internal Governance. Here at home, The Bank enforces the Corporate Governance Code in tandem with Fitness and Probity Standards. Recent governance publications include the EBA's consultation paper on its proposed updates to current governance guidelines (GL44) and the Financial Stability Board (FSB) 2017 peer review of corporate governance standards. These documents indicate the way that regulators' expectations are evolving by becoming more granular on what they expect the management body to do (roles and responsibilities) and how they expect them to act (more prescriptive requirements e.g. board committees and three lines of defence). Evolving regulatory expectations and themes are summarized in diagram 1.

Overall expectations are that Boards should have a collective competence to deal with all material matters of their firm. There needs to be a clear link between the way the Board and executive team manage the organisation and its risk culture and risk strategy.

But being aware of the regulatory expectations is not enough – what are the practical outputs a Compliance Officer can drive to ensure good governance at a time where perhaps bad governance is easier to spot?

Practical application for Compliance Officers

Sarah Quinn, Compliance Manager for Barclays Bank Ireland PLC, recent graduate of the MSc in Compliance and author of research titled "Effective Collaboration of the Board: A Study detailing how material and information provided

to non-executive directors (NEDs) facilitate good governance", examined the Compliance Officer's role in facilitating the Board of Directors' compliance with Corporate Governance obligations. Various barriers to good governance were highlighted along with a practical framework of solutions which Compliance Officers could adopt to help overcome these barriers. Sarah noted that good governance entails much more than compliance with regulatory obligations; she suggested that an organisation must guard against a 'box-ticking' culture and management must understand what the Board's role is and what they require in order to facilitate good governance.

Sarah's research findings and key tips for Compliance Officers can be found in the article in the Winter 2016 edition of **ICQ**. This is available on the ACOI website under the Library tab - *Irish Compliance Quarterly*.

When Good Governance goes Wrong – An External Perspective

Louise Barrett, *In-house Counsel, Company Secretary and Head of Corporate Governance for Western Union Payment Services Ireland Limited* brought an external perspective of the increasing focus of Regulators on corporate governance and highlighted what can happen when things go wrong from a governance perspective. She focused in particular on the Corporate Governance Requirements for Credit Institutions 2015 (the "Code"). Despite the Code being applicable to Credit Institutions, it is also viewed as best practice for other regulated entities such as payment institutions who are encouraged to adopt equivalent good governance practices.

The Code imposes minimum standards on credit institutions and requires relevant entities to have "robust governance arrangements" in place "which include a clear organizational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risk to which it is or might be exposed, adequate

internal control mechanisms... and practices that are consistent with and promote sound and effective risk management both on a solo basis and at a group level" (Corporate Governance Requirements for Credit Institutions 2015 – Section 6.3).

The Code covers a number of key focus areas from a corporate governance perspective including composition of the Board, roles and responsibilities of the Chairperson, roles and responsibilities of the Chief Executive Officer, Independent NEDs and NEDs, Committees of the Board, procedures at meetings etc.

Good corporate governance is a key focus area of The Bank's supervision with regulated entities seeing increased emphasis on governance risk as part of Probability Risk and Impact System (PRISM) reviews. This is highlighted in the recent sanction of the Bank against Arch Reinsurance Europe Underwriting DAC ("Arch"). In March 2016, The Bank levied a fine of €275,000 against Arch finding that it had failed to comply with

certain standards required by the Code because:

- some of its governance structures and internal controls were not sufficiently robust,
- its Risk Committee was not sufficiently effective; and
- it failed to adequately oversee its subsidiary.

In total, The Bank identified 9 prescribed contraventions of the Code which was viewed very seriously by The Bank and reflective in the fine levied. When commenting on the Arch sanction, The Bank's Director of Enforcement emphasized the importance of embedding good governance practices throughout the organization. She noted in particular that "good corporate governance is not limited to having effective and experienced people in governance roles. It requires continuity of approach. In order for a Firm to be well controlled its governance structures must be able to withstand any loss of key staff which includes written policies and procedures governing key control functions and record keeping that is sufficient to preserve the Firm's institutional memory".

How can you help ensure that your organization adequately addresses governance risk? A few key takeaways were noted:

- Document governance principles and the role and functions of the Board and its Committees;
- Ensure a clear organizational structure is in place and that key roles and responsibilities within the organization are defined and documented with reporting lines clearly identified;
- Review the composition of the Board and Committees to ensure there is an appropriate balance of

- skill, experience and independence;
- Consider carrying out a Board Effectiveness Survey to assess Board and Committee performance;
- Consider what information is being presented to the Board - does this constitute management information which should be discussed at an operating level rather than Board level?
- Ensure risks and issues are appropriately highlighted to the Board in board reports and that Board presentations are distributed well in advance to give directors sufficient time to review the information
- Ensure meeting minutes document an appropriate level of detail on discussion and dissensions.

For further information regarding the content of this article, please contact a member of the ACOI Team by emailing info@acoi.ie. In addition to this, 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.

Niamh O'Mahoney, *Advisory Consultant, Regulatory and Risk, PwC & member of the PR&G Working Group. ICQ*



ANSWERS TO

FREQUENTLY ASKED QUESTIONS

How do I break into the compliance field? Am I a “good fit” for a career in compliance?
How do I strengthen my application for a programme when I do not possess a degree?
Finbarr Murphy gives us the lowdown on these burning questions.

As Director of Education & Professional Development I am asked lots of questions as you'd expect but three questions I am constantly asked in many different ways which people seek clarity, guidance or assistance with are;

- 1) How do I break into the compliance field?
- 2) Am I a "good fit" for a career in compliance?
- 3) How do I strengthen my application for a programme when I do not possess a degree?

Whilst each person's circumstances are unique, in this article I will consider each question and provide some helpful tips for all to consider.

1 How do I break into the compliance field?

This is quite often asked as "How do I get compliance experience without a job, or how do I get a job without experience?"

In the case of those people who already work, many forget that they already work in a highly regulated, compliance driven environment. Therefore, everyone has a component of compliance in their role, it's just the level of pervasiveness of compliance they need to be aware of, e.g. a sales or advisory person primarily is considered with providing the right advice or sale of a product / service appropriate to the customer's risk appetite and needs, guided by applicable codes and regulations, Consumer Protection Code, MiFID II product governance requirements etc.

The above point illustrates the need for a person to acknowledge that they are aware of this and the knowledge and skills they can transfer from their existing role into what's required in a role more compliance oriented.

In addition to full-time, paid employment, there are a lot of ways to build competencies and know-how to help demonstrate your employability in the compliance field.

- Acquiring a formal qualification and taking up the designation can be a quick and cost effective method to acquire credentials and

"In the case of those people who already work, many forget that they already work in a highly regulated, compliance driven environment."

establish your professional capabilities in the compliance field. Acquiring experience after will legitimise the knowledge gained.

- Liaising with your employer to gain access to your compliance colleagues through mentorship programmes, serving on committees etc. and assist you build your professional network but also learn the language required in the field.
- Other forms of volunteer work such as internships or unpaid work in the non-profit sector can demonstrate acquisition of essential management skills, such as assuming responsibility, leadership and administration acumen.
- If presented correctly and in the right context certain knowledge and skills acquired through personal experiences and even hobbies can provide you with substance to legitimise your transfer into the field. For example, travel broadens the mind. Articulating different cultural experiences can appeal as the merits of a diverse culture and workforce is now at the forefront of the compliance culture agenda. Also never underestimate the transferable skills of teamwork and leadership that can be gleaned from being involved in sports.

The above is not an exhaustive list. I always stress that it requires the person to take some affirmative steps to acquire different or additional knowledge, skills, and abilities. This will require them to reflect & consider their current situation and translate it into the requirements of what's required for a role in compliance. Finally, the biggest requirement is to have a genuine interest and disposition to regulation, acknowledging it as a society "good" rather than only as a burden.



2 Am I a “good fit” for a career in compliance?

To answer this question I always refer people to read certain articles from ICQ. I justify this by saying you receive better advice from the leaders and practitioners in the field.

In the Spring 2015 edition the then Chairperson, Ms. Melanie Blake discusses her thoughts on the ACOI and the role of the Compliance Officer. In the Spring 2017 edition the new President of the ACOI, Mr Clive Kelly provides his commentary on the same theme. In the Winter 2016 edition Niall Gallagher one of founding fathers of the ACOI provides insightful commentary on his career and how the ACOI was formed.

Another source that many people find helpful is the winning essays of the Niall Gallagher Professional Diploma in Compliance Scholarship. Entrants wrote about what they thought were “The Effective Attributes of a Compliance Officer”. Ms Anna Mulhall the inaugural winner’s essay appeared in the Spring 2017 edition. The second placed winner appeared in the Summer Edition and the third placed winner follows this article.

3 How do I strengthen my application for a programme when I do not possess a degree?

The ACOI has worked closely with its academic education partners to enable access for its members without compromising the integrity of the admissions requirements for any programme. The programmes that require a degree are as follows;

- Professional Certificate in Data Protection

- Professional Certificate in Financial Crime Prevention.
- MSc in Compliance
- MA in Ethics (Corporate Responsibility)
- Diploma in Risk Management, Internal Audit & Compliance.

Despite this for each programme applicants who do not hold a primary degree but have relevant work experience at a middle or senior management level are eligible to apply and will be considered on a case-by-case basis. The following are ways that can augment your application and add substance to when being considered in this manner;

- Demonstrate that despite not possessing a degree you have engaged in the education process – acquired a number of lesser awards at level 7 or level 8 but not full degree programmes. For further information on what these levels mean visit the acoi website under the education tab.
- Another consideration is people who have degrees in non-cognate disciplines, e.g. degrees not relevant in the field, e.g. BA in Art History. Still state this as it shows you have underwent a programme of academic rigour at an equivalent level, yet not in a cognate discipline, such as law, business etc.
- Detailed CV that outlines your progression in your roles, e.g. moving up levels of responsibility. Consider information that will assist a panel of people to determine your appropriateness. Items such as job title, moving from team leader to manager, number of staff, assets under management, budgets you manage. Figures and numbers that infer your level of seniority. Reporting lines too

can provide some clarity. State if you report to the Board etc.

- Business experience is very valuable, regulations can be learnt, customer perspectives and experience of engaging with customers is very valuable too.
- Employer Endorsement – A letter / declaration from your employer acknowledging your application for the programme and their support, financially &/or acknowledging the time with a commitment to release you to attend lectures, study etc. can differentiate you from other non-standard applicants.

Whilst the ACOI and its academic partners wish to encourage and harness an individual’s enthusiasm this needs to be done in the context of ensuring the programme is level appropriate and all applicants who enrol are capable to do so.

I hope you found this article helpful. It goes without saying if you ever require any assistance I am here to help, Finbarr.murphy@acoi.ie or 01-779 0202. ICQ

Applications are open for the following programmes commencing in February 2018;

- Professional Certificate & Diploma in Compliance.
- Professional Certificate in Data Protection.
- Professional Certificate in Financial Crime Prevention.
- Professional Certificate in Conduct Risk, Culture & Operational Risk.
- Professional Certificate in Investment Fund Services Risk Management.
- Diploma in Risk Management, Internal Audit & Compliance.

THE ATTRIBUTES OF THE Effective Compliance Officer

Concluding the series of essays in this year's Niall Gallagher Professional Diploma in Compliance Scholarship, **Alan Simon**, who came third in the competition, outlines the attributes of an effective compliance officer.

OVERVIEW

In the Spring 2017 edition of ICQ the essay from the inaugural winner, Ms Anna Mulhall was featured. In the Summer 2017 edition the second placed essay winner Rosemary Atuokwu's essay appeared.

The Niall Gallagher Professional Diploma in Compliance Scholarship' was launched to promote the importance of further education and recognition of professional certification in the advancement of an individual in their career in compliance. It is named the 'Niall Gallagher Professional Diploma in Compliance Scholarship' in recognition of Niall's contribution to the field of Ethics and Compliance and in particular for his pivotal involvement in the formation and development of the ACOI.

Compliance as a function is a complicated beast. Occasionally nicknamed the 'Business Prevention Unit' by the sales team; a seldom mentioned presence who are out to catch mistakes and generally make life difficult. Of course, this is a misconception, but it is one we all find on a regular basis working in industry. We as compliance officers know we are working to protect the business and its staff, and to enable us to do this we must demonstrate certain attributes which are discussed below.

To paraphrase Mr Niall Gallagher's interview in the recent ACOI Quarterly Update (Q4 2016), compliance officers require a professional compliance skillset and need to advance their careers in order to be most effective. Developing and attaining a professional qualification, amongst many other benefits, gives compliance officers the strength of their convictions to stand up to the business and get their points across. Professional qualifications are also an excellent base on which to build a career, as they show an ability to persevere through difficult examinations, often whilst juggling work and a family, and demonstrate to senior management that you are

able to deal with a heavy workload whilst not sacrificing the quality of your work – an important ability for any compliance officer. Should these qualifications lead to progression within the firm, by joining the senior management team, a compliance officer now has a much stronger voice, which is more likely to impact the decision making and strategic plans for the firm.

The attributes of an effective compliance officer are as follows:

Confidence

The overarching requirement for an effective compliance officer is confidence. You must have confidence both in your own abilities, and have the confidence to self-identify where your own abilities are lacking. This is especially important as you begin your career as a compliance officer – there is a human tendency to be over confident in your own abilities and this is something that must be carefully watched. Having confidence in your abilities is something that comes with time, practice and developing your professional skills through education, and should be nurtured by management in new staff, and encouraged amongst colleagues.

Confidence manifests itself in a number of ways, from leading seminars with other professionals to share knowledge, to standing up to what you believe is the wrong course of action, regardless of how senior in the organisation the drivers of the action may be. It can be intimidating, particularly for a junior member of the compliance team, to tell a senior manager in a firm 'no', particularly when a 'no' from compliance could impact the sales for the individual, the division or the firm.

As a confident compliance officer, you are offering a much better service to your firm and are furthering the compliance function's ultimate goal, of protecting the business (sometimes from itself).

Knowledgeable

As discussed above, having the confidence to identify your shortcomings can manifest as discussing with your line manager and asking for more training, or as a more experienced practitioner it could be undertaking a course of study in the area you need more information on. Effective compliance officers should be able to answer most questions posed by the business with limited recourse to research materials, and would know where to get the information for more complex queries. If the main function of compliance is to protect the business, then understanding the "ask" is essential to being effective.

Becoming more knowledgeable about the compliance sphere is also the easiest of the requisite attributes to build upon – it requires the appetite for learning and the

"Being a tenacious person means being someone who will persevere at their goal, and will work to overcome obstacles in their path without giving up."

awareness that your skills cannot be allowed to stagnate. New regulations, requirements and directions will constantly come and you must accept the need to stay constantly up to date on developments.

Tenacity

Being a tenacious person means being someone who will persevere at their goal, and will work to overcome obstacles in their path without giving up. On occasion, the ambitions of a firm will run against the regulatory requirements, from firms seeking to run an aggressive marketing campaign, a customer being offered an unsuitable product or being treated unfairly in order to maximise profits. It is the responsibility of a compliance officer to prevent the firm from taking these actions, which may require lengthy conversations with eager sales colleagues or arguing your point with the Board of Directors. Likewise, this rings true in the reverse – an effective compliance officer can be a key stakeholder when launching a new product, as they have the technical knowhow and abilities to ensure the launch, or action, is handled in a compliant manner and will not give rise to issues for the firm.

By working through obstacles rather than giving in and taking the easy path, having a tenacious approach will stand a compliance officer in good stead.

Approachable

As mentioned in the opening paragraph of this essay, compliance officers often have a reputation for being an internal secret police, snooping on colleagues and questioning their every move. Though in some cases the level of surveillance may be warranted, it is not the reputation any individual wants to have. In order to be effective, a compliance officer must be able to get their message out, and must be approachable by anyone in the business to bring their questions, doubts, or indeed issues. Compliance officers must have the implicit trust of their business, that they are acting to protect the business from regulatory sanction or disrepute. If a compliance officer fails in this task that trust will be broken and the relationship between compliance and the business is likely to be fractious.

This trust can be difficult and time consuming to create, as it can be a fine line between building a good relationship with the business and being perceived as a 'push-over', someone who can be trusted to sign off on anything put in front of them. Rather, by taking a professional approach and seeking to work with colleagues, rather than against them, you can ensure your effectiveness in the organisation. It has been demonstrated time and time again that by not taking a collaborative approach, colleagues in the business will simply avoid dealing with you. If

you were the sole compliance officer in a firm, or an individual such as the MLRO, the issues this present are clear and open the business to significant risk.

What is 'Effective Compliance'?

How can compliance's effectiveness be measured? There are a number of different measures that can be employed, such as the firm being fully in compliance with regulatory requirements and not having been sanctioned by a regulator; a clean bill of health from an auditor; or having an open and honest working relationship between the front office, or sales team, and the compliance team. The first two metrics are straightforward to review, but the final measure is more difficult to quantify.

By fostering an environment of open communication, and encouraging individual staff members to bring breaches and issues immediately to the attention of compliance, and having the staff members know this won't lead to unfair treatment, you will begin to see results. This could be issues being identified whilst they can still be handled in house, or any breaches being immediately brought to the attention of the regulator and thus potentially saving the firm from a significant penalty were these issues to have been uncovered during an audit.

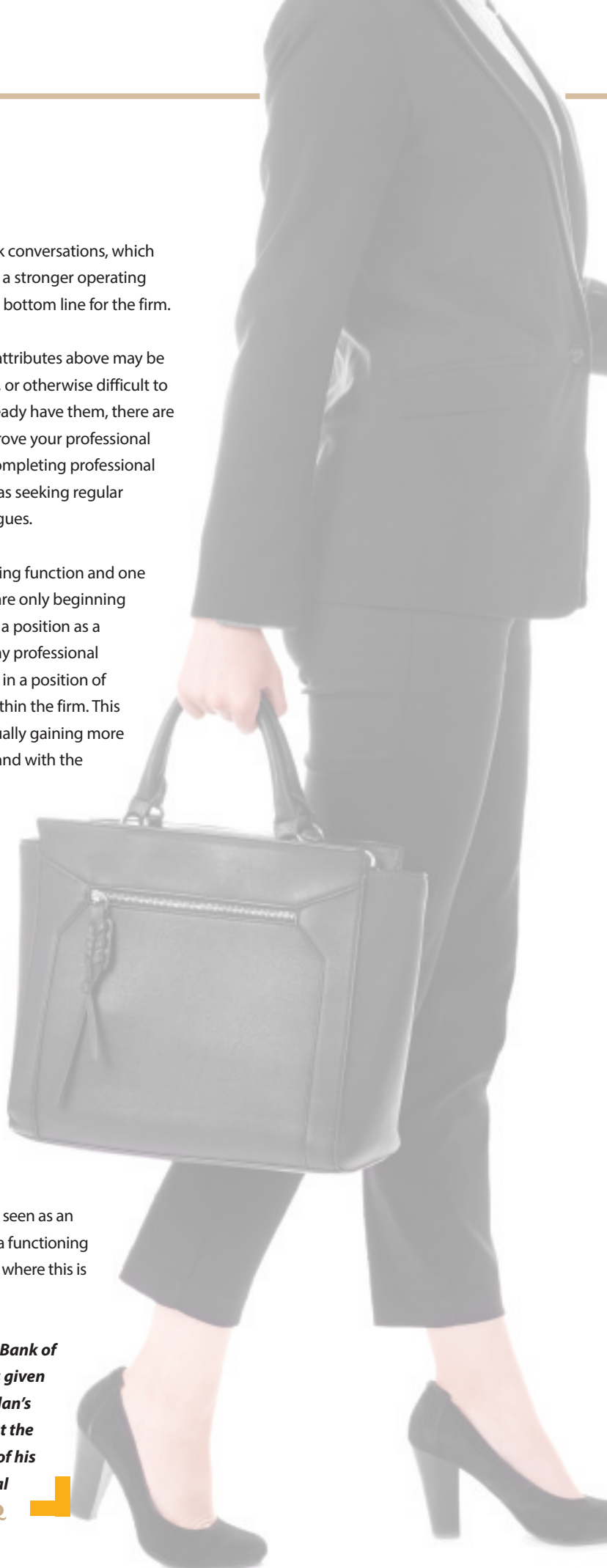
As demonstrated above, to be an effective Compliance Officer you must be able to bring a high level of professionalism, in addition to personal attributes, to the table. Having an effective compliance department is a huge asset for any firm, as it not only ensures that the business is protected from regulatory breaches, but will also foster a culture

of openness and frank conversations, which will ultimately lead to a stronger operating model and a stronger bottom line for the firm.

Though some of the attributes above may be seen as being natural, or otherwise difficult to attain if you don't already have them, there are always means to improve your professional abilities, such as by completing professional qualifications as well as seeking regular feedback from colleagues.

Compliance is a growing function and one in which many firms are only beginning to invest in. By taking a position as a compliance officer, any professional is putting themselves in a position of high responsibility within the firm. This responsibility is gradually gaining more traction within firms and with the Financial Regulators, for example in Ireland through the expanding Pre-Approved Controlled Function ('PCF') compliance positions of the Central Bank of Ireland. However, it is only through the further development of the profession, and its professionals, that compliance as a whole will come to be seen as an indispensable part of a functioning financial services firm, where this is not already the case.

Alan Simon, Central Bank of Ireland. All opinions given above are entirely Alan's and in no way, reflect the opinions or policies of his employer, the Central Bank of Ireland. ICQ



PERSUASION *in* Compliance

The power of persuasion is a key skill that all compliance officers should acquire, writes **Margaret Considine**.

Power is the most persuasive rhetoric." (Friedrich Schiller). Compliance is good business.

In a world of ever changing compliance and regulation, it is becoming more and more important to use the power of persuasion to get the necessary outcomes as opposed to an overuse of the age old positional power and authority.

In an ideal world, every department would see the benefit of compliance and focus on delivering it as a priority in their business unit. For too long the dominant way of influencing people to comply with compliance requirements was the threat of negative consequences or repercussions. We need to find another way to encourage people to do the right thing; a way to create a positive culture that benefits everyone, one that gains commitment and passion to the purpose of compliance.

One way in which we can do this is to use the more behavioural modes of communication, namely, influence and persuasion. These are skills important not just for business but also for life. Influence is what is left behind when you leave the room. Therefore, we need to interact with intent, be clear and purposeful in our interactions.

"Like all things in life preparation is key. Knowing the who and the why. Once we have these essentials in place we can look more deeply and think about how people actually make decisions."

As a result, we all need to continually develop our Persuasive Repertoire. Fortunately, persuasion is a skill that can be learned. Just like most skills it is also one that needs to be practiced.

In all interactions - start by getting the basics right. Demonstrate confidence, optimism, authenticity and demonstrate the right attitude. The only way you will be able to do this well is by being exceptionally prepared for any encounter. Like all things in life preparation is key, knowing the who and the why will help you create a better case for getting what you want. Once we have these essentials in place we can look more deeply and think about how people actually make decisions.

All decisions are influenced by both reason and emotion. To what degree each impact will depend both on your knowledge and preparation as well as your charisma and natural ability to connect with people. In addition, you must understand how your audience like to receive the information.

Persuasion comes in two styles and as compliance executives you will need to be adept at both.

Persuasive Reasoning: Rational and logic, the evidence and data that support your argument and;

Charismatic Reasoning: When there is no logic or data, acceptance of any future based arguments can rely heavily on how convincing and trustworthy a person is to the audience.

If you would like to improve your ability to persuade people to move in your direction practice using the following principles outlined by Dr. Robert Cialdini in his groundbreaking research *Harnessing the Science of Persuasion* [Harvard Business Review Oct 2001]. Use one or combine all six weapons of influence to increase your impact.

“Power is the most persuasive rhetoric.”

Fredrich Schiller



1 Principle of Reciprocity

If you do something for someone else, they are more likely to return the favour. We seem to be wired this way. Do a favour for someone and you leave them with a debt to repay. If you want to have more influence on the people around you, start with doing something for them, help with a project, offer your meeting room – people repay in kind.

2 Principle of Consistency

We tend to stick with what we already have committed to. When we have to make a decision, we feel a pull to align our self with our stated commitments or a previous decision made. We also like to finish what we have started and if we remind employees of the sense of satisfaction gained on completing and filing what they have agreed to do in their responsibility to compliance work, we may foster a more diligent workforce that are more likely to comply. Ideally make their commitments active, public and voluntary.

3 Principle of Social Proof

We follow the lead of similar others: Peer Power. Encourage a few influential people in your organisation to focus on compliance and others will follow. It is easier to follow the current instead of pushing against it. We tend to conform to social trends. Though we might prefer not to think so, we usually are affected by the views and actions of others, particularly those we hold in a good light. Are you first on the dance floor or do you need others to make it ok to join in?

4 Principle of Authority

We defer to authority. If an expert says it, it must be true. Be an expert. Authority figures carry much influence. People like experts and will be influenced more easily by someone who they deem to have the answers.

5 Principle of Liking

Liking is a powerful principle, People like those who like them. Using someone's name, remember who they are, their department,

big projects they are working hard on. All of these simple actions can have a powerful effect to making someone like you by taking the time to uncover real similarities and if they like you they are much more likely to be influenced by you.

6 Principle of Scarcity

If people believe that there are few of something, it increases their desire to have it. People want more of that they have less of. Highlighting to people the fact that there are not so many of what you have will encourage them to want more of it – i.e. think of the price of the last two tickets for a rugby or GAA match.

Achieving perfection and one hundred percent compliance may not always be attainable, however if we chase perfection we may just catch excellence in compliance. Try it – be yourself but with persuasive skill. Human models, your experience and character, are more vivid and more persuasive than explicit commands. **Margaret Considine is CEO of the EQuita Group, Consultant, Author, Trainer, Mediator and Key note speaker. www.equita.ie. ICQ**

1 27.06.17 MiFID II Product Governance: (L-R) Aoife McGee, Des Ritchie & Sinead O'Riordan, Asset Management Supervision, Central Bank of Ireland.

2 12.07.17 Train the Trainer: (L-R) Ciara Conlon, EQuita Consulting and Sarah Browne, BOI.

3 29.06.17 PRG Seminar. (L-R) Louise Barrett, Western Union, Sarah Quinn, Barclays Bank Ireland PLC and John Kernan, Deloitte.

4 08.06.17 Preparing for GDPR. (L-R) Aisling Clarke, ACOI Council Member and Event Chair, John Magee, Partner, William Fry. **ICQ**



ACOI WORKING GROUPS

Joiners, Leavers & Role Changes

F We welcome all new members to the Working Groups. We say goodbye and a big thank you to all leaving Working Groups for their contribution to **ACOI**.

Working Group	Joiner	Leaver	Change in position
AML	n/a	n/a	n/a
Consumer Protection	Cathryn Kendal (from DP & Technology WG)	Susan Clerkin	n/a
Prudential Regulation & Governance	Jackie Ennis	n/a	n/a
Data Protection & Technology	Alan Moore	Samantha Fletcher-Watts Daniel Patterson	Tom O'Connor (Vice-Chair)
Funds	n/a	n/a	n/a
Pensions	Cormac O'Neill	n/a	n/a
Credit Union	n/a	n/a	n/a



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ACOI Education & Careers Evening





1 Panel of Speakers **2 Early Days & Skills in Demand Presentation** Ms. Eimear Walsh, Associate Director, Banking, Funds, Insurance & Legal. **3 KPMG** (L-R) Mr. Michael Daughton, Partner; Ms. Jennifer Reynolds, Risk Consultant; Ms. Grainne Quinn, Manager, Consulting; Ms. Laura O'Dwyer, Director, Risk Consulting; Ms. Margaret Murphy, Director, Regulatory Knowledge Centre; Ms. Sinead Galvin, Recruitment Specialist and Ms. Janis Heather, Recruitment Manager. **4** (L-R) Mark Middleton, Associate Director, Banking & Financial Services, Redtree Recruitment; Eimear Walsh, Associate Director - Banking, Funds, Insurance & Legal, Brightwater; Suzanne Feeney, Director Legal, Compliance & Financial Services, Robert Walters; Clive Kelly, ACOI President & Event Chair and Frances Bleahene, Senior Associate, Knowledge Team, McCann FitzGerald. **5 The Institute of Banking** Gerry Grenham, Head of Postgraduate Programmes. **6 The Insurance Institute** (L-R) Bernice Grimley, Senior Events Executive; Naomi Gaffney, Client Support Manager Corporate Accounts; Claire Minchin, Corporate Account Manager Apprenticeship

Programme and Sandra Harvey-Graham, Apprenticeship Project Manager. **7 Careers Clinic Presentation** Mark Middleton, Associate Director, Banking & Financial Services, Redtree Recruitment. **8 The Central Bank of Ireland** (L-R) Liz Graham, Resourcing Manager and Erica Skelly, Resourcing Manager. **9 Brightwater Recruitment** (L-R) Eimear Walsh, Associate Director - Banking, Funds, Insurance & Legal; John Howe, Assistant Manager - Financial Services; Laura Mattimoe, Marketing Executive; Michael Minogue, Assistant Manager - Legal and Jean Heylin, Senior Associate. **10 When Established Presentation** Suzanne Feeney, Director Legal, Compliance & Financial Services. **11 LIA** (L-R) Jean Haughton, Supervisor - CPD Department and Kathleen Burke, Education Administrator. **12 Student Experience Presentation** Frances Bleahene, Senior Associate, Knowledge Team, McCann FitzGerald. **13 Eversheds Sutherland** (L-R) Chris Martin, Senior Associate - Financial Regulation, Compliance and Philip Reynor, Trainee. **ICQ**

Banking

04 AUGUST 2017

Domestic

Key provisions of the Credit Reporting Act 2013 enter force.

European

EBA publishes final standards specifying information requirements for the authorisation of credit institutions; The Commission consults on the development of secondary markets for non-performing loans and distressed assets and protection of secured creditors from borrowers' default.

07 JULY 2017

Domestic

CCPC publishes its Mortgages Options Paper; Central Bank launches a Consultation in order to update their 2014 Implementation Notice in relation to the exercise of Options and Discretions arising from the CRD Regulations and CRR.

European

EBA publishes its Annual Report for 2016; EBA updates final guidelines on Disclosure Requirements pursuant to the CRR.

08 JUNE 2017

Domestic

Initial public offering of

shares in AIB announced by the Minister for Finance. On the EU Front: EBA publishes opinion on "own funds" in the context of the CRR and CRD review proposal; ECB publishes guidance on Fit and Proper Assessments and on Leveraged Transaction.

Funds

04 AUGUST 2017

Domestic

Update of the Investment Limited Partnership and ICAV legislation announced

European

ESMA issues opinion on Asset Segregation and Custody Services; ESMA issues opinion supporting supervisory convergence in the area of investment management in the context of Brexit.

07 JULY 2017

Domestic

Central Bank publishes revised guidance on Share Classes and updated Central Bank UCITS Questions and Answers.

European

Money Market Funds Regulation published in the Official Journal; Commission addresses cross-border distribution and supervision of UCITS and AIFs.

08 JUNE 2017

Domestic

Companies (Accounting) Act 2017 will come into operation on 9 June 2017; Central Bank publishes AIFMD Q&As and UCITS Q&As.

European

ESMA publishes principles on supervisory approach to relocations from the UK; European Council adopts the Money Market Fund Regulation

Insurance

04 AUGUST 2017

Domestic

The Government proposes changes to Insurance Compensation Fund; Department of Finance publishes update on the transposition of the Insurance Distribution Directive.

European

European Commission consults on two draft Delegated Regulations supplementing IDD; EIOPA issues opinion on supervisory approach to Brexit relocations.

07 JULY 2017

Domestic

Central Bank publishes Macro-Financial Review; Central Bank publishes Insurance Quarterly Newsletter.

European

EIOPA publishes Annual Report for 2016; EIOPA publishes Supervisory Assessment of the Own Risk and Solvency Assessment.

08 JUNE 2017

Domestic

Supreme Court reaches decision in Law Society of Ireland v The Motor Insurers' Bureau of Ireland; Central Bank publishes notice on reporting under Solvency II.

European

Insurance Europe publishes Annual Report and review of indirect taxation on insurance contracts; European Commission adopt Solvency II Implementing Regulation on the calculation of technical provisions and basic own funds.

Investment Firms

04 AUGUST 2017

Domestic

Department of Finance publishes feedback to the Consultation on national discretions under MiFID II; Central Bank consults on the Second Edition of the Central Bank Investment Firms Regulations including changes related to MiFID II.

European

ESMA issues sector-specific



principles on relocations from the UK to the EU27; ESMA launches three consultations on the Prospectus Regulation.

07 JULY 2017 **Domestic**

Central Bank publishes Markets Update, Issue 4 2017; Central Bank publishes updated Q&As on the Investment Firm Regulations 2017.

European

Commission publishes proposal to amend the EMIR with accompanying Q&As on the proposal; ESMA publishes updated MiFID II/ MIFIR Investor Protection Q&As.

08 JUNE 2017 **Domestic**

Central Bank publishes Markets Update, Issue 3 2017.

European

ESMA publishes final report on Product Governance Guidelines under the MiFID II; ESMA publishes opinions and updated Q&As in relation to MiFID II; European Commission publishes a proposal for a regulation amending the EMIR

Cross Sectoral

04 AUGUST 2017 **Domestic**

Central Bank publishes Brexit Frequently Asked Questions.

European

European Commission publishes guidelines

on Key Information Documents as required by the PRIIPs Regulation

07 JULY 2017 **Domestic**

Central Bank publishes discussion paper on the Consumer Protection Code and the Digitalisation of Financial Services.

European

ESMA publishes its Annual Report for 2016; ESAs publish final guidelines on the factors to be considered when carrying out Simplified and Enhanced Customer Due Diligence to assess Money Laundering and Terrorist Financing Risks; ECB announces plan to develop a service for the Settlement of Instant Payments.

08 JUNE 2017 **Domestic**

Exemption from stamp duty announced on the transfers of shares in Irish companies admitted to the Enterprise Securities Market of the Irish Stock Exchange; Financial Services and Pensions Ombudsman Bill 2017 published.

European

EBA consults on draft Guidelines on security measures for operational and security risks of payment services under the PSD II; Corrigendum to Delegated Regulation (EU) 2017/653 on Key Information Documents published. **ICQ**



MEMBER Profile**Anna Mulhall**

Anna Mulhall, Associate Director,
Risk Consulting, KPMG

**What did you want to do when you left school?**

I was obsessed with music as a teenager and wanted to become a professional pianist. I was lucky enough to gain a place on the music performance degree programme at the Royal Irish Academy of Music and my chief concern during those undergrad years was making it to the RIAM on Westland Row for 8am, to claim a practice room for the day!

How did you enter into the world of compliance?

While working on a number of large-scale remediation projects, I came to realise that conduct risk is an area of enduring interest for me. Additionally, through the projects I have worked on, I have developed an appreciation for robust internal controls and how these (or a lack thereof) can influence the trade-off between risk and reward. I am currently undertaking the ACOI's Professional Diploma in Compliance, which is an excellent broad-based introduction to the world of compliance.

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

I believe that the production and dissemination of timely and adequate risk information will continue to pose a challenge for financial service providers. There are also further opportunities to formally establish ownership, responsibility and accountability for risk management across processes and to ensure that compliance obligations are embedded into day-to-day activities.

How would you describe your management style?

I work in a learning environment, where teams are formed based on project needs. Our projects tend to be quite structured and tasks are delegated to achieve optimum time efficiency and quality. This approach requires a coaching management style, which features the provision of ongoing feedback. I enjoy open collaboration and giving people the opportunity to contribute their own ideas and shape deliverables.

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

'Done is better than perfect' – this taught me not to deliberate too much at the start of a task and it helped me to gain inspiration from the process of production, rather than a visualisation of the end-product itself.

An accomplishment you are most proud of?

Professionally, becoming a qualified accountant after completing an undergrad in an unrelated discipline; and moving into professional services after training in industry and financial services. Personally, performing a concerto at the National Concert Hall and running my first 10k!

What are you currently watching and listening too?

Watching, I don't make enough time to watch TV! The last series I religiously watched was 'Victoria', which I really enjoyed. Listening, Frederic Rzewski's 1975 variations 'The People United will never be defeated'.

What's your favourite book of all time and what book changed your life?

I struggled to answer this question as there are many abandoned books on my bookshelf which I am ashamed to have not yet read, including a Penguin collection of banned books! I enjoyed novels by Thomas Hardy, George Eliot, Daphne du Maurier, the Bronte sisters, Jane Austen and Fyodor Dostoyevsky when I was younger, as well as all of Roald Dahl's children's books. Separately, 'Ham on Rye' by Charles Bukowski was very raw and honest and made an impression on me, perhaps changing my outlook in some ways.

How do you relax & unwind?

At the moment, I find that gym classes help me to relax and unwind. I also enjoy catching up with friends for brunch.

What's your favourite restaurant?

I love The Vintage Kitchen on Poolbeg street.

Where is your favourite place in Ireland?

I would say Dublin on a sunny day.

An interesting fact about you?

My circadian rhythms are consistent - I am not a morning person at all, despite it being the case that larks are valued highly where I work!! I hope this is something I mask well with coffee! **ICQ**



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