

ICO

IRISH COMPLIANCE QUARTERLY

AUTUMN 2022



Ethics an Afterthought?
When One Hour is not
Enough

The EU's Digital
Services Package

Regulation, Ethics
and the Impact on
Stakeholders

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CEO Update



Welcome to the Autumn edition of ICQ Magazine

These certainly are challenging times. All the indications are that the war in Ukraine will contribute to further food and fuel shortages, a continuing refugee crisis, accelerated global inflation and a cost-of-living crisis. Central Banks, globally, are planning further interest rate increases to counter inflation. Added to this is the effects of global warming and the imposition of ambitious climate change targets. Clearly all of these factors directly impact the profession which is further challenged in trying to keep one step ahead of the resultant ever-changing regulatory landscape. Your Institute needs to continue to anticipate the future needs of members so that we are ready to deliver solutions when they are needed. In that context, we continue to offer a range of services to members during these unprecedented times, some of which are summarised below.

New Education Offering - Professional Diploma in Sustainable Finance for Compliance Professionals

Work continues on finalising the new Professional Diploma in Sustainable Finance for Compliance Professionals. The Diploma, the first of its kind globally, is the result of a collaboration between Compliance Institute, Sustainable Finance Skillnet (SFS) and IFS Skillnet and forms part of the continuing effort, nationally, to address the talent gap in sustainable finance. It is expected that the programme will be launched during Climate Finance Week in October and a programme taster event will be held on 21st October. IOB have been awarded the contract to deliver the Diploma. Registration for the programme will commence in Q4, 2022. To register your interest, please contact skills@sustainablefinance.ie

CPD and CPD on Demand

To date this year, we have provided almost 30 hours CPD. The average attendance at these has been over 200. Numbers availing of our CPD on Demand offering has also increased over the past number of months and there are currently 8 short programmes available. These can be found on the Professional Development section of our website.

Annual Conference

I am really looking forward to the Institute's annual conference which will take place as a hybrid event on the 10th November. The 'in-person' venue will be the Shelbourne Hotel, Dublin and I would encourage you all to attend and network with fellow members in this our anniversary year. The Conference theme, 'Compliance - Setting the Standard', will deal with a variety of topics including the forthcoming IAF/SEAR regime, developments in ESG of relevance to the Compliance professional and ethics. Our keynote speaker will be Mr. Michael McGrath, Minister for Public Expenditure and Reform. Additional speakers and panellists will be announced in the coming weeks. Make sure to keep an eye on our social media and website News page.

Members' Table Quiz

Continuing the theme of the importance of availing of networking opportunities - a reminder of our upcoming Table Quiz on 22nd September. Join us for a fun filled evening and team up with your fellow members to test your general and compliance knowledge. The night will include complimentary food and drink together with a raffle for fantastic prizes. Details are on the events section of our website.

“

Clearly all of these factors directly impact the profession which is further challenged in trying to keep one step ahead of the resultant ever-changing regulatory landscape.”

Education

A number of our educational offerings, delivered by our education partners, are now open for registration. These include the:

- MSc in Compliance, a level 9 qualification, which commences on the 3rd October with registration closing on 19th September.
- Professional Certificate and Diploma in Compliance, a level 7 qualification, which commences on the 3rd October 2022 with registration closing on the 11th November. An information event will take place on 21st September.
- Professional Diploma in Leading Cultural Change and Ethical Behaviour in Financial Services, a level 9 qualification, which commences on the 3rd October with registration closing on 19th September.
- Diploma in AML in a Fintech Environment, a level 8 qualification, which commences in mid-October.
- Diploma in Fintech Risk and Compliance, a level 7 qualification, which commences on the 26th September with registration closing on the 23rd September.
- Diploma in Risk Management, Internal Audit and Compliance which commences on the 21st September.

In the news

Members' views on the forthcoming Google ban of third-party cookies received coverage in a number of news outlets. The survey found that although the

oncoming changes from Google around the use of third-party cookie data will have implications for almost 9 in 10 businesses, there is a widespread lack of awareness, with 74% of respondents saying there's little to no awareness of the issue within their organisation.

Further details of the coverage since the last edition can be found on page 10.

Podcasts

We continue to add regular podcasts to our 'The Compliance Files' series which now has over 900 minutes of content and has been downloaded 10,000 times and listened to in 65 countries. If you haven't done so already, I would encourage you to listen to the series which gives you access to Irish and international industry insights and key perspectives on how the evolving regulatory landscape is driving change and bringing opportunity for compliance professionals everywhere. Subscribe to the Compliance Files on whatever platform you normally use.

Reminder

Finally, a reminder that the payment of the Institute's 2022/23 membership renewal fee is now due. Please log into your account on the website (www.compliance.ie) and follow the instructions.

Michael Kavanagh

CEO



President's Page



Welcome to the autumn edition of the ICQ. I hope everybody has found the weather as enjoyable as I have and taken the opportunity to recharge. It has been a terrific opportunity to visit different parts of Ireland including Cork, Clare, Antrim, and Donegal. I often find a get away to the countryside to be a great opportunity to reset and a break from the daily routine. It also helps when the 4g in the area prevents the habit of email review.

The last quarter has been a busy one for the Compliance Institute with an initial session on refreshing our strategy. As I have spoken about on several occasions, we as a Council want to ensure that the Compliance Institute's offerings resonate with our membership across all sectors to ensure it benefits as broad an audience. I am excited as to what can be achieved and look forward to how we bring this to life.





I have also found the last few months enjoyable not just with Compliance Institute responsibilities, but with the awaited publication of the Client Asset Regulations by the Central Bank at the end of June. These rules will require updates to the existing arrangements for asset managers and stockbrokers where clients have entrusted assets for their safekeeping. Importantly, these new rules will apply to credit institutions for the first time with an effective compliance date of 1st January 2024. The Compliance Institute hopes to facilitate an event with the Client Asset Specialist Team to ensure clear understanding of obligations to allow successful implementation.

The Central Bank has also been busy over the period highlighting areas for strengthening in Virtual Asset Service Providers AML/CFT frameworks. The messaging cannot be clearer for all firms of the need to continue to demonstrate a robust AML/CFT control framework that complies with the relevant obligations.

In July we saw the awaited publication of the Central Bank (Individual Accountability Framework) Bill 2022. This was aligned as expected with the key elements including:

- Statement of responsibilities
- Management Responsibility Maps
- Common Conduct Standards for all controlled functions
- Additional Specific Conduct Standards on PCFs

This can be seen as a further evolution from the Fitness and Probity regime. One significant area that has been subject to ongoing focus is the reasonable steps.

The final wording requires any reasonable steps to be taken to ensure the business area is being managed appropriately and ultimately ensure that a regulatory contravention is avoided. This is and remains a key ask for all Senior Executive Functions and reinforces the accountability.

We are also currently completing our planning for our annual conference on 10th November. We expect this will have focus on key topics such as IAF/SEAR and ESG. We are looking forward to an excellent group of speakers offering differing views and perspectives on areas that will be very topical and interesting. I hope that you will be able to join us on the day as traditionally the annual conference has been a fantastic event with a great opportunity for networking with your peers. This will be a hybrid event but I would hope to have the opportunity to meet as many of our members in person.

We will also have our annual Conferring Ceremony, to celebrate our graduates who have successfully completed our programmes during the period. It is a great achievement to complete exams with the day to day work focus and we look forward to celebrating this with you.

I am really looking forward to both these events and what the remainder of the year will bring.

**Stay well,
Diarmuid**

Learn the fundamentals of tax as a Tax Technician.



Consider our flexible Tax Technician programme, ideal for people in compliance roles. To learn more, visit: www.taxinstitute.ie



Leading through tax education



Sustainable Finance for Compliance Professionals Programme

For all our futures, a sustainable world is going to be ever more important. An important component to achieve a sustainable world is sustainable finance. Everyone is a stakeholder: policy makers, central banks, citizens, employees, and employers. They all have an increasingly important role to play. Becoming aware and educating are building blocks to a lifetime of employment.

The Compliance Institute, Financial Services Ireland (FSI), Ibec, Sustainable Finance Skillnet and IFS Skillnet are working with the IOB to deliver compliance professionals a knowledge-based course that will equip you for a more sustainable future.

The area of sustainable finance is evolving to meet the expectations of a range of shareholders, including investors, policy makers, regulators, central banks, and society.

Financial Services Ireland (FSI) is the Ibec sector representing the full suite of financial services companies in Ireland. As FSI Executive Board strategic lead on Sustainable Finance we have undertaken exploratory work since December 2020 and identified a need for an educational programme to provide compliance professional with competencies to lead, raise awareness, train, and implement good corporate governance regarding current and pending ESG regulations. Plus, provide them with the practical skills and tools to be effective in their role and ensure their organisation conducts its business in full compliance with all national and international regulations that pertain to its industry and maintain a positive reputation.

The Sustainable Finance Skillnet Deep Dive Skills Report (2019), commissioned by the Sustainable Finance Skillnet and Sustainable Nation Ireland, and researched by Deloitte, says that sustainable finance is quickly becoming mainstream and will fundamentally change the entire financial sector, with regulation acting as

an accelerator in prioritising skills and training. It adds that sustainable finance is not a short-term trend, but a permanent shift from ‘niche’ to ‘mainstream’ representing an entirely new focus in finance.

This report identifies the most important drivers of investment in Sustainable Finance skills and talent as improved long-term returns; brand image and reputation; decreased investment risk and/or underwriting risk; regulatory/disclosure demands; and external stakeholder requirement (e.g., clients, government, society at large).

The IFS Skillnet report Financial Services in Ireland - Skills of the Future (2022) notes that training in baseline knowledge is the key short-term skills priority, while the main challenges limiting the development of Sustainable Finance skills and talent in Ireland are competing internal priorities and lack of available talent, and there is significant demand for skills in data management and measurement.

Ensuring compliance professionals have the knowledge to lead their companies on a journey to greater sustainability, to enable companies to be future proofed and to take competitive advantage in a world where environmental and social governance is becoming increasingly and necessarily important.

**Forward by Joe Duffy,
Senior Client Executive, BNY Mellon and FSI Board
Member**



World-First Sustainable Finance Compliance Programme for the Financial Services Sector

On 10th August, 2022 Compliance Institute, Sustainable Finance Skillnet (SFS) and IFS Skillnet announced that they had awarded the contract to design and deliver a new Professional Diploma in Sustainable Finance for Compliance Professionals to the IOB.

Supported by Skillnet Ireland, the new Diploma, the first of its kind globally, is the result of an enterprise-driven collaboration and forms part of the continuing effort to address the talent gap in sustainable finance, in line with Pillar 1 of Ireland's national 'Sustainable Finance Roadmap.' This is in keeping with Ireland's ambitious goal of becoming a global leader in sustainable finance.

The Professional Diploma in Sustainable Finance for Compliance Professionals will:

- Assist participants to implement good corporate governance regarding current and pending ESG regulations;
- Amplify existing knowledge and expertise among compliance professionals in financial services companies and prepare and equip them for a challenging future;
- Provide compliance professionals with awareness, knowledge, and practical skills to provide governance and influence on sustainable finance in their firms and boards; and
- Position Ireland as the leading centre globally so that Ireland becomes recognised as a centre of excellence in sustainable finance and ESG.

The role of the compliance professional is becoming one of the most important positions in boardrooms as businesses seek to show investors, shareholders and customers that they have sustainability practices in place to deliver on Sustainable Development Goals (SDGs).

All financial market participants and financial advisers must abide by new rules on transparency around the integration of sustainability risks and impacts, with respect to financial products. Under the new EU Taxonomy, companies will need to invest more time and effort to be compliant. The Professional Diploma in Sustainable Finance for Compliance Professionals programme will encompass the regulatory impact of sustainable finance regulations, particularly at EU level.

Having a base of educated professionals in Ireland will allow global companies to tap into that talent, establishing Ireland as a global sustainable finance location and a hub for talent and skills in this vital area.

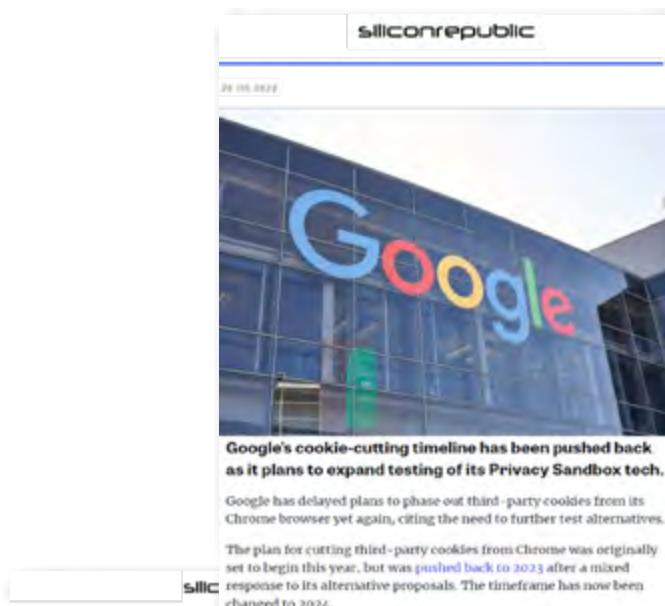
“ I wish to welcome the partnership between SFS, IFS Skillnet and the Compliance Institute on delivering this impactful initiative.

Ensuring that compliance professionals have the knowledge to lead their companies through regulatory changes, such as the Sustainable Finance Disclosure Regulation (SFDR) and the EU Taxonomy, means there is an opportunity to further enhance Ireland’s reputation as a global innovator in sustainable finance.”

AIB Chief Sustainability Officer and Chair of the Sustainable Finance Skillnet Committee, Yvonne Holmes.

Registration for the diploma course will commence in Q4, 2022. To register your interest and to secure a place on the programme, please contact skills@sustainablefinance.ie

Compliance Institute In the Media



siliconrepublic

Google's cookie-cutting timeline has been pushed back as it plans to expand testing of its Privacy Sandbox tech.

Google has delayed plans to phase out third-party cookies from its Chrome browser yet again, citing the need to further test alternatives.

The plan for cutting third-party cookies from Chrome was originally set to begin this year, but was [pushed back to 2023](#) after a mixed response to its alternative proposals. The timeframe has now been changed to 2024.

4 JUL 2022

Google cookie changes to impact almost 90pc of Irish firms, survey says



The Compliance Institute said the survey points to a possible lack of collaboration between compliance and marketing teams to prepare for Google's plan to remove third-party cookies from Chrome.

Google's plans to remove third-party cookies in its browser are expected to impact almost 90pc of Irish organisations – but most are not aware of the issue, according to a new survey.

Details of all the Compliance media coverage can be found on compliance.ie

Compliance Institute received media coverage and featured in multiple online media articles, on the results of our members survey, Google Chrome - phase out of third-party cookies.

Google's third-party cookie ban on Chrome was expected to come into effect this year, but was pushed back to 2023 after a mixed response to its alternative proposals. The ban was seen as a win for the privacy conscious, but concerns were raised about how it would impact the ad industry. The timeframe has now been changed to 2024.

32% of firms in Ireland say they are “not prepared at all” for a future which will preclude them from using 3rd party cookies.

Michael Kavanagh, CEO of Compliance Institute said: “Major changes are coming down the tracks and there will be no getting around this. All organisations will be forced to change their practices and find other ways to collect information needed to research the market and target key audiences while keeping within the boundaries of data protection laws.”

The survey also looked at whether or not marketing and compliance teams were working together to prepare and develop new data collection strategies in advance of these changes – more than half said there was no collaboration at all, while a further 14% say they would like to be working more closely with the marketing department.

Further highlights from the Compliance Institute Cookie Survey reveal:

6 in 10 say compliance and data protection teams within their organisation do not have a clear understanding of how 3rd party cookies are used within the organisation.

46% say the compliance function within their organisation has little to no involvement in aspects of marketing such as first and third-party cookies and data capture.


IRISH TECH NEWS

JULY 27, 2022



COOKIE DISAPPEARANCE: ONLY 10% OF IRISH FIRMS PREPARED FOR A COOKIE-LESS FUTURE

32% of firms in Ireland say they are "not prepared at all" for a future which will preclude them from using 3rd party cookies. In March of 2021, Google Chrome, the world's biggest browser, announced the phasing out of third-party cookies, which are a key component of online advertising, and enable a company to effectively target particular audiences for their products or services.

techbuzzireland

JUL 25, 2022

32% of firms in Ireland say they are “not prepared at all” for a Cookie-less future



Further highlights from the Compliance Institute Cookie Survey reveal:

- 9 in 10 say compliance and data protection teams within their organisation do not have a clear understanding of how 3rd party cookies are used within the organisation
- 48% say the compliance function within their organisation has little to no involvement in aspects of marketing such as first & third-party cookies and data capture



ALMOST 9 IN 10 IRISH ORGANISATIONS TO BE IMPACTED BY GOOGLE'S COOKIE CHANGES

11th Jul 2022



Marketing departments of organisations throughout Ireland are undergoing a fundamental shift in the way they use and capture data as a result of changes to how businesses can use 3rd party cookies.

However, a survey from Compliance Institute, of 144 compliance professionals within Irish organisations throughout the country, has found that although the oncoming changes from Google around the use of 3rd party cookie data will have implications for almost 9 in 10 businesses, there's a widespread lack of awareness, with 74% of respondents saying there's

TechCentral.ie

4 July 2022

Accept Cookies

Compliance Institute survey shows lack of awareness on Google third party cookie ban

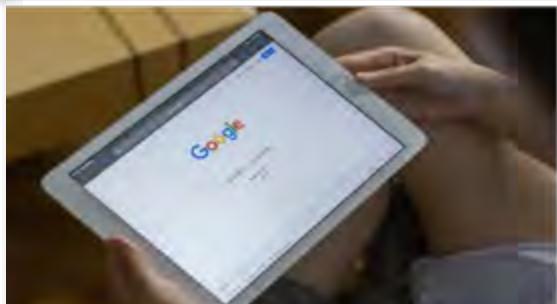
Up to 90% of Irish businesses to hit hit by changes due next year

The survey also looked at whether or not marketing and compliance teams were working together to prepare and develop new data collection strategies in advance of these changes - more than half said there was no collaboration at all, while a further 14% say they would like to be working more closely with the marketing department.

techbuzzireland

JUL 4, 2022

Almost 9 in 10 Irish Organisations Will Be Impacted by Google's Cookie Changes



In 2021, Google removed third-party cookies and, as of July 2022, it's phased them out completely. However, these changes have been a hot topic of discussion, particularly in web development, of which are concerned from a compliance perspective.

What this means is that organisations need to look at the way it uses data from a more holistic viewpoint. This is not just the domain of the business – it's something that needs to be considered from a compliance perspective.

It seems that Google is doing its best to make sure that the Data Protection Commission (DPC) issued a guidance document. This document aims to help companies understand what needs to be done to ensure that they are compliant with the GDPR. It also provides practical advice on how to implement these changes effectively.

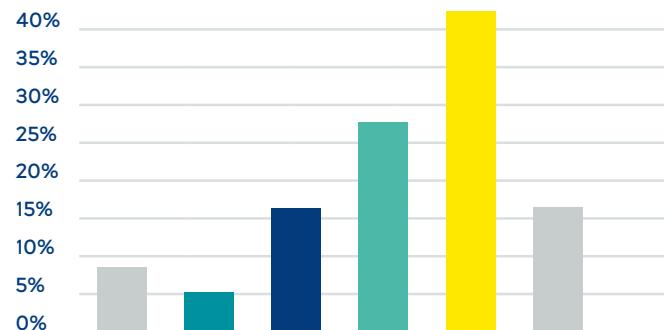
One aspect of this guidance is to encourage companies to work together to address these challenges.



Third-Party Cookies Members Survey Results

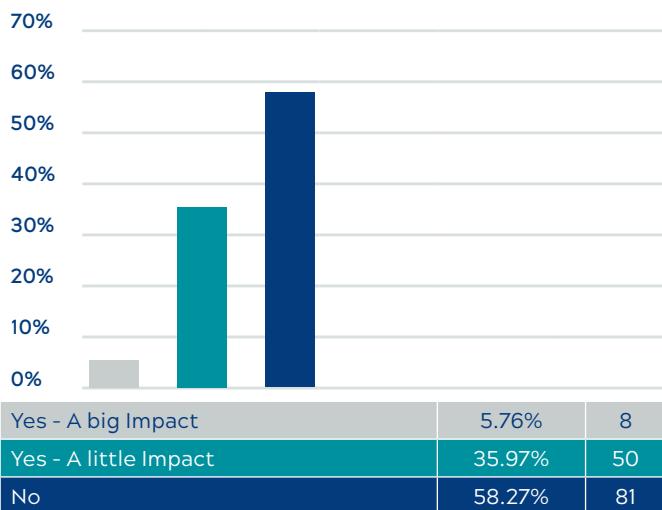
In March 2021, Google Chrome, the world's biggest browser, announced the phase out of third-party cookies. Third-party cookies will no longer be supported on the search engine. However, first-party cookies will continue to be supported. We surveyed our members to find out their views.

How much awareness is there in your organisation around the forthcoming changes from Google and are actions been taken as a result?



“ All organisations will be forced to change their practices and find other ways to collect information needed to research the market and target key audiences while keeping within the boundaries of data protection laws.”

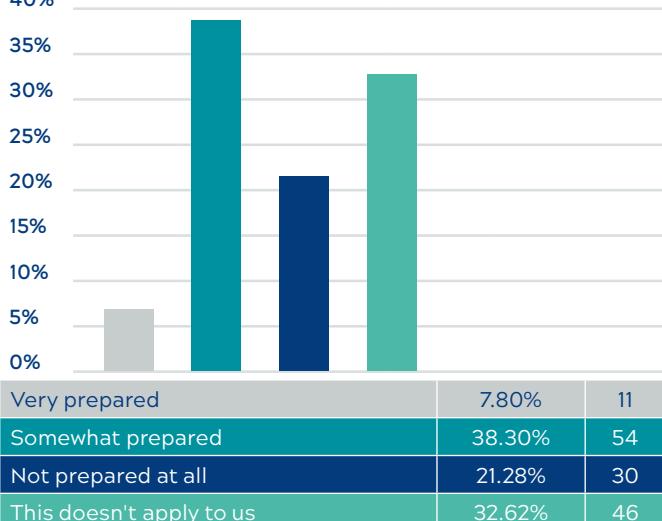
In terms of targeting key audiences, will the change by Google outlined above, have an impact on your organisation?



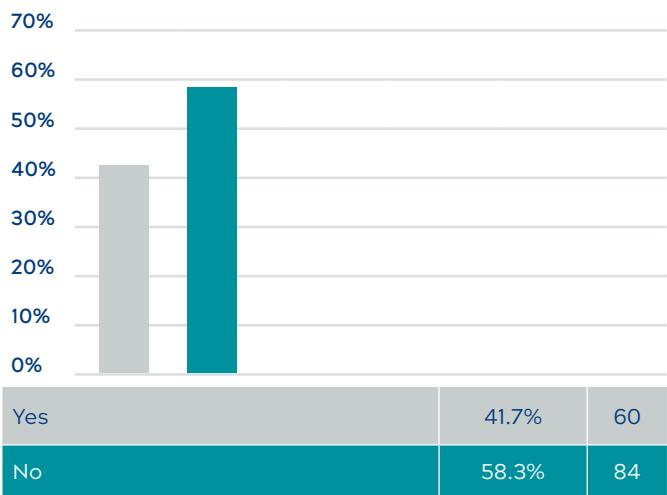
How great a role does the compliance function within your organisation have in aspects of marketing such as first and third party cookies and data capture?



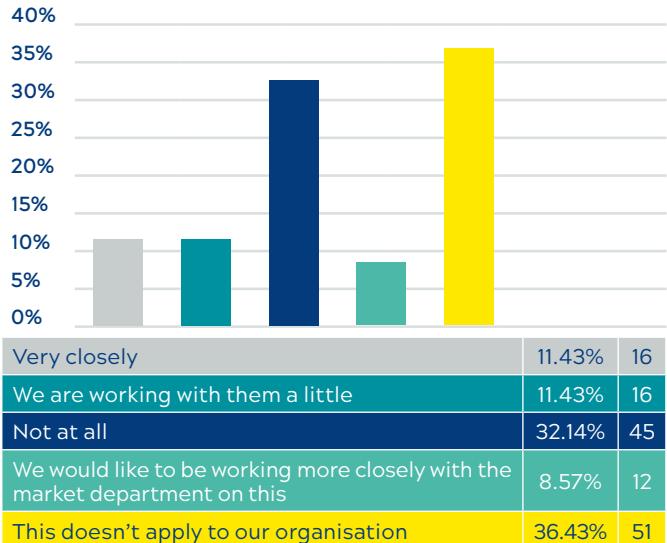
How prepared is your organisation for a cookie - less future?



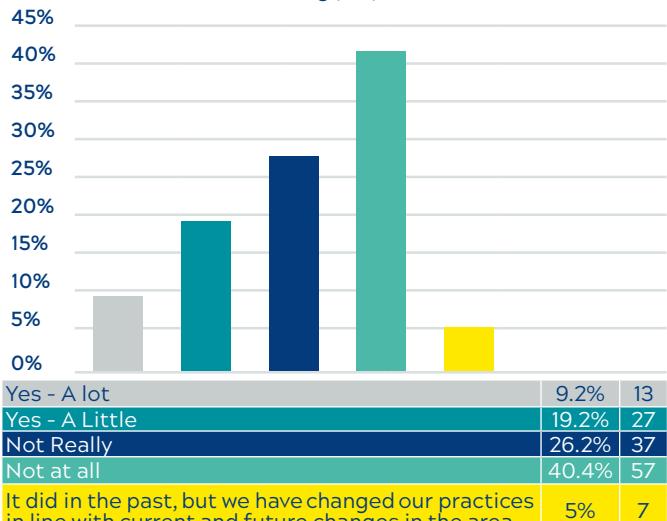
In your view, do compliance and DPO teams have a clear understanding of what personal data is outlined and processed by your company via third party cookies?



How closely are you working with your marketing department in the development of alternative data strategies to replace third party cookies?



Does your organisation rely on third party cookies for marketing purposes?



Member Appointments & News

Member:
Siobhain Ivers

Position:
Global Compliance Director

Siobhain Ivers has recently joined Etsy (www.etsy.com) as Global Compliance Director. Etsy is a global marketplace for unique and creative goods with a mission to keep commerce human.

Siobhain is a member of the Compliance Institute and chair of the Institute's new Fintech and Payments Working Group. Siobhain is currently completing the MA in Ethics (Corporate Responsibility).



Member:
Louise Doyle

Position:
Financial Crime Manager

Louise Doyle recently joined Flutter Entertainment plc as Group Financial Crime Manager. Flutter is the parent company for some of the world's biggest and most popular betting and gaming brands, with operations in more than 20 regulated markets and over 18 million customers worldwide.

This appointment will see Louise support, advise and enable the compliant delivery of the Group's strategic objectives across Flutter's divisions.

Louise is a designate member of the Compliance Institute and a member of the IOB since completing the LCI designation in 2019 and more recently in 2022 she has completed the new CFRCP designation.

Our Members Appointments and News page is available free of charge to Compliance Institute members who would like to celebrate an achievement or promote a recent change in career/role.

If you would like to have an achievement/appointment notice published in the next issue of the Irish Compliance Quarterly (ICQ) magazine, just email your photograph (in JPEG format) and 150 words of text to info@compliance.ie

Compliance Institute's D&I Committee

In June of this year, Compliance Institute formed a D&I Committee, to foster a culture where diverse voices are welcomed, respected, and heard. The D&I Committee will be responsible for ensuring that the Institute actively promotes and aspires to advance the culture of diversity and inclusion through intentional, positive, and conscious efforts that benefit members. If you have experience or an interest in diversity, inclusiveness, and culture and would like to participate on this committee, email info@compliance.ie to register your interest.

D&I Committee Chair Claudette Whyte

Claudette Whyte from South Africa has been a Compliance Institute Member since 2015 and is a Fellow of Compliance Institute (FCI), Certified Data Protection Officer and Certified Financial Crime Prevention Professional (CFCP), having completed the MSc in Compliance. Claudette works as a Senior Compliance Officer at JP Morgan. Prior to this, she worked in various positions in Compliance, Legal and Forensic Investigation.

Claudette is passionate about Diversity & Inclusion and was shortlisted in the category Advocate of the Year - Women In Finance Awards Ireland 2021.



Vice Chair Della Hunter

Della is currently the Data Protection Officer in Teagasc, a semi-state body under the aegis of the Department of Agriculture, Food and the Marine. Della completed the MSc in Compliance in 2019 and is a Fellow of Compliance Institute (FCI). She has previously held several roles in Corporate Services in Teagasc. She has a Master's in Public Management from the Institute of Public Administration and holds a Bachelor of Arts degree where she pursued studies in Law, Sociology and Politics. The early part of Della's career was spent in the Civil Service where she was based in several Government Departments which included Agriculture, Social Welfare, Environment and Justice. She has been passionate about equality since her undergraduate studies. She is a member of the Teagasc Diversity and Inclusion Project Team and she led the team in drafting the first Diversity and Inclusion Strategy in Teagasc which was launched in 2020.

Cathy Farragher

Cathy is the Head of Compliance at The Underwriting Exchange (Ireland) which is part of the Specialist Risk Group. Cathy is a qualified solicitor and has extensive compliance experience in both insurance and banking. Cathy was previously a member of the D&I Committee at IPB Insurance and has a personal interest in the recognition and support of employees with additional caring responsibilities.



Deepa Nair

Deepa Nair grew up in various parts of India and has lived in three countries. After graduating from the University of Bologna she joined a bank in Italy and moved to Ireland in 2015. She is a compliance professional and travels the world as a hobby (currently up to 50+ countries) to explore perspectives on different cultures.

Deepa is proud to be one of the Compliance Institute's members raising technical and cultural standards of compliance professionals in Ireland.'

Muheenat Folasade Aderinto

Muheenat is a Nigerian trained lawyer with almost 30 years' experience in both legal practice and as in-house counsel, having worked in leading law firms in Nigeria such as Olaniwun Ajayi LP, Aelex and ACAS. Muheenat possesses vast knowledge in the areas of corporate, commercial and energy law. In the course of her legal career, she was privileged to set up a successful regulatory compliance team and unit at Pan Ocean Corporation Nigeria where she headed the legal department and have since then been very passionate about everything compliance.



Fidelma Griffin

Fidelma is a Business Leader and Consultant with over 30 years' experience in Financial Services. Her career spans Corporate Banking, Real Estate, and Restructuring. Fidelma is passionate about Talent and Culture and Diversity and Inclusion in organisations. She is a Culture and Ethics Advisor and an Executive and Corporate Wellbeing Coach.

Ethics Committee - Ethics an Afterthought? - When One Hour is not Enough



Author: Susan Naughton, Senior Compliance Officer at AXA and member of the Ethics Committee.

Introduction

Autumn brings a routine reminder to the inbox. The email that says check your progress with CPD (Continuous Professional Development) requirements invariably says don't forget the hour of ethics. As we all know, CPD for qualified and grandfathered individuals, working in financial services has been a structured requirement for many years. The additional requirement for a person 'to complete at least one hour of CPD each year which relates to ethics'¹ was added in the Minimum Competency Code (MCC) in 2011. The reminder relating to the one hour of ethics always evokes the thought that there must be a better way to get people in financial services to think about ethics.

Rightly or wrongly 'one hour of CPD that relates to ethics', sometimes referred to as the 'compulsory ethics module', paints a picture of content that is separate to the other fourteen or more hours of CPD that is undertaken by qualified individuals every year. The part of the requirement that says 'at least one hour' seems to get lost. Indeed, a question frequently asked of many a Compliance Officer is a telling enquiry. "Is it OK to include more than one hour of ethics in the annual submission?" Could an individual be forgiven for thinking that there is an aspect to compulsory ethics CPD that calls the individual to do something that is almost beyond the call of duty, something extra and distinct from all the other CPD modules being completed? My question in relation to every piece of CPD without exception, is whether the ethical dimension of this topic was considered and discussed and whether there was consideration of situations, activities and decisions where issues of right and wrong were addressed. If not, was there meaningful professional development?

It is not Complicated

The requirements of the MCC in 2011 and 2017 are simple. They outline that, best practice in relation to any range of topics, should include recognition of ethical issues relating to the conduct of business and the most appropriate means of ensuring ethical standards

and behaviour apply. Take the Insurance Distribution Directive² as an example of one of the EU directives that deals with the distribution of financial products and services. Annex 1 identifies areas of competency that relate to fundamentals of providing goods and services to customers. The rules are the same no matter where insurance is sold in the EU. There is an expectation that ongoing training and development will focus on knowledge of the goods and services provided, the relevant law and regulations applicable and how that market operates, how to understand customers' needs and handle their complaints and develop a fundamental knowledge of business ethics standards. These are minimum standards that provide the broad base of building blocks for other business operations such as product design and governance, target markets and pricing and overall management and strategy of firms.

In everyday life professionals are expected to make decisions based on principles of what is right and what is wrong. Basic principles of fairness honesty and trustworthiness are the norm rather than the exception. To ensure there is common understanding of ethical and unethical behaviour there must be an ability at all levels in the organisation to know and identify clearly what the values of the firms are and the culture that enables those values to flourish. Vague opinions or hunches about acceptable business practices need to be replaced with clear and visible factors that influence decisions and activities at the coalface of the business. Does one hour of ethics provide meaningful support for this activity?

Making it Happen

So, who in the organisation is responsible for ensuring the ethical dimension is included routinely in every piece of CPD. In organisations there are rules about the use of the brand and corporate messaging that must be embedded when designing a piece of training. All learning modules have some core objectives such as "at the end of this session you will understand... be able to..., recognise..., respond to...", the list is endless. To include one other element would not be onerous or

difficult or detract from the task. Ask the question: what is the ethical dimension of this activity?

Many would shy away from this task, pleading lack of credentials to get into an ethical discussion. Those same individuals would, nonetheless, profess to know the differences between good outcomes and bad, fairness and inequality, self-interest, common good and public interest. In the insurance world the concept of the contributions of the many paying for the losses of the few, and similar fundamentals in banking all enable enterprise, encourage growth, protect life, limb and property to promote a flourishing economy. Professional bodies and many organisations, large and small, have codes of conduct, behaviour or ethics, all variations on the same theme. Consideration of the ethical dimension is not starting from zero in financial services industry. With the right tools, consideration of the ethical dimension can become second nature and hopefully embedded as part of the delivery of financial services opportunities for learning and development.

Finding an Ethical Dimension – A Suggested Exercise

Granted, ethics is a vast area of ongoing study and exploration. It has a history going back thousands of years full of interesting, thought-provoking philosophers and a multitude of theories. Finding an ethical dimension, based on a range of ethical theories, taken from the business ethics branch is straightforward. This exercise looks at a few typical questions that can be asked when any piece of learning or training is under consideration to identify one or maybe more ethical dimensions to the relevant learning object.

Looking at the following table six ethical considerations are stated. Beside each, is one (of many potential) questions that could identify an ethical dimension to the matter under consideration.



Figure 1: Extract Business Ethics Crane & Matten Oxford University Press 2016 Pragmatic Use of Ethical Theory p125



Going the Extra Mile – One Step at a Time

In 2011, the UN endorsed Guiding Principles for Business and Human Rights, known as the Ruggie Principles³, that require firms to know and show that they will respect and protect rights of individuals and provide remedies when things go wrong. Eleven years later the Financial Conduct Authority (FCA) introduced the New Consumer Duty⁴ that is designed to drive change in the financial services industry mindset. The rationale for this change is the requirement on firms to set higher standards to improve outcomes for customers. Whilst the New Consumer Duty does not reference ethics per se, it does however refer to fair value, acting in the interest of consumers, preventing harm, provision of information and transparency. Like the Guiding Principles the focus is on rights, duties and obligations to treat people fairly, making sure to cause no harm and respecting their dignity. The FCA are going the extra mile, to make firms accountable, by reporting the improvement in customer outcomes.

In the light of the above requirements would it really be such a stretch to require that every CPD module include material that deals with ethical considerations? The questions in Figure 1 on previous page are a starting point for ways of addressing business ethics problems and concerns. There are many other tests and rules that can easily be incorporated in training and development

material to highlight ethical dimensions. Ethical principles are here to stay. Where the FCA venture others follow shortly after. Is it time to review a CPD regime that calls out a need ‘to complete at least one hour of CPD each year which relates to ethics?’

Conclusion

Yes, this requirement put ethics firmly on the CPD agenda in 2011. However, when elements of CPD become a box ticking exercise perhaps it’s time to drive a change to make things better. The call from all regulators is to embed ‘good’ practices that deliver ‘better’ outcomes. A different approach to ethics in CPD has the potential to bring about change. Helping individuals to have ethical discussions about the day-to-day aspects of their role, encouraging critical review of proposals using straightforward ethical tools and theories, has the potential to develop meaningful application of ethical understandings to new and evolving technologies. Developing a new approach to ethics and CPD is needed to enable those who work in financial services to identify ethical dimensions of the business. After all if we cannot see the ethical dimension how can we build a culture that is both commercial and compliant, ethical and consumer centric addressing ethical risks whilst protecting and respecting the rights of individuals. Let’s make ethical discourse the norm at all levels of our organisations.

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Data Protection & Information Security Working Group -

The EU's Digital Services Package

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Introduction

The Digital Services Package (“DSP”) reached the political agreement stage of EU adoption in April 2022 and is aimed at creating safer access to digital products and services, while encouraging fair competition in digital markets. It comprises two different pieces of legislation, the Digital Markets Act (“DMA”) and Digital Services Act (“DSA”), which together overhaul the rules applying to online platforms.

This article provides a brief overview of the impact the DSP will have on providers of online platforms and on the businesses and end users that rely on services such as online search engines, networking sites, video-sharing platform services and cloud computing.

Overview of the DMA

The DMA will regulate the conduct of the largest core platform service providers (so-called “gatekeepers”) and will restrict unfair conditions and practices which limit the contestability of markets. Many of its measures are aimed at limiting the use of personal data across gatekeepers’ products or services and regulating how data will be shared with businesses and consumers which use the gatekeeper’s services.

Gatekeepers will be prohibited from cross-using personal data collected via a core platform service, to improve their other products and services (and vice versa). Gatekeepers’ use of personal data for online advertising services will be curtailed, and they will be required to provide advertisers and publishers with enhanced information on each advertisement placed by an advertiser or displayed on a publisher’s inventory. Advertisers, publishers and their authorised third parties will be given access to the gatekeeper’s performance measurement tools and the data necessary to independently verify the performance of the core platform service.

End users of the core platform services will be given enhanced data portability rights, including real-time access to data generated through their use of the service. Gatekeepers will also be required to provide an independently audited description of their profiling techniques for online advertising, which will be transmitted to the European Data Protection Board.

In addition to these limitations on personal data usage, the DMA includes provisions to improve the interoperability of number-independent interpersonal communication services (such as iMessage and WhatsApp), and establishes timelines for rendering

specific features interoperable (e.g. group chats, video calls and end-to-end encryption). It will also prohibit gatekeepers from self-preferencing their own products and services, require them to be more transparent with businesses (e.g. with respect to search engine rankings) and enable businesses to conclude contracts with end users of core platform services and to take payments directly.

The European Commission (“EC”) has the power to designate gatekeepers and will be solely responsible for overseeing compliance.

Overview of the DSA

The DSA represents a significant evolution in intermediary liability. While it retains the E-Commerce Directive’s safe harbour protections for ‘mere conduit’, caching and hosting services and enables providers to carry out good faith and voluntary measures to detect, identify and remove illegal content, it introduces significant new obligations for online platforms. Although member states will designate a Digital Services Coordinator to oversee compliance with the DSA, the very largest online platforms and search engines will be subject to additional obligations and to the direct oversight of the EC.

The DSA introduces a formal notice-and-takedown regime, with provisions for ‘trusted flaggers’, and establishes minimum standards for governmental takedown orders and orders for information. Online platforms will be required to be more transparent with users who are subject to enforcement action, including content removal and demonetisation, and will be required to put in place out-of-court dispute settlement measures.

Where an online platform becomes aware of information giving rise to a suspicion of a criminal offence involving a threat to the life or safety of a person or persons, it will be required to promptly notify the law enforcement or judicial authorities of the member state(s) concerned. For online platforms which are accessible to minors, providers will be required to put in place appropriate and proportionate measures to ensure *“a high level of privacy, safety, and security of minors, on their service”*. They will also be prohibited from presenting advertising on the basis of profiling, where the service provider is *“aware with reasonable certainty”* that the recipient is a minor.

Online platforms which use recommender systems to present content suggestions will be required to inform users of the relevant parameters that inform these systems. Online advertising platforms will be required to provide information on the natural or legal person on whose behalf an advert was presented, as well as who paid for the advertisement. Furthermore, providers of online marketplaces will be required to ensure the traceability of traders on their platforms by collecting certain minimum information about each trader. Traders who fail to provide this minimum information, and to self-certify that the products and services they offer comply with applicable law, will be prevented from using the online platforms.

Providers of very large online platforms and search engines will be required to conduct annual risk assessments to *“identify, analyse and assess any systemic risks stemming from the design, functioning and use made of their services”*. These assessments must consider the spread of illegal content, as well as risks to public security or to civic discourse and electoral processes.

The assessment must also have regard to the Charter of Fundamental Rights of the European Union, including the right to human dignity; respect for private and family life; data protection; freedom of expression; non-discrimination; the rights of the child; and consumer protection. Providers of these services must put in place reasonable, proportionate and effective mitigation measures, which must be independently audited on at least an annual basis.

Enforcement

The DSP concentrates enforcement powers in the EC, with national Digital Services Coordinators overseeing compliance with the DSA for smaller online platforms. This represents a departure from the one-stop-shop model under the GDPR and it remains to be seen if this will lead to uniform enforcement of obligations across all regulated entities.

The DSA carries fines of up to 6% of annual worldwide turnover for failing to comply with an obligation, and separate fines of up to 1% of annual worldwide turnover for providing incorrect, incomplete or misleading information. Under the DMA, EC can impose fines of up to 10% of the company’s total worldwide annual turnover or 20% in the event of repeated infringements.

In addition to these fines, the DSP contains several other measures to ensure compliance, including the appointment by the EC of independent external experts and auditors under Article 26 DMA and the power to make voluntary commitments binding under article 56 DSA.

Conclusion

In the words of Commissioner Margrethe Vestager, the aim of the DPS *“is to ensure a fully functioning and competitive single market for digital services based on European values”*. The rules contained in the DSP will shape the development of digital services for years to come and are likely to have an effect beyond Europe. If it succeeds in its ambition, the DSP will transform the way individual users and businesses interact with some of the largest providers of online platforms and other core platform services.

While both texts are in the process of being adopted by the European Council, recent indications are that some of the large platforms are considering challenging the DMA in particular, although Amazon have described a court challenge as a “last resort”. Given the broad ramifications and the scale of the companies facing the biggest impact from the DSP, we can expect lots of twists and turns before the full impact of the proposed reforms take effect.

Consumer Protection Working Group - A Conduct Practitioners View

Author: Andy Coulson, is a Certified Ethics and Culture Advisor (CECA) and has worked in financial regulation and the banking industry in Ireland and the UK for 25 years.

As we digest the detail of the strengthened regulatory powers as part the Central Bank of Ireland (CBI)'s Enhanced Framework for Individual Accountability (EFIA), some might believe we have finally reached peak focus on Conduct risk in financial services. Twenty years working in this space, however, tell me this is unlikely, and that attention and intervention will remain at present levels while there is still a necessity for the cultural shift in financial services to progress further. What is true is that some 10 years after robust Fitness and Probity assessments were introduced over industry appointments in Ireland, there will be more action against and expectation on us as senior individuals in the sector throughout our tenure.

This evolving working environment understandably creates some trepidation among some - but for the many, who work so diligently in the sector on behalf of Irish consumers, it can be seen as a welcome move towards helping us to embed the culture that we would all like to see. In this piece, I reflect on progress made and what remains for us to do.

While Prudential compliance focus fluctuates throughout global financial boom cycles, Conduct focus (on banks in particular) has been more of a relentless creep. When I entered the industry in the nineties it was very different. Though customer relationships were always highly prioritised; shareholder-value driven approaches took precedence, and competitive cultural norms emerged. Even with advances in regulatory oversight, we saw long-term customer outcomes becoming outmuscled as the priority.

So - it is acknowledged that Conduct needed attention. Conduct risk as a unique concept, has gained traction among regulators in the past decade; most visibly with the separation of financial regulatory structures into distinct Prudential and Conduct operations. This made it harder for regulators to slant resources towards Prudential when there is a financial crisis, as we saw in the back end of 00's. The result is a continuous focus from dedicated supervisors on Conduct matters.

Obviously, Conduct failures in the market have accelerated supervisory oversight - but it is interesting to this ex-FCA¹ and CBI staffer at least, that the CBI Conduct purpose - to serve the best interests of consumers and ensure they are treated fairly - still resonates as work not complete, some 15 years after "Treating Customers Fairly" (TCF) principles were first promoted. Indeed, as the recent Irish Banking Culture Board (IBCB) Éist Trust Survey² shows, Irish consumers are still a long way from feeling that banks are treating them fairly.

The CBI's interventionist approach post its Behaviour and Culture report;³ greater enforcement activity; scrutiny of bank strategies and insurance fair pricing for example, as well as the advent of the IBCB - has in my view, influenced Irish financial services to experience rapid cultural change. We are set on the right course. This had to happen. Top talent is increasingly attracted outside the industry to more appealing propositions, at the very same time when demand for skilled resource in the many parts of the sector increases post-Brexit. The churn we are seeing - including at senior management level - will help with accelerating pace of cultural change as will the much-touted "brain gain" in Ireland.⁴ If we are to face ongoing Cultural challenges in the sector as well as transformational priorities of Sustainability; Technological overhauls; Gender and Diversity and security enhancements - an influx of new thinking and approaches is much needed. Indeed, as a hiring manager; I have successfully hired consumer advocates; engineers and scientists alike to broaden that thought pool.

Looking back at the Culture and Behaviour report of 2018, can we as an industry be content with progress? The CBI talked of the need to develop a shared 'consumer compass'; embedding consumer focus in structures, processes and systems; ensuring organisations are sufficiently diverse and inclusive to prevent groupthink, over-confidence; and promote internal challenge. It warned of 'firefighting behaviour', focussing on short-term issues; reversal to 'command



and control' leadership styles over inclusivity and collaboration; and over-optimism regarding transition to a consumer-focused culture.

While a personal view, my engagement with Conduct colleagues suggests that much good progress is being made without yet being totally transformative. Indeed, the pandemic temporarily may have revived some of the behaviours noted by the CBI - short-termism and firefighting.

Examples of what is changing fast are for example, the embedding of industry-wide behaviour and culture MI and reporting; specialist internal roles in Culture or Ethics being created; and governance committees overseeing customer protection and outcomes becoming de rigueur.

An ongoing strategic challenge will continue to be that demonstrable culture where customers' best interests is the doctrine that fundamentally drives operational capability and strategic decision-making in order to deliver financial performance. Compliance and Legal colleagues will recognise the ask from business colleagues to ensure that a decision or change is compliant against Conduct standards and regulation, rather than the other way round.

As someone who has bridged the divide between industry and regulator, I know there is no magic button to press, but our role as industry Conduct leaders can be to instil in all colleagues and stakeholders what Christine Lagarde has described as 'the goal of the

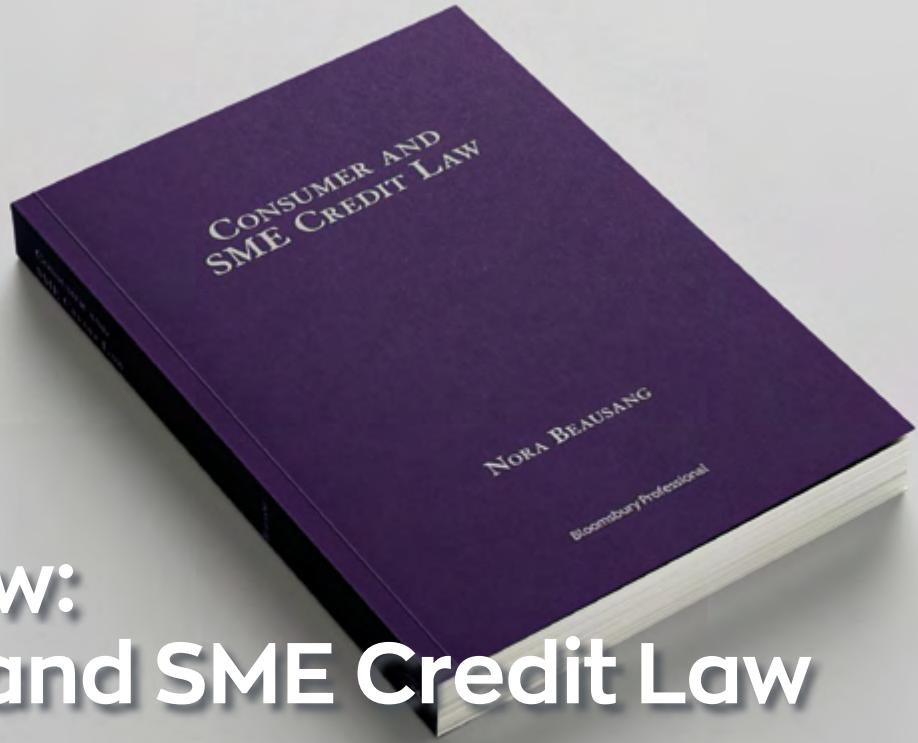
financial sector....must be not only to maximise the wealth of shareholders, but to improve the well-being of people'. To do this, an authentic self-integrity is required to commit to that principle across the sector and I see Compliance professionals as key ambassadors in that respect working in tandem with the new EFIA regime.

When we think where this might go next, it is worth looking at the UK FCA's recently introduced "Consumer Duty" which is behavioural focused in tone, but directive in what it wants to achieve.⁵ It calls for consumers to receive communications they can understand, products and services that meet their needs and offer fair value, and customers getting the support they need, when they need it. The aim is pragmatic and industry-focused allowing for more flexibility for firms to compete and innovate in the interests of consumers, while also enabling quick identification of practices that don't deliver the right outcomes for consumers and action before they become entrenched as market norms. The interesting element here is the extension of this duty to closed books of business - albeit the FCA is allowing another 12 months in this space - but this will prevent firms and individuals declining to take responsibility for mistakes of the past.

So, my take is that we are not done yet but there is nothing to fear. Conduct and culture remains a growth area in the financial services sector and I would recommend it heartily as a career option for diverse and progressive talent.

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Book Review: Consumer and SME Credit Law by Nora Beausang (Bloomsbury Professional 2021)

Reviewer: Eoin O'Connor, is a financial regulation specialist and the Managing Partner of the Irish office of international law firm Hogan Lovells.

Nora Beausang's recently published work, ***Consumer and SME Credit Law*** (Bloomsbury Professional 2021) is an ambitious, thoroughly researched publication that distils the complex regulatory environment for Irish consumer and small and medium enterprise (SME) lending into a single, accessible reference work. That Ms. Beausang achieves this in such a comprehensive yet accessible manner is demonstrative of the vast research and insight devoted to this excellent and timely book. The book fills a gap in the Irish market for a modern and comprehensive consideration of this area of law.

Ms. Beausang is well placed to author this book, being a senior legal and regulatory banking and finance expert practitioner, with over twenty years of international and domestic experience working in both law firms and inhouse.

The genesis of this book was, as explained in the author's preface, an intention to provide 'a couple' of additional chapters to William Johnston's ***Banking and Security Law in Ireland*** (Bloomsbury Professional 2020) (itself a renowned legal text). Now running to a well-structured 16 chapters and 2,362 pages, it is clear this is a topic which merits the stand-alone, in-depth and thorough analysis which Ms. Beausang has provided.

The index and chapter titles of the book alone demonstrate the scope and, returning to my initial theme, ambition of the book. Highlights include in-

depth considerations of EU and domestic requirements applicable to:

- credit, including mortgage and personal lending;
- the wider business of regulated firms in the financial services arena, including the fitness and probity regime, distance marketing, redress arising from Financial Services and Pensions Ombudsman complaints, the mandatory reporting of credit to the Central Credit Register, culture in regulated firms and product oversight and governance;
- dealings with consumers in a contractual context, including how the concept of a 'consumer' has developed, the EU unfair commercial practices regime and the increasingly topical area of the EU unfair contract terms regime; and
- the effect of a breach by a lender of applicable regulatory requirements, including the extent to which this may impact on a borrower's obligation to repay their loan.

It is little wonder then that, Mr Justice Gerard Hogan describes the book in his foreword as setting out "all the relevant law in relation to what has become a vast topic laid out in meticulous and extensive detail by Ms Beausang" and praises the "enormous scholarship and erudition displayed in the book".

Readers who work in or have a passing knowledge of this area of law will be aware that consumer (and, to a lesser

extent, SME) credit is a particularly heavily regulated area of financial services. The current Irish landscape is comprised of dizzyingly fragmented measures that include heavily amended domestic primary legislation (some of which remains on the statute books despite being based on long-repealed EU directives), secondary legislation in the form of regulations that have transposed EU Directives into Irish law, as well as various 'gold plating' codes and regulations issued by the Central Bank of Ireland, most notably the Consumer Protection Code 2012. General consumer protection legislation, such as the unfair terms regulations, also apply to consumer lending. Ms Beausang's aggregation and explanation of the area is to be welcomed by practitioners and students alike.

It is difficult to imagine that anyone looking at the current situation would conclude that we have arrived at a regime that is particularly user-friendly or accessible to those consumers (and SMEs) that it is designed to protect. The confusion caused by the current regime is in some ways illustrated by the many (sometimes genuine, sometimes misstated or spurious) consumer protection defences/arguments raised by borrowers against enforcement actions by lenders. Ms. Beausang gives detailed attention to the relevant law and authorities around the definition of 'consumer'.

As highlighted in Ms. Beausang's book, and with which I would tend to agree, the level of complexity in this area of law does not always bring additional benefit to consumers - for example, the overlapping, tangled rules applicable to mortgage loans. This is particularly so where a comprehensive, modern existing EU-law based consumer protection framework already exists. In addition, there is a reasonable argument that the current situation stifles the already dismal competition in the Irish market, by increasing the cost of providing consumer/SME financial services, creating confusion and acting as a de-facto barrier to entry for new market entrants.

In reality, the chances of wholesale root and branch reform of this area are limited in at least the short term and as Ms. Beausang notes herself in her preface "regulation in the area of consumer credit is only going one way". This makes Ms. Beausang's book even more important for legal practitioners, compliance officers, members of the judiciary and others that should find this a valuable reference tool. Indeed, the appeal of this book may go beyond the classic audience for this type of legal textbook. If the detailed consideration that Ms. Beausang gives to the General Principles of the Consumer Protection Code, which she notes provide 'fertile ground' for administrative sanctions actions, had been front of mind for the boards and management of the Irish retail banks, one wonders whether events like the tracker mortgage scandal would have happened? While it is difficult to speculate on this point, accessible in-depth familiarity with these concepts should guard



against such events and the accompanying negative consumer outcomes occurring in future, and assist firms in managing exposure to subsequent fines and adverse publicity. The relevance of such expertise will increase further following the recent publication of the draft legislation underpinning the Central Bank of Ireland's Individual Accountability Framework and Senior Executive Accountability Regime, which increases the responsibility (and liability) of directors and senior management to ensure detailed understanding of the applicable regulatory requirements.

One notable point about this area of law is the rapid rate of regulatory change, with increasing complexity, and the growth in innovative products since the publication of this book in November 2021. Since then we have already seen further regulation in the form of the April 2022 Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022, that regulates providers of, amongst other products, the emerging fields of 'buy now pay later' and 'personal contract plan' products. In addition, we have entered a new era of administrative sanctions, where the most recent fines issued by the Central Bank of Ireland to Irish banks in the context of the 'tracker mortgage' scandal dwarf all those that have come before.

Finally, the upcoming enactment of the Consumer Rights Bill, will substantially overhaul Irish law, including the implementation of three EU Directives: the Enforcement and Modernisation Directive, the Digital Content Directive and the Sale of Goods Directive.

As a reference work in this area of Irish law, this book is truly peerless and will reward anyone that invests time in reading it. Ms. Beausang deserves recognition and commendation for her valuable contribution to the literature in this important area.

Nora will feature in our upcoming podcast series with a 2-part episode on consumer protection issues that apply to financial services business in Ireland, with a particular focus on lending.



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Compliance and Ethics is an Ever-Expanding Area of Corporate Governance

Author: Robyn Jacobs, 2021 Niall Gallagher Scholarship 2nd place winner.

Compliance and Ethics is an Ever-Expanding Area of Corporate Governance: How should a firm respond to ensure that the function is properly resourced and situated within the organisation to meet new challenges and the needs of the firm and its stakeholder?

An organisation's business strategies, the way it manages its workforce, and how it yields positive financial outcomes for its stakeholders, are deeply rooted in the Compliance function. Compliance and ethics are integral components in ensuring good corporate governance and safeguarding against negative impacts that may arise from new challenges brought about by regulatory, legislative and economic changes.

Since the Compliance function does not generate active income for an organisation, some organisations are of the view that the function is financially draining. They believe that only large organisations need a robust Compliance function, or that the function's sole purpose is to ensure that an organisation merely acts within the parameters of legislative and regulatory requirements. However, in light of the ever-increasing scrutiny of regulatory bodies since the financial crisis of 2008 and the resultant increased pressure on organisations to improve the efficacy of the Compliance function, a passive Compliance function is a thing of the past.

While there is no one-size-fits-all approach to ensure that a Compliance function is high-performing, there are certain factors that should be taken into account when building or improving the function. This paper recommends factors organisations may consider and apply to properly resource and situate their Compliance function in order to meet the constantly evolving challenges and needs of the organisation and its stakeholders. The factors that will be explored are: Setting Clear Ethics and Compliance Objectives; Building and Investing in the Compliance Function; and Regular Training and Consistent Engagement.



Setting Clear Ethics and Compliance Objectives

From the outset, it is essential for top management to determine the ethical culture it wishes to entrench throughout the organisation and the organisation's compliance plan objectives. An organisation's "ethical culture" is the set of values which business strategies can be measured and set against, and it is about tying ethical values into the daily running of the organisation (Chartered Institute of Personnel Development, 2021¹). Conducting business in an ethically conscious manner will help build and protect the organisation's reputation, thereby solidifying its position in the market within which it operates and ensuring its longevity in an evolving economic climate.

Once the organisation's ethical culture and compliance plan objectives have been determined, this must be conveyed to the Compliance function so it can validate it from a legislative and regulatory perspective and incorporate it into the policies and procedures it implements. The Compliance function must then take this tone from the top and communicate it to all other levels within the organisation, encouraging them to implement the organisation's ethical culture in their day-to-day tasks and measuring their conduct against it.

Placing the Compliance function at the centre of bringing to life the organisation's ethical culture and creating an open channel between lower levels of staff within the organisation and the Compliance function will: foster a spirit of honesty and transparency, enable the Compliance function to reinforce and monitor the standards required by top management, and encourage staff to offer suggestions on how to better apply the standards set by top management in a practical manner.



Building and Investing in the Compliance Function

Since the Compliance function is key to ensuring that top management's ethical culture emanates throughout the organisation, it is vital for organisations to recruit staff who are competent, qualified, of good repute, and who can build a rapport with all levels of the workforce (Deloitte, 2015²).

The Compliance function will be the first port of call when issues surrounding ethics and compliance with statutory and regulatory requirements arise. Therefore, individuals in the function must subscribe to the organisation's ethical culture so they can continuously reinforce it.

It was previously acceptable for the Compliance function's sole focus to be preservation, reaction and damage-control. However, the function has since needed to transform into one that not only ensures legislative and regulatory compliance and reputational protection, but also operates in a more strategic and forward-looking capacity. The way in which top management appoint staff for the Compliance function will therefore have to be overhauled. The interview process must be conducted under stringent scrutiny so that top management can thoroughly assess candidates. It is imperative to establish whether they will complement existing staff members, appreciate the importance of their role, and whether they will uphold and apply the organisation's ethical culture through their policies and procedures. Additionally, top management must endeavour to appoint candidates that have: adequate knowledge about the business of the organisation; good interpersonal skills; diverse skillsets and capabilities and a desire to continue to improve same; a good understanding of regulatory and legislative requirements to be met by the organisation; and a desire to grow and adapt with the organisation (KPMG, 2019³). Once appointed, the candidate should be integrated into the organisation through an orientation process, including training. Engagement

between the candidate and all levels within the organisation should at all times be encouraged.

Top management must also ensure that appropriate resources are allocated to the function. Regular training should be made available to the function to sharpen practical understanding of how to integrate the organisation's ethics and business strategies into daily work, along with policies and procedures. Training must always be relevant to developments in technology, legislation and regulations. Providing sufficient resources to train and develop the Compliance function will allow it to be adaptable to a continuously-developing economic and technological environment, and will allow those in the function to evolve with the organisation. Top management must understand that if a Compliance function is "starved", it will not benefit the organisation (Bliss, 2015⁴).

Investment in the function must be long-term and top management must, in ensuring stability of an organisation, avoid high staff turnover in the Compliance function. Staff loyalty can be encouraged through fair reviews of staff's performance, implementing promotion and remuneration policies, and offering study opportunities. These methods will also inspire staff to advance their knowledge and skillset and work effectively (CBI, 2019⁵).

Regular Training and Consistent Engagement

A Compliance function is the knowledge hub of an organisation insofar as regulatory and legislative compliance, implementation of ethical culture, and development of business strategies are concerned. Therefore, those in the Compliance function must keep up to date with current and relevant information impacting their line of work, and must maintain a live library of resources that can be updated as and when necessary.

The Compliance function must ensure that all levels within an organisation are equipped with the necessary knowledge to fulfil their roles in a compliant



manner, and to identify and report risks prior to them materialising. In order to do so, the Compliance function must continuously engage with all levels within the organisation to assist them in understanding how to operate within the purview of legislation and regulations, and how to approach their tasks in a way that proactively mitigates risks. A key strategy to engage as aforesaid is through compulsory, ongoing training. The Compliance function must deliver tailor-made training programmes that are relevant to each department in respect of the different roles that they fulfil in the organisation.

Regular training will not only ensure that all levels of staff in an organisation have sufficient knowledge to act compliantly, it will also ensure that the organisation's business strategies and ethical culture are always reinforced. Additionally, regular training and increased contact with the workforce will make the Compliance function more accessible, thus encouraging openness and honesty. This will inevitably lead to reporting risks and whistleblowing at an early stage so that they can be mitigated, thereby protecting the organisation from the potential of reputational and financial damage.

Conclusion

Every organisation will adopt different approaches to ensure that their Compliance function is properly resourced and situated within the organisation to meet new challenges and the needs of the organisation and its stakeholders. However, the one common goal that all organisations share is consistently improving their financial and reputational standing. A definite way to reach this goal is by having a robust Compliance function in the organisation.

Although some organisations already have measures in place to safeguard against their Compliance function stagnating, it is beneficial for organisations to regularly revisit these measures and ensure that they are current and still bringing positive results for the organisation and its stakeholders. This paper suggested factors that can be taken into account when building and improving an organisation's Compliance function, however, it is prudent for organisations to conduct a thorough assessment of specific needs, develop their own strategies, and implement them in a meaningful manner to ensure that their Compliance function is vigilant and proactive to the benefit of the organisation and its stakeholders.

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Regulation, Ethics and the Impact on Stakeholders



Author: Dr. Gerry Gallagher, Managing Director, GBCL Governance Ltd.

Introduction

The type of regulation in any country depends on a wide variety of economic and societal factors, and there will be widely differing views of what is the correct level. Speaking recently about proposed regulation of senior executives in the banking industry, the Minister for Finance Pascal Donohue stated: "While Ireland is hyper-open by EU standards, the country is still dealing with the aftermath of the global financial crisis and is still trying to get the regulatory balance right." Too much regulation can stifle business and innovation. Too little regulation ultimately results in economic collapse. One factor that often gets little mention in this equation is ethics, and its vital role in the contemporary business environment.

This article will briefly examine the development of regulation in liberal economies, and the role of business ethics. It will then focus on the practical application of regulation and ethics in relation to the organisation's stakeholder and how these impact on day-to-day decision-making in the firm. In that respect, ethics must be seen not as an abstract concept without practicality, but as an integral element in running an organisation.

Geographical Differences in Governance

It is important to note that governance differs quite significantly around the world depending on factors such as:

- The legal system;
- Historical reasons; and
- National culture.

In addition, German sociologist Max Weber suggested that different religions dictate whether people have an individualist or a collective perspective which ultimately influences their views on how governance is framed, and also the role of ethics.

The different global types of governance can be broadly categorised as:

- Anglo-Saxon;
- Continental European; and
- Asian.

Given our history and the subsequent origin of our legal system, it perhaps comes as no surprise that we fall under what is termed the "Anglo-Saxon" model, which includes Britain, the Commonwealth countries, and the US. This model has a single-tier board of directors.

Even within the Anglo-Saxon model, there is a major difference between the US on one hand, and Ireland and the UK on the other. The UK Corporate Governance Code (which covers Irish PLCs) is a principles-based approach which requires companies to "comply or explain" and is based on shareholder primacy. The US also has a strong focus on shareholder primacy but operates on a rules-based system, in particular the Sarbanes Oxley Act. This places stringent legal conditions on how US companies are governed, focusing especially on the role of the CEO and CFO. Since the 1980s, the approach to business in the Anglo-Saxon model was based strongly on neoliberal economics where rules are often regarded by many business leaders as an interference in how the market should operate.

The EU (and the OECD) place a strong emphasis on the role of the 'stakeholder' rather than on shareholders. Two-tier boards are common e.g. Germany operates a system of co-determination where in large companies, workers, banks and state representatives sit on the upper board. In Europe, there is generally a much greater acceptance of societal rules. In Ireland, the financial collapse in 2008 put the spotlight on the shortcomings of "light-touch" regulation. This, along with the move towards greater self-regulation, necessitates a stronger focus on the centrality of ethics in business.



Morality and Ethics

According to Crane and Matten (2016), Morality is concerned with “the norms, values, and beliefs embedded in social processes which define right or wrong for an individual or a community.” Ethics is concerned with “the study of morality and the application of reason to elucidate specific rules and principles that determine morally acceptable courses of action.” There are many different ethical theories which codify these principles, including:

- Teleological ethics - dealing with consequences;
- Deontological ethics - dealing with universal principles;
- Virtue ethics - based on character; and
- Ethical relativism - allowing for regional variation in standards.

These theories can be applied to a variety of settings to arrive at a clear understanding of what is the correct thing to do. Each approach examines the issues from different perspectives. Crane and Matten suggest using a “prism of ethical theories” to provide a broader perspective to arrive at the right conclusion.

Stakeholders

While there is a very strong focus on maximising shareholder wealth under the Anglo Saxon approach to governance, it must be remembered that under the Companies Act 2014, the duty of directors is to the company. For the company to thrive, it must have a holistic strategic approach, and in so doing, it is

imperative that it takes into account a wide variety of stakeholders’ interest. Freeman (2010) defines stakeholders as: “any group or individual who can affect or is affected by the achievement of the organisation’s objectives” stakeholders include employees, consumers, suppliers, the local community, regulators, and the environment.

There is now a wide corpus of laws that governs how organisations deal with their stakeholders e.g. consumer laws to protect customers against poor-quality or even dangerous products; environmental laws to prevent pollution etc. It must also be remembered that managing stakeholders has enormous potential for the company, what is often referred to as “enlightened self-interest.” The relationship between the organisation and stakeholders will vary from one time period to another and from one group to another. It can be mapped according to the shareholder’s interest in a particular project, and the commercial impact this will have on the organisation (Gallagher, 2019).

Employees and Ethics

Ethics has relevance to each of the stakeholder groups mentioned above. One group that has particular relevance for every company is its employees. The EU has been responsible for the introduction of a very considerable array of employment legislation in Ireland, and there are various bodies tasked with ensuring the implementation of these laws from the Workplace Relations Commission to the law courts.



However, the law often lags behind the demands of society, and it is said that ethics begins where the law ends. This makes ethics an integral part of how companies build trust that underpins their relationship with stakeholders. Ethics, therefore, is not the preserve of any one person or group: it must be embedded in the culture of the organisation, and in the decision-making process. According to French et al. (2011), culture is “the system of shared values and beliefs that develops within an organisation and guides the behaviour of its members.” This behaviour must include ethical values in the day-to-day operations of the company. The relevance of culture is becoming more apparent. In 2016, the Financial Reporting Council in the UK issued a report: *“Corporate Culture and the Role of Boards”*. In 2018, the Central Bank of Ireland produced a report “Behaviour and Culture of the Irish Retail Banks,” the opening sentence of which states: “Cultural failings within the banking sector were a significant contributory factor in the financial crisis.” (See ICQ - spring 2022 for a comprehensive account of organisational culture).

With power comes responsibility. Large firms are de facto political actors and can yield enormous power. According to the German philosopher Emmanuel Kant, people should be considered an end in themselves, never a means to an end. Managers run the business on behalf of the owners, but employee participation is an important factor both in terms of the success of the organisation and also on ethical grounds. Employees are paid for their work, but employees also expect

to have meaningful employment and there are many HRM studies that highlight the central importance of employee engagement in the success of companies.

In Ireland, the Constitution protects the right of employee association, but there is no commensurate law to oblige companies to recognise unions. In the case of many companies operating here this is not an issue, as employees are well treated. However, there are also organisations where employees have precarious contracts, poor working conditions and unreasonable pressure put on them to perform, with enormous income inequality between employees and those at the top.

Conclusion

The level of regulation is growing, placing an increasing layer of oversight and administration on companies across all industries and sectors. Complying with the law, however, should be regarded as the minimum base for any organisation. The company also needs a social licence to operate. Having a strong ethical stance requires board commitment, and leadership throughout the organisation, and must be embedded in its culture. This requires selecting the right people, provide ongoing ethics training, and judging their performance on how they demonstrate ethical behaviour in their work. The company’s relationship with all of its stakeholders is of vital importance for its long-term survival. Trust, built on a solid ethical foundation is central to this relationship, not least of all with the company’s employees.

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The Way We Work Now – Is Compliance in Step?

Authors: Patrick Kelly, CEO of The Mizen Group, Sam Saarsteiner, Partner Clark Hill

The COVID-19 pandemic has disrupted and altered almost every facet of society. Business is no exception, and the impacts, though varied, have been industry-agnostic. The way we work has changed radically over the last two and a half years. The initial tsunami of change, which saw entire sections of the workforce furloughed or working from home, has withdrawn and settled into a “new norm” leaving long-lasting consequences both for operational structures and for morale, retention and risk mitigation to name just a few.

At the beginning of the pandemic, hybrid or fully remote work was viewed as a necessity in unprecedented times; it was not expected to take on a long-term hold in employer/employee dynamics. Yet, as we have seen over the last nine months or so, the return to office location work of an increasingly burned-out and stressed workforce has led to many employees looking to hybrid and other modes to make their careers work for them. Recruitment in all business sectors is now adapting to the need to deliver a broad package to candidates, encompassing work/life balance, hybrid working and overall working environment rather than the traditional pay and perks focus. For example, a McKinsey report on the future of work after COVID-19 postulated that, of remote work that can be done without a loss of productivity, 20-25% of the workforce could work remotely between three and five days a week.

The benefits of hybrid working are clear, yet it is right to reflect equally on the risks. Workplace camaraderie is not just a social phenomenon, it carries significant and tangible risk mitigation benefits. As the UK's Financial Conduct Authority (FCA) stated, “any form of remote or hybrid working adopted should not risk or compromise the firm's ability to follow all rules, regulatory standards and obligations, or lead to a failure to meet them.” The FCA¹ warned banking and brokerages firms it was preparing to conduct inspections in the homes of financial workers, perhaps a shock headline but a clear message that policy in or out of the office must be followed.

At this juncture, it is important and timely for organisations to reflect on whether their policy, procedure and compliance culture are in step with a long-term hybrid or alternative work strategy. Regulators may well ask, ‘how did you evaluate your compliance risk in a changing work culture?’ With the advent of the Senior Executive Enforcement Regime in

the near future, boards and management teams will be acutely aware of the potentially personal consequences of getting this wrong.

Additionally, this ‘ask’ may come during economically trying times. Budgeting in the face of uncertainty may mandate a reflexive and nimble approach. The way we work now may necessitate reflection on whether the culture within the organisation is healthy enough to support compliance in the context of hybrid working. One constructive (and cost effective) method of ensuring that healthy compliance culture is built into the organisation from the ground up is to listen to employees. Organisations that provide opportunities for employees to give feedback on compliance culture and ensure that the feedback is actioned, will have a clear and persuasive answer to any questions the regulator may have concerning compliance risk.

Clark Hill | The Mizen Group

The Mizen Group has partnered with Clark Hill Solicitors to develop a bespoke self-diagnostic tool to measure compliance with the Central Bank of Ireland's fitness and probity requirements for regulated financial service providers.

Mizen also has proprietary Compliance Culture Diagnostics allowing you to quantitatively measure risks and provide actionable insights on how to build on strengths, address potential weaknesses and prioritize areas of focus in relation to budget decisions.

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REFERENCE:
1 Irish Independent 14/10/2021

2022 CPD Codes - Log your CPD

DATE	WEBINAR TITLE	CPD Hours	CPD CODE
January 20, 2022	Ethics at Work: 2021 International Survey Findings	1 hour Ethics for all designations 22503 - 1 hour for CU Ops/Gov	2022-0001
January 25, 2022	The Role of Technology & Public Private Partnerships in Fighting Financial Crime	0.5 hours LCI, FCI (Compliance), CFCPP 22507 - 1 hour for CU Ops/Gov	2022-0012
January 27, 2022	Data Breaches and Data Subject Access Requests	1 hour LCI, FCI (Compliance), CDPO 22508 - 1 hour for CU Ops/Gov	2022-0013
February 9, 2022	Doing the Right Thing: Embedding Business Ethics	1 hour Ethics for all designations 22510 - 1 hour for CU Ops/Gov	2022-0333
February 21, 2022	Central Bank of Ireland: Speaking Engagement	1 hour LCI, FCI (Compliance) 22511 - 1 hour for CU Ops/Gov	2022-0332
March 8, 2022	International Women's Day 2022	1 hour LCI, FCI (Compliance), FCI (Ethics), CECA 22512 - 1 hour for CU Gov	2022-0905
March 9-10, 2022	QUBE 10TH NextGen Payments & RegTech Forum (Day 1)	4 hours LCI, FCI (Compliance) 1 hour CFCP 22513 - 4 hours for CU Ops/Gov	2022-0697
March 9-10, 2022	QUBE 10TH NextGen Payments & RegTech Forum (Day 2)	3 hours LCI, FCI (Compliance)	2022-0698
March 15, 2022	Solving the Communications Compliance Chasm in a Hybrid Working Role	0.5 hours LCI, FCI (Compliance), CDPO 22514 - 1 hour for CU Gov	2022-0410
March 24, 2022	GDPR: Compliance, Concerns & Covid	1 hour LCI, FCI (Compliance), CDPO 22515 - 1 hour for CU Ops/Gov	2022-0661
March 30, 2022	Navigating the Sanctions Landscape in 2022	1 hour LCI, FCI (Compliance), CFCP 22516 - 1 hour for CU Ops/Gov	2022-0416
April 21, 2022	A Practitioners Guide to Compliance and Financial Crime Culture & Conduct	1 hour Ethics for all designations 22519 - 1 hour for CU Ops/Gov	2022-1035
May 5, 2022	Data Protection Operations: Planning a Programme	1 Hour LCI, FCI (Compliance), CDPO 22521 - 1 hour for CU Ops/Gov	2022-1195
May 11, 2022	DPC - SME Conference	4 Hours LCI, 1 hour QFA, CPD Member, RS CPD Member, CDPO	2022-1529
May 12, 2022	Preparing for the Senior Accountability Regime	1 hour LCI, FCI (Compliance), Professional Banker, Chartered Banker, Certified Bank Director, Certified Investment Fund Director, Accredited Funds Professional 22522 - 1 hour for CU Ops/Gov	2022-1036
May 19, 2022	Financial Crime Compliance - Breakfast Briefing	1.5 Hours LCI, FCI (Compliance) CFCP, Certified Bank Director, Certified Fund Director 22523 - 1.5 hours for CU Ops/Gov	2022-1190
July 19, 2022	Anti- Money Laundering	0.5 Hours LCI, FCI (Compliance), CFCP	2022-1733
Aug 24, 2022	Integration of ESG into Investment Decisions - Where are we now?	1 hour QFA, LCI, FCI, Certified Bank Director, Certified Investment Fund Director, Accredited Funds Professional, CPD Member, RS CPD Member	2022-2060
September 13, 2022	The Outsourcing Lifecycle - RFSP Obligations under the CBI's Cross Industry Guidance on Outsourcing	1 hour LCI, FCI (Compliance), Professional Banker, Chartered Banker Certified Bank Director, Certified Investment Fund Director, Personal Insolvency Practitioner	2022-2129

ANNUAL RETURNS

Every Designate is obliged to make an annual return by 31 January 2023 declaring:

The approved events that make up their CPD hours for 2022 and that the hours completed conform to the requirements and the CPD criteria for IOB and 'The Compliance Institute Criteria in Relation to Awarding CPD Credit'.

Designates are required to record all approved CPD events in their Online CPD Record in IOB Learn. An Online CPD Record will then form the basis of their Annual Return. The online Annual Return process usually opens towards the end of the year until 31 January of the following year.

Thereafter, anyone who has not made an Annual Return will be considered not to have complied with the CPD requirements and will be subject to the procedure outlined below under 'Failure to Comply'.

CPD hours must be completed by 31 December each year. Hours completed in January will count for that CPD year and cannot be counted for the previous CPD year.



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The 2022 Annual Conference will take place on the morning of the 10th November. The Conference will be a hybrid event with the 'in-person' venue being the Shelbourne Hotel, Dublin.

To register visit compliance.ie