

# ICQ

IRISH COMPLIANCE QUARTERLY

SPRING 2022

 Compliance  
Institute

## President's Interview: **Diarmuid Whyte**

**ETHICS:**  
THE  
BUSINESS  
OF ETHICS  
... OR THE  
ETHICS OF  
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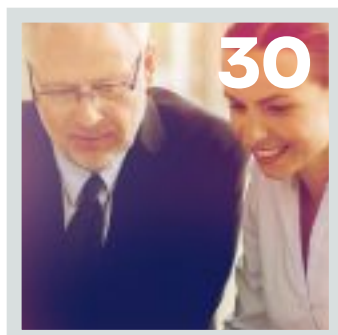
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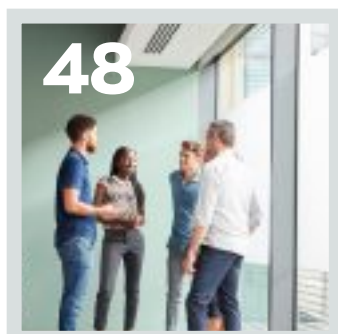
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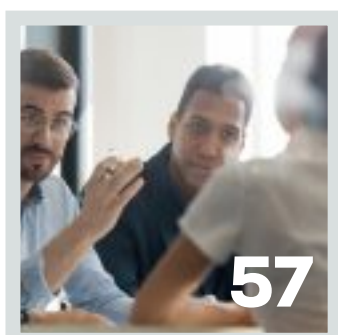
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# CEO Update



Welcome to the Spring edition of the **ICQ** Magazine.

**A**t last, we return to some degree of normality after a difficult two years. From an Institute perspective, it allows us to return to in-person events such as CPD, conferring ceremonies, the Institute annual dinner together with our various planned anniversary social events as set out in our dedicated 20th anniversary page on our website. We are aware that networking is hugely important to the compliance professional, and we aim to facilitate, as much as possible, members getting together, sharing issues, and more importantly obtaining solutions.

## CPD - First Hybrid Event!

Our first pilot hybrid event took place on 21st February when Gerry Cross, Director of Financial Regulation - Policy and Risk at the Central Bank, spoke to over 400 members. The event received coverage in all the broadsheets, and it was fantastic to be back with our first in-person event in almost two years. The last in-person CPD event we ran was a GDPR update on 5th March 2020. Little did we think that it would be almost 2 years before the next one! It was interesting that only 20 people availed of the in-person option which suggests that members continue to prefer the webinar offering. We will continue to have as many hybrid CPD events as possible for the remainder of this year.

So far this year we have had 6 CPD events with 5 of those being free to members. Attendance has been good with an average of 295 at each event.

## Annual Dinner - Save the Date!

This year's annual dinner is expected to be extra special. As well as being the first one for some time, it will also act as a celebration of the Institute's 20th anniversary. We expect a large number of members and guests. With that in mind, we have booked the Round Room in the Mansion House for Thursday, 26th May. We are encouraging as many of you as possible to attend for what should be a great night and we will be emailing members with further details at a later date.

## Conferring Ceremony

Continuing the positive news as we re-emergence from COVID restrictions, our deferred 2021 conferring ceremony will take place in the Radisson Blu on Wednesday, 23rd March 2022. Over 130 graduates will gather with their guests to celebrate their achievements and we look forward to welcoming them as designate members of the Institute.

## In the News

It was another strong Quarter from a media profile perspective with members' views on various ESG related matters and the future of the workplace receiving widespread coverage in national newspaper and radio media outlets. Further details of the coverage since the last edition can be found on page 16.

## Education

The Certificate in Leadership Skills for Compliance Professionals, provided by Griffith College in association with

Compliance Institute, commences on 21st March and will be delivered online over 8 weeks. The Certificate in Leadership skills is designed by us specifically for the compliance profession as many of you move from the traditional compliance role into a broader leadership role within your organisation. Feedback from those that have taken the programme to date has been excellent with students particularly enjoying the interactive element and group discussions. The course now qualifies for CPD and to find out more please visit [compliance.ie](https://compliance.ie)

## AGM

Our AGM was held on the 12th of January with Diarmuid Whyte elected as the new president of the Institute. I wish Diarmuid every success during his term in office and look forward to working with him as we continue to deliver on our strategy for the benefit of you, the member.

## Concluding Remarks

This year, we mark the 20th anniversary of the Compliance Institute. From its origins, in November 2002 when around 80 financial services professionals gathered in the offices of Irish Life in Abbey Street, the Institute has grown to what it is today - the premier provider of compliance education in Ireland and the largest organisation of its kind globally, with over 3,250 members. This is a tradition to be proud of and, as we return to in-person events, I look forward to meeting as many of you as possible during this celebratory year.

**Michael Kavanagh, CEO.**

# President's Welcome



## Dear Members,

Welcome to the Spring 2022 edition of our **ICQ** and my first as President of Compliance Institute. It is important to reference the ongoing developments in Ukraine. I am personally devastated to see the escalating humanitarian crisis. Some of our members may have family and friends there and I am sure you will all join me in sending our love and support.

These events have also brought changes in the area of Sanctions where the sanctions lists change on an ongoing basis. It is important that organisations continue to ensure that the impact of these sanctions list changes are considered in how business is conducted.

On a lighter note, I am happy to see that COVID measures have been relaxed and I am looking forward to a safe phased return to in person events. We have seen the success of webinar style events over the last two years. The networking interaction as part of these events is something I have always enjoyed, meeting individuals in similar roles with differing perspectives. I genuinely believe that Compliance is better as a collective that shares views, concepts ensuring that we meet and

comply with regulatory obligations. This is where I see one of the most significant benefits of Compliance Institute's membership in that it drives consistency in interpretation and application. We have all learned new ways of interacting over the last two years and I think it is important that we merge these lessons with the return of in person networking to create a greater experience.

I really enjoyed our first hybrid event of the year. I was delighted to be joined by the Central Bank of Ireland's Director of Financial Regulation – Policy and Risk, Gerry Cross. I know that our members always value the insights that the regulator can provide in these sessions as it allows consideration to the alignment of firm's regulatory focus.

I believe that 2022 is gearing up to be an interesting year. As referenced in our CPD event, we are likely to see further updates in the Individual Accountability Framework, plans for review of the Consumer Protection Code and further progression in Differential Pricing. Digital Operational Resilience Act ("DORA") is another area which will likely require ongoing focus and resources throughout 2022 and beyond. I also want to draw your attention to the Securities and Markets Risk Outlook

report which was published at the beginning of February. There are several interesting topics referenced including Sustainable Finance and Cyber Security however the reference that stands out is, Data. Data is again referenced as key to the regulatory supervision toolkit, and it is an area which I think can often be underestimated.

Data allows an insight into wider operating practices and controls in organisations. This data can be obtained via regulatory reporting submissions, regulatory engagement via desk-based reviews and with the heightened use of technology it allows granular interrogation and identification of risks or challenges in other areas which may also require regulatory compliance. Please do not feel alone when encountering data challenges as I would expect others can identify with these challenges. This is where I believe the networking element of Compliance Institute can come to the fore and allow for consideration of differing approaches and interpretation.

Compliance Institute is for the benefit of our membership base and to ensure we continue to appeal to our existing and new members now, and into the future. I am keen to understand



if you feel the sectors in which you operate receive appropriate focus. In terms of representation, I do not consider this to mean just a voice that represents Insurance, Markets, Banking, or other specific areas but also that events and educational programmes deliver valuable experiences that can be practically applied in our day-to-day roles and responsibilities.


In order to continue to deliver valuable events and educational programmes the contribution of our membership is critical. As I noted on the AGM, I would again encourage those interested in participating in working groups, committees and even the Council to reach out and put your name forward.

**“The Compliance Institute is for the benefit of our membership base and to ensure we continue to appeal to our existing and new members now, and into the future. I am keen to understand if you feel the sectors in which you operate receive appropriate focus.”**

Differing views and perspective is what to my mind drives a strong culture and drives high quality standards. Please do not underestimate what you can contribute and how valuable it can be for the wider membership base.

I look forward to hearing your thoughts and please do feel free to reach out to me directly [diarmuidwhyte@compliance.ie](mailto:diarmuidwhyte@compliance.ie).  
*Ní neart go cur le chéile,*  
Diarmuid



A portrait of Diarmuid Whyte, a middle-aged man with short, light brown hair, smiling. He is wearing a dark blue suit jacket, a white shirt, and a blue tie with a white fleur-de-lis pattern. He is standing in front of a dark grey door set into a light-colored stone wall. To his right, a blue sign with the Compliance Institute logo is partially visible.

# Introducing Compliance Institute New President **Diarmuid Whyte**

With the Compliance Institute (formerly ACOI) celebrating its 20<sup>th</sup> anniversary, its new President, **Diarmuid Whyte**, talks to ICQ about his experience in compliance, how the Compliance Institute's membership should blaze their own path and what he hopes to achieve during his Presidency.

**A**lthough no stranger to Compliance Institute previously known as the ACOI, Diarmuid is looking forward to rolling up his sleeves, getting stuck in and to do his bit to pave the way for the Institute's current membership and those of the future into the next 20 years.

Although compliance was not something Diarmuid initially considered when he left University College Cork (UCC), he has not looked back. "After I graduated from UCC, I went on to study accountancy. I was really interested in numbers and the financial side of things, so a career in business was always on the cards."

Diarmuid joined KPMG and became a chartered accountant working mainly on the audits of financial services companies like banks and hedge funds. "That was fascinating, and I suppose it gave me some useful insights for my next job."

Keen to develop his skill sets and knowledge of the wider financial services sector, his next job was with the Central Bank of Ireland ("the Central Bank") Diarmuid worked in largely compliance roles with specific focus on inspection and regulatory reviews that covered everything from corporate governance, capital requirements, client assets, general compliance, and Internal Audit. He was also involved in the Client Asset Specialist Team within the Central Bank when it was set up and subsequently conducted inspections across a wide range of firms.

"What appealed to me was that I got to explore and understand different firms, the diversity of their business models and how the regulations apply to them, it could have been anything from spread betting to stockbroking and other types of investment management."

**“A significant factor for Diarmuid in the Head of Compliance roles is the diversity. Diversity for Diarmuid is not just the people, though this is a key ingredient, it is the diversity of the business model, the diversity of products, the diversity of internal and external stakeholders.”**

Diarmuid joined the Central Bank at an interesting juncture in its own development.

"When I joined the Central Bank, it was undergoing its own evolution, changing its perspective with a greater risk focus and was starting to go down the road of Probability Risk and Impact System ("PRISM"). The diversity of exposure to differing regulations and entities meant it was a hugely interesting time and importantly I would definitely recommend the experience."

Armed with this experience he was well-equipped to take on the next role, this time with the IFG Group which was later acquired by Willis Tower Watson, following a spate of local and international M&A activity by the latter.

Diarmuid joined IFG as compliance manager in 2013 and ended up as Chief Risk Officer and Head of Compliance with Willis Towers Watson Ireland by the time he left in 2016. The previous Head of Compliance of Ireland had departed for another opportunity, so Diarmuid thought why not throw my hat in the ring. The job was across MiFID occupational pensions business, individual life advisory business, credit insurance brokerage and insurance broking.

"It was very enjoyable and involved a steep learning curve which was both interesting

and challenging. The most senior opportunities do not always appear with great frequency so it can be important to grasp them when they do arise".

"Every compliance professional will have their own approach but a key message for members here is to back yourself. Trust your judgement and where challenges on interpretation do not be afraid to bounce concepts with colleagues and peers. I believe in blazing your own trail, believing in yourself and most importantly with hard work you can achieve your goals. The views and perspectives that you bring should be valued as it allows practices to be looked at through a different lens".

A spell in stockbroking beckoned when he became Head of Compliance with Cantor Fitzgerald in Dublin.

"After a period of time, the Head of Client Asset Oversight was added to my responsibilities. Stockbroking was very different with a large array of services and activities which are considered to be higher risk. It was an enjoyable experience."

A significant factor for Diarmuid in the Head of Compliance roles is the diversity. Diversity for Diarmuid is not just the people, though this is a key ingredient, it is the diversity of the business model, the diversity of products, the diversity of internal and external stakeholders. These ingredients mix to make a fantastic



experience with never a dull day. After two years in the stockbroking world, Diarmuid was then approached by one of the biggest global financial institutions, Citibank, to join as Head of Client Asset Oversight for the Irish entity and its' EU branches, a role which then developed to include other areas including Deposit Guarantee Oversight.

Citibank Europe plc, which has its headquarters in Dublin has been operating in Ireland since 1988 and was one of the first companies to receive a license to operate in the IFSC. Now its activities span everything from markets and securities services, banking capital markets right through to treasury and trade solutions and private banking.

"When I started, I had to get my head around the sheer depth and breadth of service offerings Citi has in Dublin and the wider EU."

"I remember when I was at KPMG, I used to audit Citi Hedge Fund Services and I always had this perception that it largely operated in the funds space, but the reality is that it is an enormous global company with diverse offerings across a wide number of areas. It is also a fantastic company to work for with great opportunities for staff to advance and learn."

If there is a common thread running throughout Diarmuid's career to date it is his exposure to a broad and diverse range of financial service providers and business models all of which have very distinct and unique compliance requirements and objectives, something which makes him particularly suitable for his role as the Institute's President.

"I was fortunate to get the opportunities along the way as they have given me great

**"I would like to see a re-invigoration of the Compliance Institute's chapters and I will be working closely with Michael Kavanagh and the Executive team to try and achieve this."**

insights and experience across a diverse number of areas, and I am very grateful for that. These opportunities allowed me to challenge myself and develop."

"My time with the Central Bank, in particular, was most helpful when it came to getting a deeper understanding about how a regulator may interpret obligations and requirements. I believe being able to bring that skill-set to the business is valuable. However, it is not only valuable to the business but also the regulator in ensuring firms have suitable arrangements to ensure compliance. So, the Central Bank experience for me, was fantastic and has helped me ever since."

Diarmuid, of course, is no stranger to the Institute. His first involvement came in 2012-2013 when a former colleague asked him if he would be interested in becoming part of the Finance, Risk and Administration Committee (FRAC).

"I only stepped down as chairman of that committee in June 2021 the experience was interesting and informative, and you get to meet and share knowledge with colleagues across the compliance industry which is invaluable. Additionally, it benefited me in allowing me to stay involved with my original interest of financials".

As the Compliance Institute's new President, Diarmuid says he is looking forward to continuing the work of previous Presidents and committee members who have voluntarily given up their spare time to help the Institute grow and expand.

As a Corkman, one of several things on his Presidential agenda is to continue to expand the Institute's membership base nationally and beyond.

"I would like to see a re-invigoration of the Compliance Institute's chapters and I will be working closely with Michael Kavanagh and the Executive team to try and achieve this. I recognise the thriving financial services industry in Leinster but also the wider financial service providers operating around the country whether its venture capital firms in Cork or fund administrators in Limerick. So, I think there are lots of opportunities there for us to continue to grow our membership."

With diversity and inclusion looming large on the agendas of many businesses and member organisations, Diarmuid says that is another thing on the radar for his presidency.

"I would like to see further diversity and inclusion within Compliance Institute and the broader industry. One of the things we are looking at is how we can do something at committee level that has a diversity and inclusion focus. The compliance role in many companies is uniquely positioned to influence and direct change, so I think we need to do a lot more on this front."

"Thankfully, within Compliance Institute we have benefited from having a diverse council over my time as a Director with two of the three past presidents being female. All businesses, in every sector, need to look at their diversity



and inclusion policies and practices. I would love our members to feed into this at council level, join us in driving the Compliance Institute's strategy and would encourage you to put yourself forward to join us on Council."

Another area of keen interest for the President and the Institute will be working on the whole client asset landscape. With the Central Bank's imminent amendments to the Client Asset Regulations (CAR) expected at the end of March or early April, there will be substantial interest within Compliance Industry for a better understanding of what the new regulations will entail. Currently they apply MiFID investment firms, but this is about to change.

"The rules that have been in place for investment firms will now be extended to credit institutions with some amendments, so there is a big opportunity for the Institute to develop something around this area once the regulations and the guidance are issued".

On the wider stage, Diarmuid says that the pace of regulation will show no let up over the next few years as wave after wave of national and EU-initiated regulations continue to have an impact on the wider industry.

"It is always going to be a challenge for compliance professionals and in recent years there has been a constant stream of it. We had MiFID II in 2018, we've had GDPR and going forward we are going to have regulations on things like digital assets, Environmental, Social and Governance (ESG) which is going to be a really interesting one and then of course the other big one coming down the line will be the Senior Executive Accountability Regime (SEAR) which is going to have a big impact across the board."



"But we will be ready for them and that's one of the wonderful things about the Institute and its ability to be able to help our members understand what's coming down the line by preparing them and giving them the knowledge to be able to act."

It is also one of the reasons why Compliance Institute has been so successful, Diarmuid adds.

"One of the major purposes of the Institute is to provide a top-quality educational offering for our members and we have been very successful in that. We are very fortunate in that we have brought in the best experts in their fields, including regulators, and this has helped us deliver quality CPD training and expert and knowledge-led events. But one

of the great things is the networking opportunities we offer to members who can reach out to fellow members and colleagues and bounce things off them whether it is help with interpreting things correctly or seeking the appropriate direction of travel with something".

"This has always been one of our great strengths and it's down to the commitment and hard work of our members and the executive down through the years."

"The reality is the Institute exists for its members and thanks to its members, it has been successful for the last twenty years and hopefully will continue to be successful for the next 20 years," Diarmuid concludes.

# Preparing for the IAF 2022



Welcome to Compliance Institute in collaboration with Mazar's first individual accountability framework awareness and readiness survey report.

**P**ost the publication of the Central Bank of Ireland's July 2018 report, Behaviour and Culture of the Irish Retail Banks, our members and their firms have been anticipating and planning for a new individual accountability framework (IAF) and a senior executive accountability regime (SEAR).

Following the Department of Finance's publication in July 2021 of the General Scheme of the Central Bank (Individual Accountability Framework) Bill 2021, the industry obtained an insight into draft legislation that will pave the way for the IAF/SEAR. Whilst there have been no formal deadlines when impacted firms must have implemented their own IAF, it is anticipated that this may occur in 2023.



“Through member engagement, we are aware of the potential impacts of the IAF/SEAR for our members and their firms, and that this area continues to be a source of ongoing debate and uncertainty.”

In January, Compliance Institute issued a survey to members to obtain their views on a range of areas in relation to SEAR/IAF. The high response rate demonstrates the level of interest and engagement in this topic. 76% of responses represent firms impacted by SEAR, with the remainder working within other types of firms. A significant number of respondents work in a controlled function role and the second line of defence, 71% and 72%, respectively.

## Purpose

Through member engagement, we are aware of the potential impacts of the IAF/SEAR for our members and their firms, and that this area continues to be a source of ongoing debate and uncertainty.

As a result, through the performance and publication of our IAF/SEAR survey report, we are seeking to provide our members and the financial services industry with a unique insight into:

- The level of awareness and preparedness within firms for the new IAF/SEAR; and
- Our member's views about the potential impacts of IAF/SEAR on them and their firms.
- As we progress through the legislative process concerning IAF/SEAR, the consultation process, the publishing of the regulatory guidance and post-implementation, we will continue to assess and report on the challenges and impacts of implementing IAF/SEAR amongst our members.

## Key Findings

### 1. Awareness of an Accountability Framework

There is a high level of awareness of the IAF/SEAR and its potential impacts (70%) within Boards of Directors and Executive Committees of firms. Many firms have already taken some action to prepare for the IAF/SEAR, including:

- 65% of respondents have reviewed their fitness and probity (F&P) or corporate governance arrangements.
- 76% of respondents completed a formal assurance review of their F&P arrangements, performed by internal audit or compliance monitoring within the last three years.

These findings would indicate that firms are starting from a good place for reflecting the incremental F&P enhancements that will be required through IAF/SEAR.



## 2. Preparedness for an Accountability Framework

The proposed IAF/SEAR will result in significant enhancements and changes to firm's system and control environments. In terms of overall preparedness for an IAF/SEAR, it would appear that the majority (68%) of firms have yet to commence formal planning for the implementation of IAF/SEAR. Less than one-third of respondents have initiated an IAF/SEAR readiness project. Given that the enabling legislation is not yet final, it is not surprising that the percentage is so low. Once there is further clarity surrounding the implementation dates, we expect this metric to improve in the months ahead.

It is anticipated that the IAF/SEAR will share several similarities with the regimes implemented in other jurisdictions, including that implemented by the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) in the United Kingdom (UK). Using the learnings from those jurisdictions, it is advised that firms here should develop an initial implementation project to ensure they have sufficient time to address the requirements promptly.

Given the importance of IAF/SEAR on enhancing the culture and behaviours within firms and its focus on senior management, it is expected that the CEO would sponsor this project. According to our survey, 20% of respondents noted that their CEO sponsors their IAF/SEAR project. Over one-third (34%) of respondents noted that a representative from the second line of defence sponsors their IAF/SEAR project. Whilst our members and the second line of defence have a critical role in implementing their firm's IAF/SEAR project from an advice

and oversight perspective. It would be unusual for the second line of defence to be charged with sponsoring a project to improve firmwide culture and accountability. As the legislation and supporting regulatory guidance are published, we expect to see a shift in the sponsor of IAF/SEAR projects away from the second line of defence to the first line of defence.

## Potential Impacts of SEAR

A key objective of introducing the IAF/SEAR requirements is to encourage firms to improve their culture, behaviours and the treatment of customers and employees. Goals of this nature can often be welcomed with scepticism by stakeholders.

However, over three-quarters (79%) believe that IAF/SEAR will bring about meaningful change in behaviours within the industry. This finding highlights the positive appetite for change within the industry, despite the requirements not yet being finalised. Indeed, based on research performed in the UK by the PRA, 94% of senior managers noted that the Senior Managers and Certification Regime (SMCR) had resulted in positive behavioural change.

In addition, 84% of Compliance Institute members believe that the IAF/SEAR will result in people becoming more risk-averse. At the same time, some would argue that excessive risk aversion could erode innovation and competition in our financial services ecosystem. It could also be viewed as a positive regarding safeguarding customers and employees.

While our respondents believe that the IAF/SEAR will positively impact behaviours, there is concern that the regime will increase the personal risk

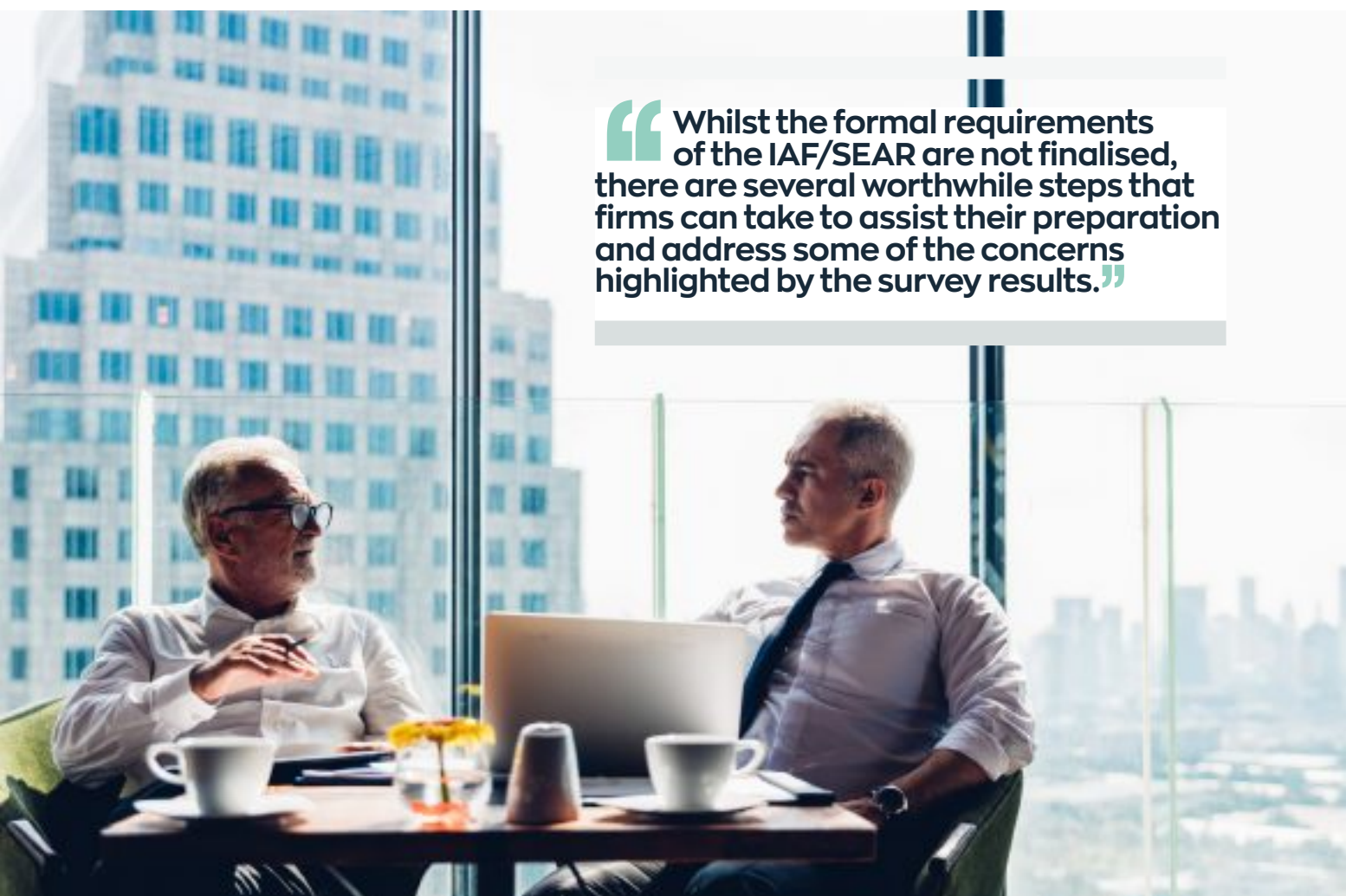
associated with a PCF role. 42% are particularly concerned about how they should/will document, and evidence reasonable steps related to their role.

These concerns surrounding risk aversion and personal risk were prevalent in the build-up to implementing similar regimes in other jurisdictions. However, through the timely implementation of the requirements, firms and individuals could address these concerns without the crystallising of additional resource and capacity risk. In many instances, the implementation resulted in employees having greater clarity surrounding their roles and responsibilities. It is clear that respondents are seeking clarity on what constitutes reasonable steps in the context of their role and how they manage their personal risk.

## Next Steps for Firms

Whilst the formal requirements of the IAF/SEAR are not finalised, there are several worthwhile steps that firms can take to assist their preparation and address some of the concerns highlighted by the survey results. These include:

- Establish an IAF/SEAR Working Group, with an appropriately senior first line of defence sponsor;
- Develop an initial high-level implementation plan based on the detail outlined in the following;
- General Scheme of the Central Bank (Individual Accountability Framework) Bill 2021;
- Key requirements outlined in the UK's SMCR that are referenced in the aforementioned General Scheme, e.g. management responsibility map, regulatory responsibilities, statements of responsibilities,



**“ Whilst the formal requirements of the IAF/SEAR are not finalised, there are several worthwhile steps that firms can take to assist their preparation and address some of the concerns highlighted by the survey results.”**

reasonable steps, code of conduct rule breaches etc.; and

- Relevant publications from other jurisdictions evaluating the effectiveness and lessons learned from the implementation of their accountability frameworks;
- Assign ownership and target dates within the implementation plan for the preparation of key activities, including:
  - Assessing the design and operating effectiveness of your current systems and controls as they relate to relevant areas such as, but not limited to: Governance and oversight arrangements; and
  - F&P and human resource management arrangements,

including performance management, employee onboarding and exiting.

Your observations based on the above assessments should be utilised to identify areas that requirement enhancement, accompanied by the relevant actions and allocation of ownership.

- Developing business and employee-specific conduct standards that reflect the draft Bill and incorporate into your culture and performance management processes;
- Develop a draft responsibilities map working document that reflects and allocates prescribed responsibilities, key business areas and management functions

as identified within other similar regimes (e.g. the PRA and FCA); and

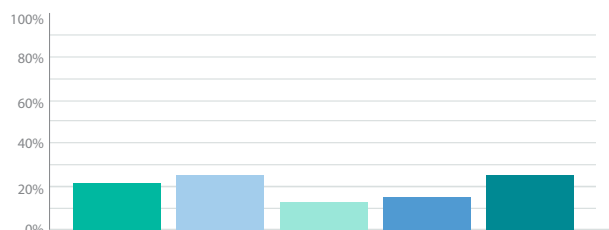
- Developing your internal guidance for the documentation and evidencing of reasonable steps.

## Conclusion

This topic will remain a key area of focus for the Compliance Institute as we journey through the legislative process. We will continue to provide analysis and insights on the latest developments via our magazine the ICQ, our monthly newsletter, publications, CPD events and our podcast series – the Compliance Files. We are also working on an education programme which will be delivered once there is more certainty on what the regime will look like.

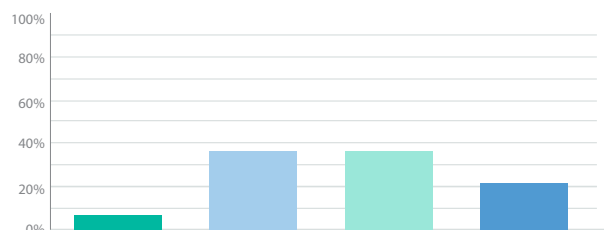
# SEAR/IAF Member Survey Results

## 1. What type of firm do you work in?



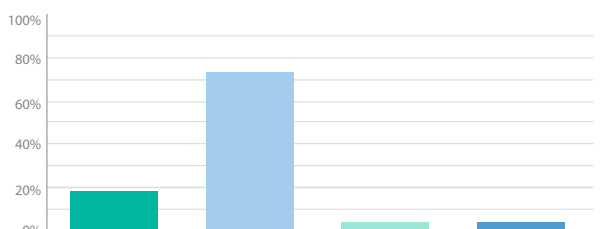
Credit Institutions	20.73%	40
Insurance Firm	25.91%	50
Intermediary	11.40%	22
Investment Firm	18.13%	35
Other (please specify)	23.83%	46

## 2. What best describes your role in your firm?



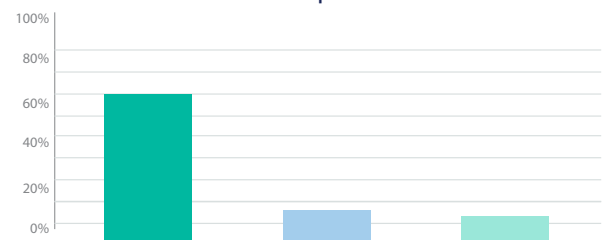
Non-executive	7.85%	15
Executive Senior Manager - PCF	35.60%	68
Manager - CF	35.08%	67
Other (please specify)	21.47%	41

## 3. What section of your firm do you work in?



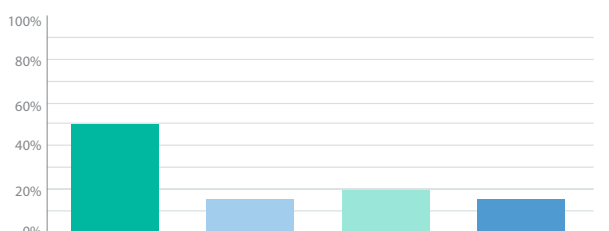
1st line of defense	17.28%	33
2nd line of defense	72.25%	138
3rd line of defense	5.24%	10
Other (please specify)	5.24%	10

## 4. Has your Board and/or Executive Committee considered the impact of SEAR/IAF in the past 12 months?



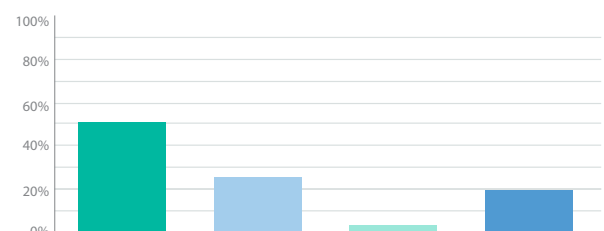
Yes	70.00%	133
No	17.89%	34
Do not know	12.11%	23

## 5. What steps/actions has your firm taken in preparation for SEAR?



Reviewed Fitness and Probity processes	50.00%	95
Reviewed governance arrangements	15.26%	29
Do not know	21.05%	40
Other (please specify)	13.68%	26

## 6. When was the last time your firm performed an internal audit or compliance monitoring review of its Fitness and Probity arrangements?

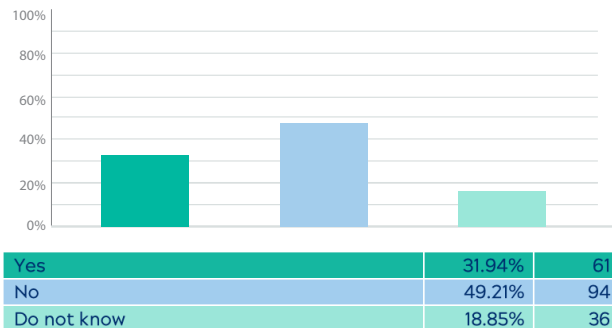


0-1 year	51.58%	98
1-3 years	24.74%	47
3 years plus	3.68%	7
Do not know	20.00%	38

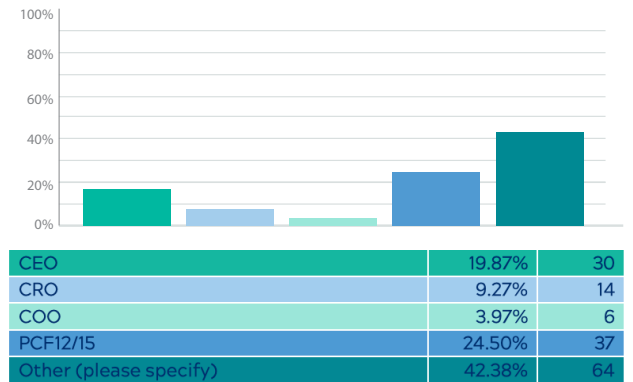


**“79% of respondents believe that SEAR/IAF will bring about meaningful changes in behaviour in the industry.”**

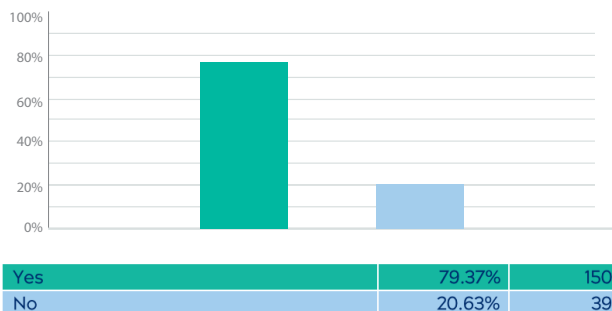
**7. Has your firm initiated a SEAR/IAF readiness project?**



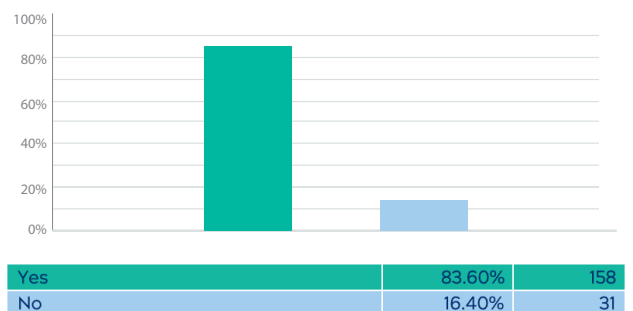
**8. If yes, who is the sponsor of the project?**



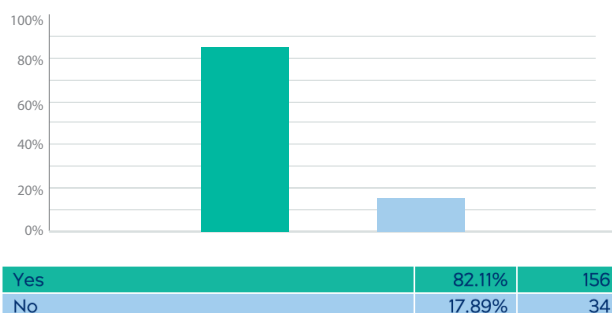
**9. Do you think SEAR/IAF will bring about meaningful change in behaviours in the industry?**



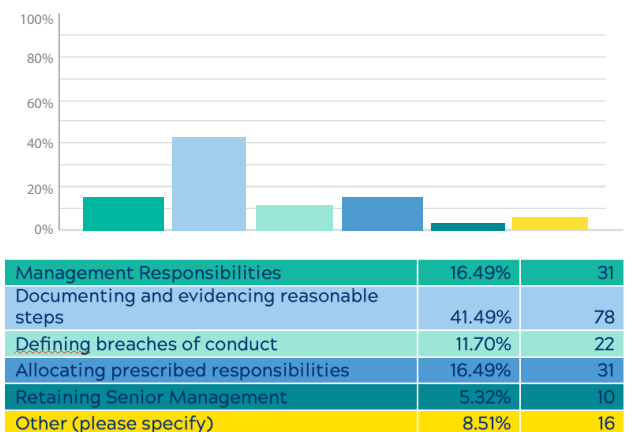
**10. Do you think the SEAR/IAF regime will lead to people becoming more risk averse?**



**11. Do you think that there is an increased personal risk in you taking a PCF role in the future?**



**12. What aspects of the SEAR/IAF proposals are you most concerned about/want detailed guidance on?**



# Compliance Institute in the Media

The first quarter of 2022 proved to be a very busy period in the media for Compliance Institute.

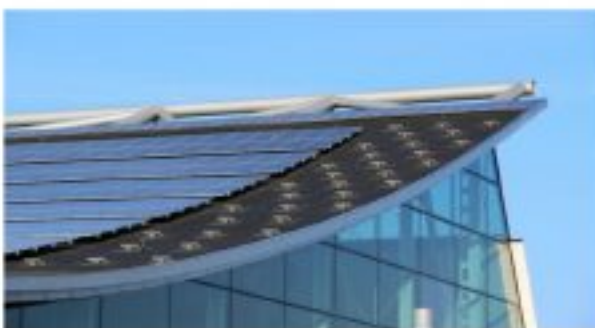
In February 2022, we released the findings of our Members' Survey, which sought to gain an insight into climate commitments, notably steps taken and planned within Irish organisations towards becoming more eco-friendly. The survey found that 79% of Irish organisations within the financial services sector are committed to achieving 'Net Zero' – though one in five "have no plans" to do so. It also found that almost four in 10 (37%) have a target date in mind, with 24% saying 'net zero' will be achieved by 2030 – well ahead of Ireland's national target of 2050 at the latest – while 13% say this should be achieved by 2040 or 2050.

The survey also pointed to growing evidence of corporate greenwashing emerging, more than four in 10 businesses have seen evidence of greenwashing by companies operating in Ireland, and a further two in 10 are uncertain of their ability to discern authentic green initiatives from mere public relations.

## THE IRISH TIMES

Almost 80% of financial firms plan to hit net-zero emissions targets

Compliance survey shows strong commitment to net zero in financial services sector



Organisations within the Irish financial services sector are strongly committed to achieving "net zero" carbon emissions, with 79 per cent planning to achieve that target, according to a Compliance Institute survey – though one in five "have no plans" to do so.

Almost four in 10 have a target date in mind, with 24 per cent saying net zero will be achieved by 2030 – well ahead of Ireland's national target of 2050 at the latest – while 13 per cent say this should be achieved by 2040 or 2050.

## Independence

Compliance officers sound signalling'



Irish business is rife with "greenwashing" misrepresenting their products and actions, according to a survey of leading compliance officers.

More than four in 10 businesses have seen evidence of greenwashing by companies operating in Ireland, and a further two in 10 are uncertain of their ability to discern authentic green initiatives from mere public relations, according to a new survey by the Compliance Institute.

“These results and comments featured in the Irish Independent, The Irish Times, the Irish Examiner plus, many other well-known Irish media outlets.”

Speaking about the findings of this survey, Compliance Institute CEO Michael Kavanagh, said: “Unfortunately, we are seeing that, in companies of all sizes, many 'green' references are

simply marketing aids rather than measurable environmental initiatives.”

These results and comments featured in the Irish Independent, the Irish Times, the

dent.ie

alarm about green 'virtue



g', with numerous firms  
ivities as environmentally friendly.  
ance officers.  
en evidence of greenwashing by  
urther two in 10 are uncertain of their  
ives from mere public relations,  
ance Institute.

Irish Examiner plus, many other well-known Irish media outlets.

On 21 February 2021, Gerry Cross, Director of Financial Regulation - Policy and Risk at the Central Bank of Ireland, spoke to Compliance Institute members at our first hybrid event, on the latest insights from the Central Bank of Ireland.

In his speech, Gerry spoke about

effective regulation supporting economic activity, achieving a positive regulatory dynamic, individual accountability, consumer protection, and differential pricing.

Gerry's speech from our event featured on both the Independent.ie on IrishTimes.com, and various professional publications and websites.



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

## "The spirit in the machine: considering evolving financial regulation" – Remarks by Gerry Cross, Director of Financial Regulation – Policy Risk, at the Compliance Institute



### Speech delivered at Compliance Institute

#### Introduction

Good afternoon. I am very pleased to be here at the Compliance Institute today. Thank you for the invitation to speak with you.

Financial regulation and compliance are close siblings which have much in common; they are both about achieving the best outcomes by implementing – through design, engagement, oversight and enforcement – a framework of rules and guidance; they are both about doing so as efficiently as possible so that interference with the underlying enterprise is kept to the minimum; and, unfortunately, they both share the feature that they are at times misunderstood.

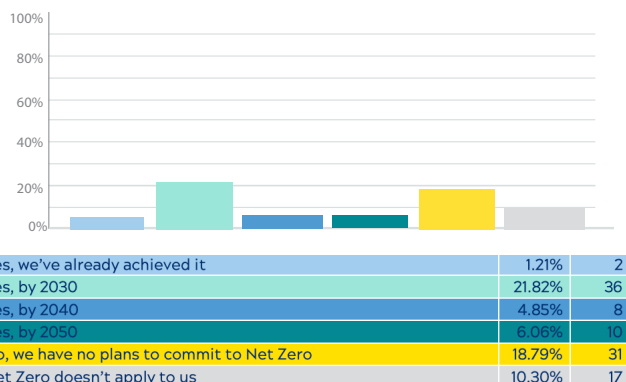
All Compliance Institute media coverage can be found under news on [compliance.ie](https://www.compliance.ie).





# ESG Member Survey Results

## 1. Is your organisation committed to Net Zero emissions?



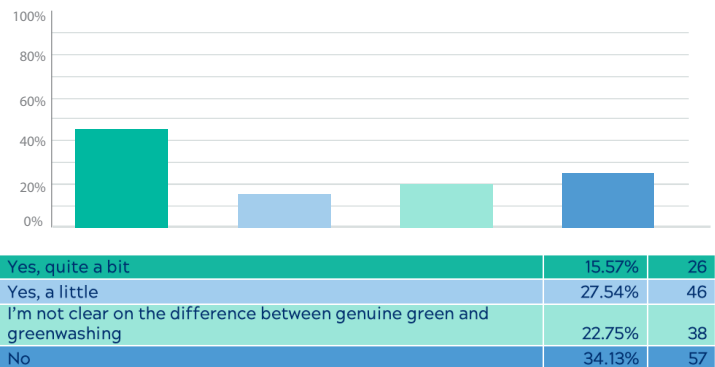
## 2. Which of the following most closely represents where your organisation is at in terms of going green and/or establishing a protocol for achieving Net Zero?



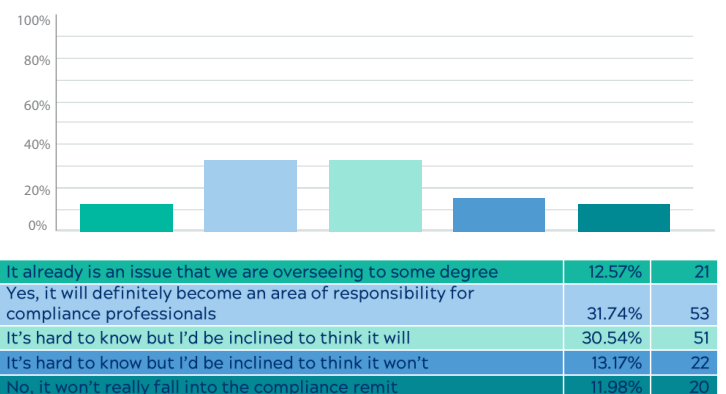
## 3. Does your organisation understand the risks and opportunities regarding climate change for your business?



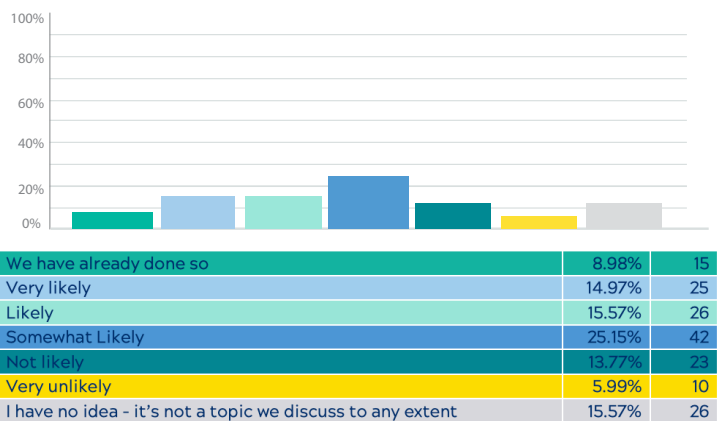
4. In a recent speech CBI Governor Makhoul said, “‘Greenwashing’ is an area I am particularly concerned about. ‘Green’ market practices are currently almost exclusively based on voluntary principles and standards, which leaves a lot of room for different interpretations. There is a spectrum of risks here from the accidental error to the deliberate misdeed.” Have you seen any evidence of ‘greenwashing’ in businesses operating here?



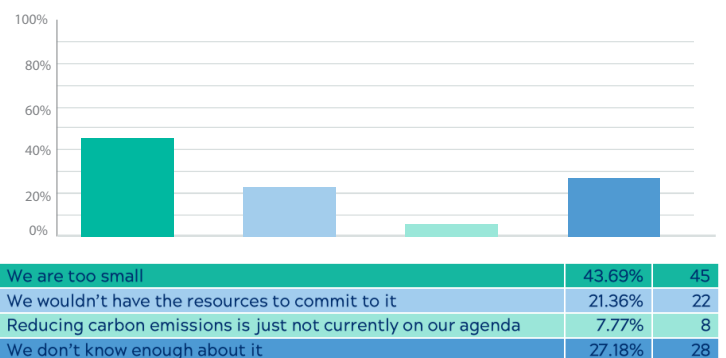
5. Governor Makhoul also said that “Climate change will be a major supervisory focus. The single most important thing is that the boards of firms we supervise have climate change on their agenda and they understand the risks their firms are carrying.” Do you believe that delivering on a firm’s green agenda is something that will be overseen by compliance professionals within organizations in the next 12 - 24 months?



6. Earlier this year, 60 of Ireland’s largest companies signed up to a ‘low-carbon pledge’ overseen by Business in the Community Ireland (BITCI), which is a not-for-profit network for sustainability. The aim of the carbon pledge is it being a starting point for its member companies to commit to cutting their carbon footprint, to report annually on progress and to develop a credible roadmap towards a ‘net-zero’ emissions economy. In your, opinion, how likely is it that your organisation would sign up to this over the next 12 - 24 months?



7. If you do not believe your organisation would sign up to a pledge as outlined above - what is the primary reason for this?





# Arctic Challenge for Debra



Compliance Institute member and Chair of the Prudential Regulation & Governance Working Group, **Rose-Marie Kennedy**, in March 2022, is planning to take on the Arctic to raise much needed funds to support those and the families of those suffering with Epidermolysis Bullosa (EB) and to fund research to treat EB on behalf of Debra Ireland.

**C**ompliance Institute would like to wish Rose-Marie and her companions a safe trip as they travel to the Arctic on behalf of Debra Ireland. We would also like to encourage our members who are in a position to make a donation, to do so. We will speak to Rose-Marie in a future edition of ICQ to find out how the trip went.

## About Debra Ireland:

DEBRA Ireland is a national Irish charity, established to provide support services to patients and families living with the debilitating skin condition epidermolysis bullosa (EB). We also drive research into treatments and cures for those living with the condition. Established in 1988 by the patients and families of those living with EB. Our patient focus has never changed since then and is reflected by the fact that patient family representatives continue to sit on our Board and their opinions inform our decisions both in terms of how we raise money and how we spend it. We provide hope and support to those living with EB, there are currently 300 people living in Ireland living with the condition. DEBRA Ireland provides support not only to them but to their families who regularly act as carers. Meet some of the people we help here.





**Pictured left:** Rose-Marie Kennedy arriving in the Arctic.

# Appointments & News



**Member:**  
**Paula Walsh**

**Position:**  
**Head of  
Compliance  
& Risk**

Paula Walsh recently joined Shop Direct Ireland Ltd t/a Littlewoods Ireland as Head of Compliance & Risk with responsibility for Money Laundering and Data Protection while she covers a maternity leave contract. Paula qualified as a mediator in 2019 and is a member of the Mediators Institute of Ireland as well as the IOB and is a designate member of Compliance Institute.



**Member:**  
**Niamh  
O'Mahoney**

**Position:**  
**Head of  
Compliance  
& Risk**

In September 2021, Niamh O'Mahoney was appointed the Head of Risk & Compliance, MLRO for Optal Financial Europe Limited (OFEL). OFEL, a subsidiary of WEX Inc., provides business-to-business payment services throughout Europe and is authorised by the Central Bank of Ireland as an e-money institution. Niamh is a designate member of Compliance Institute.



**Member:**  
**Karen Sinclair**

**Position:**  
**Group  
Compliance  
Manager**

Karen Sinclair was recently appointed to the role of Group Compliance Manager at Prestige Insurance Holdings. Karen joined Prestige Insurance Holdings, a group of insurance businesses delivering specialist products and services in Broking, Underwriting and Insurtech throughout the UK and Ireland, in October 2020 when she took up the role as Group Compliance Officer. Karen is a member of Compliance Institute.

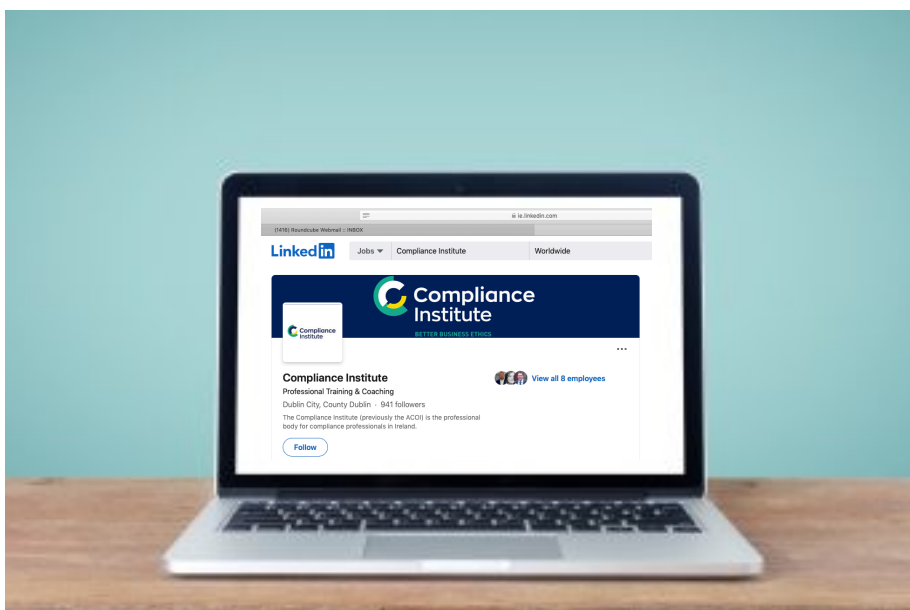


## Compliance Institute's D&I Committee

Compliance Institute is forming 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.

So, if you have experience or an interest in diversity, inclusiveness, and culture and would like to participate on this committee, email [info@compliance.ie](mailto:info@compliance.ie) to register your interest.



Our Member Appointments & 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 a news/achievement/appointment notice published in the next issue of Irish Compliance Quarterly (ICQ) magazine, just e-mail your photograph (in JPEG format) and 150 words of text to [info@compliance.ie](mailto:info@compliance.ie)



# Compliance & Ethics is an Ever-Increasing Area of Corporate Governance



Author: Joseph Anwana,  
1<sup>st</sup> place winner of the  
Niall Gallagher Scholarship

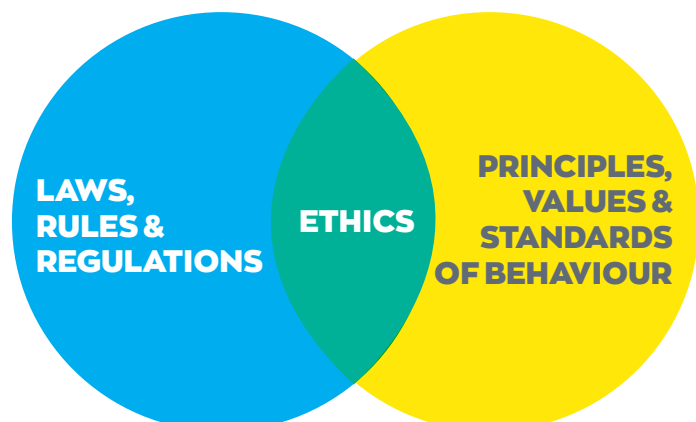
“ Compliance is doing what is right in the eyes of the law while ethics is doing what is right regardless of the law.”

**C**ompliance focuses on conforming with laws and regulations while ethics goes beyond the letters of the law.

Compliance is doing what is right in the eyes of the law while ethics is doing what is right regardless of the law. In that sense, compliance is reactive while ethics takes a proactive approach to how firms behave in the marketplace and society at large.

Both concepts may be different in scope and focus, but they are overlapping and complementary as illustrated in the diagram opposite:

### The Compliance-Ethics Nexus



A firm could be compliant with laws and regulations and still behave unethically or accommodate unethical behaviour (Kuebler & Beever, 2019). Throughout history, popular culture and business practices of the day had tolerated unethical practices that were completely legal. Unfortunately, modern firms have little or no room to get away with misdemeanours arising from either a breach of laws and regulations or unethical business practices.

## Compliance & Ethics: Why do they Matter?

The behaviour of firms in the marketplace is now constantly in the spotlight. There's hardly any business development initiative, product innovation, market expansion, and investment that wouldn't have a compliance and ethical dimension. This places compliance and ethics at the heart of the modern firm with an ability to either shape the future of the firm or limit its potential. A few factors are driving the laser focus on compliance and ethics.

## Shareholders or Stakeholders?

Historically, organizational behaviour has been dominantly dictated by the profit motive and shareholders' interest, in line with Milton Friedman's long-standing shareholder theory. No doubt, this obsession with the bottom line and narrow focus on satisfying the shareholder's financial expectations enabled suboptimal corporate behaviour (Springman, 2011).

There is now a shift towards accounting for a broader constituent of impacted groups. The expanded parties of interest include employees, investors, customers, suppliers, competitors, governments, activists, the environment, and local communities. Based on the stakeholder's theory of the firm proposed by R. Edward

Freeman in 1984 (Guthrie, 2021), anyone or anything impacted by the firm and its operations is a stakeholder that must be considered in strategic decision making.

## Past Corporate Scandals & Failures

Firms have risen and fallen on compliance and ethical breaches. It is safe to say that corporate scandals of the last two decades have raised the stakes for the governance of corporate behaviour. To prevent the next big corporate failure, regulators all over the world have always responded with an increasing volume of regulations and supervisory measures. This reactive approach to corporate malfeasances follows the crisis theory of regulation (Wang, 2017) which suggests that regulators are always steps behind businesses and innovations.

## New Technologies

The prevalence of new technologies and innovations create new sets of compliance and ethical risks never conceived or imagined. For example, internet-enabled mobile devices have advanced communication and deepened human connections. But new technologies have also facilitated the collection of personal data in such a manner that places compliance and ethical demands on firms using such data. As a result, firms that leverage data as a critical asset must analyse and address potential compliance and ethical issues.

## Heightened Reputational Risk

The emergence of social media has taken reputational risk to another level. Social media has democratised information dissemination to an uncontrollable extent. When coupled with intrusive technologies used by malicious actors, the potential for reputational damage and financial losses is enormous. Bad

**“The prevalence of new technologies and innovations create new sets of compliance and ethical risks never conceived or imagined.”**

news travel at the speed of light reaching far corners of the earth in real time. The virtual mob justice that follows breaking news associated with a corporate failure makes for an almost instant dent on reputation and brand image.

## Personal Liability

Individual accountability as part of corporate governance framework has been on the rise globally. This is driven by the understanding that a good culture of compliance and ethics should be rooted in individual integrity modelled from the top. Realistically, the firm itself cannot do wrong. It's people's individual or collective failings that translate to corporate failures. Individual accountability and personal liability regimes empower senior management within a firm to actively engage in creating a culture that serves the interest of all stakeholders.

## Location & Culture

Compliance and ethics should be embedded across the firm and not an add-on or after-thought. The program should be designed with clear roles and responsibilities across the three lines of defence. Where the compliance and ethics function sits in the corporate structure determines the reach and impact. Visibility drives engagement and influences the priority





afforded investment in risk management. The compliance and ethics function must be 'independent but not isolated'. It is counterproductive to have compliance and ethics at Board level but completely 'missing in action' in the trenches where risk is being created daily. Culture also plays a huge part in how effective a compliance and ethics program could be. A box-ticking approach to compliance would always create cracks and gaps. A principles-based culture that encourages openness is more effective. The culture should encourage people to always speak up and seek to confirm if their planned course of action is right or appropriate.

### Resourcing for Impact

An effective compliance and ethics program requires much more than an inventory of rules, regulations, policies, and standards. There are a few more tools to consider.

### Leverage Technology

Systems and tools don't do compliance. But it's impossible to have an effective and efficient compliance and ethics program without appropriate tools. A shiny front-end application driving operational excellence should be complemented with an equally effective back-end systems and tools to enable compliance monitoring and identification of breaches. Anything short of a proportionate investment

in compliance and control related technology could be a symptom of 'profit over risk, safety, or public good'.

### Maximise the Power of Data

The compliance and ethics toolkit should also include governance processes that are supported with data for effective decision making. Intelligent use of data through modern technologies like artificial intelligence and machine learning could produce powerful outcomes. Issue management process should also be developed and deployed across the firm to ensure timely and transparent identification of risk and tracking of risk mitigation plans.



## The Most Critical Asset

People are the greatest asset in any high-performing compliance and ethics function. The quality of talent within the function depends on the level of investment in training and development.

Another aspect of the people strategy is talent pipeline. To adequately prep

for success will require developing an active pipeline of talents. A well-oiled talent development machinery reduces lead times in filling open roles across all cadres thereby minimizing disruptions and potential control gaps.

## Embrace Differences

Diversity & Inclusion (D&I) is no longer a nice-to-have or a public relations tool.

It's not an investment that must yield a certain return in financial terms.

The real value in diversity is when a firm intuitively levels the playing field to avoid structural marginalization of any group – call it 'strategic inclusion'. It requires a complete change in heart, conscious and unconscious behaviour of the firm and employees at all levels. It's about aligning



**“The real value in diversity is when a firm intuitively levels the playing field to avoid structural marginalization of any group – call it ‘strategic inclusion’. It requires a complete change in heart, conscious and unconscious behaviour of the firm and employees at all levels.”**

the soul of a firm to a deeper objective of ensuring unconditional respect for human dignity. This moral or ethical case for diversity trumps any business case that could be presented or invented.

Inequalities and discriminatory practices that keep workplaces demographically or structurally homogenous can hardly be compliant with equality laws. Firms that fail to implement D&I strategies risk breaching ethical boundaries in their human capital management practices.

To future-proof the compliance and ethics function means to embrace D&I and influence the entire organisation

up to Board level to ‘walk the talk’ on equality, diversity & inclusion.

## Evaluation & Reward

Compliance and ethics must be top of mind across the organisation. One way to achieve this is to align the program with performance goals. By doing this, firms would be able to measure and reward success. For example, rewarding people managers for meeting D&I goals would inspire and fast-track behavioural change across the firm. This is a particularly great way to set the “tone at the top” and align the “mood in the middle” to drive change across the firm.

## Conclusion

Compliance and ethics are separate but interconnected realities of modern business. Both are individually and jointly capable of either sustaining or destroying the reputation of any business. Ultimately, compliance with laws and regulations is critical. Beyond that, it's even more important for a firm to set out their principles, values, and standards of good behaviour.

D&I is a compliance and ethical imperative that must be front and centre of human resource management across the firm. A firm that hasn't embraced D&I in a measurable way is miles away from being ready to address the new challenges of operating ethically in a modern, global, and diverse marketplace. After all, what is ethics without justice, equity, and fairness? Firms must understand the difference between compliance and ethics and harness the commonalities to ensure they meet stakeholders' expectations in the most sustainable manner.

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# GDPR Fines and Data Breach Survey: January 2022

This is the fourth annual DLA Piper fines and data breach survey since the application of the EU General Data Protection Regulation (“GDPR”) on 25 May 2018.

It has been another busy period for enforcement with new record-breaking fines taking the top two spots on the GDPR fines league table and several notable court and supervisory authority decisions. Organisations and privacy professionals have also been kept busy this year dealing with the fallout of the decision by the Court of Justice of the European Union (“CJEU”) in the case known as Schrems II.<sup>1</sup> The judgment has profound implications for transfers of personal data from Europe to “third countries”. Recent case-law in France potentially expands this challenge to cloud services hosted entirely within Europe where they are provided by vendors subject to third country interception laws. Data localisation may not be sufficient to address Schrems II.



With thanks to the many different contributors and supervisory authorities who make this report possible,<sup>2</sup>



**AUTHOR:**  
John Magee,  
Partner and  
Head of Data

Protection, Privacy and Cybersecurity for Ireland at DLA Piper and member of Compliance Institute’s Data Protection & Information Security Working Group.

our fourth annual survey takes a look at key GDPR metrics across the European Economic Area (“EEA”) and the UK<sup>3</sup> since GDPR first applied and for the year commencing 28 January 2021. The EEA includes all 27 Member States of the EU plus Norway, Iceland and Liechtenstein.

There has been a sevenfold increase in GDPR fines this year with just under EUR1.1bn (USD1.2bn/GBP0.9bn)<sup>4</sup> fines imposed since 28 January 2021 compared to EUR158.5m (USD179m/GBP132m) during the same period last year.<sup>5</sup>

Fines may be grabbing the headlines but the Schrems II judgment and its profound implications for data transfers continues to be a major challenge for organisations caught by GDPR.

<sup>1</sup> Data Protection Commissioner v Facebook Ireland Limited, Maximillian Schrems (Case C-311/18)

<sup>2</sup> This survey has been prepared by DLA Piper. We are grateful to Batliner Wanger Batliner Attorneys at Law Ltd., Glinska & Miskovic, Kamburov & Partners, Kyriakides Georgopoulos, LOGOS, Mamo TCV Advocates, Pamboridis LLC, Schellenberg Wittmer Ltd and Sorainen for their contributions in relation to Liechtenstein, Croatia, Bulgaria, Greece, Iceland, Malta, Cyprus, Switzerland, Estonia,

Latvia and Lithuania respectively.

<sup>3</sup> The UK left the EU on 31 January 2020. The UK has implemented GDPR into law in each of the jurisdictions within the UK (England, Northern Ireland, Scotland and Wales). As at the date of this survey the UK GDPR is the same in all material respects as the EU GDPR. That said, the UK Government Department for Digital, Media, Culture and Sport recently consulted on proposed changes to UK data protection laws “Data: a new direction” and is proposing to legislate changes to UK data protection laws

during the course of 2022. It remains to be seen the extent to which these changes will deviate from the EU GDPR.

<sup>4</sup> In this report we have used the following exchange rates: EUR 1 = USD 1.13/GBP 0.83.

<sup>5</sup> This survey only covers GDPR fines so does not include fines imposed under other regimes, such as the two large fines recently imposed by the CNIL on Meta and Google for EUR60m and EUR150m respectively for infringements of the e-Privacy Directive as implemented under French law.

## SUMMARY AND KEY FINDINGS

### Record-breaking New Fines

This year has seen two record breaking GDPR fines.<sup>6</sup> The first was imposed by the Luxembourg data protection supervisory authority against a US based online retailer and e-commerce platform for EUR746m (USD843m/ GBP619m). The second was imposed by the Irish Data Protection Commission on WhatsApp Ireland Limited for EUR225m (USD254/GBP187m). Both fines are subject to ongoing appeals.<sup>7</sup>

### Sevenfold Increase in Value of Aggregate Fines Imposed

This year supervisory authorities across Europe have issued<sup>8</sup> a total of EUR1.087bn (USD1.23bn/GBP0.9bn) in fines since 28 January 2021, which is a sevenfold increase on the total of EUR158.5m (USD179m/ GBP132m) issued in the year from 28 January 2020. Much of this increase is due to the two record-breaking fines referenced above. Fines may be grabbing the headlines but the Schrems II judgment and its profound implications for data transfers continues to be a major challenge for organisations caught by GDPR.

### Country Aggregate Fines League Table

It's all change at the top of this year's country league table for the aggregate fines imposed to date with Luxembourg and Ireland replacing Italy and Germany in the top two spots and Italy moving down to third place with EUR746m (USD843m/ GBP619m), EUR226m (USD255m/ GBP188m) and EUR79m (USD89m/ GBP66m) respectively.

### Significant Increase of Breach Notifications

The trend of increasing numbers of data breach notifications has also continued over the last year. For the year commencing 28 January 2021, there have been more than 130,000 personal data breaches notified to regulators and on average 356 breach notifications per day, an 8% increase on last year's daily average of 331 notifications.<sup>9</sup>

### Successful Appeals

This year has also seen some successful appeals against decisions and penalties imposed by data protection supervisory authorities. Notably, the German data protection supervisory

authorities are continuing to find difficulties in making fines stick. The headline EUR14.5m (USD16.4m/ GBP12m) fine imposed by the Berlin data protection supervisory authority against Deutsche Wohnen SE for alleged infringements of the storage limitation principle was held to be invalid by the Regional Court of Berlin on the basis that the Berlin DPA failed to specify acts of the management of Deutsche Wohnen SE which were in breach of GDPR and therefore did not satisfy the requirements of the German Act on Regulatory Offences.<sup>10</sup> The public prosecutor in consultation with the Berlin DPA has now appealed the Regional Court's decision. This follows a decision by the Bonn Regional Court in November 2020 reducing a EUR9.6m (USD10.8m/GBP8m) fine against 1&1 Telecom on the basis the original fine was "unreasonably high". As noted in last year's survey following the 90% and 80% reductions of the fines originally proposed by the UK ICO for two data breaches, given there is so much legal uncertainty and so many open legal questions concerning GDPR, it often pays to appeal and to mount robust challenges to proposed regulatory sanctions.

<sup>6</sup> All references in this survey to infringements or breaches of GDPR and to fines imposed are to findings made by relevant data protection supervisory authorities. In a number of cases, the entity subject to the fine has disputed these findings and the findings and penalties imposed are subject to ongoing appeal procedures. DLA Piper makes no representation as to the validity or accuracy of the findings made by relevant supervisory authorities.

<sup>7</sup> WhatsApp has applied to the Court of Justice of the European Union to annul the decision of the European Data Protection Board. A summary of the

grounds of appeal is available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62021TN0709&from=EN>.

<sup>8</sup> Not all supervisory authorities publish details of fines. Some treat them as confidential. Our report is, therefore, based on fines that have been publicly reported or disclosed by the relevant supervisory authority. It is possible that other fines have been issued on a confidential basis.

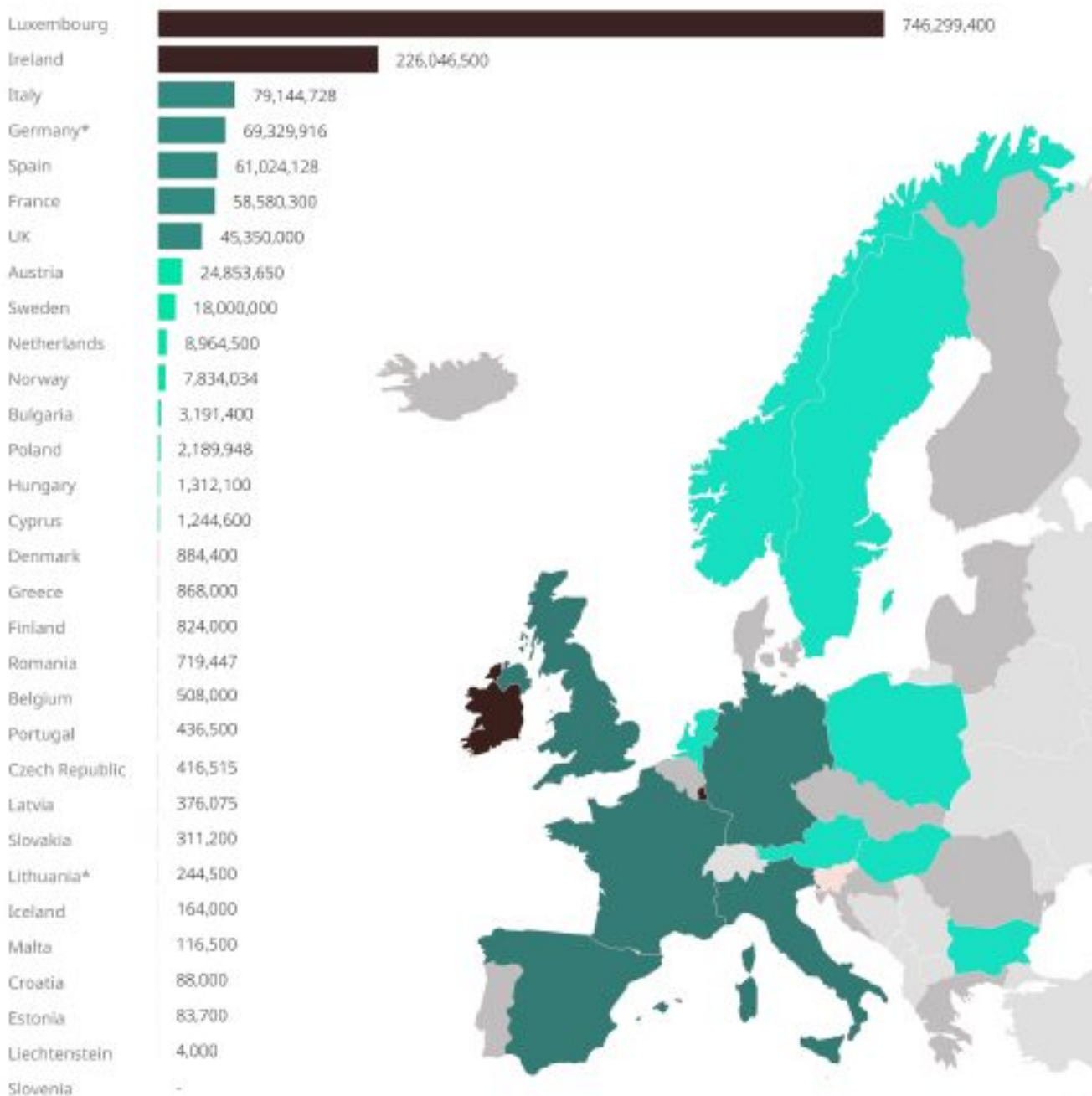
<sup>9</sup> Not all the countries covered by this report make breach notification statistics publicly available and many provided data for only part of the period

covered by this report, including Germany, which has previously had high numbers of data breach notifications. We have, therefore, had to extrapolate the data to cover the full period. It is also possible that some of the breaches reported relate to the regime before GDPR.

<sup>10</sup> There is ongoing debate in Germany whether the German Act on Regulatory Offences, which requires proof of specific acts of infringement by the management of legal persons, is consistent with GDPR, which includes no such requirement when imposing fines.

## Report

Total value of GDPR fines imposed from 25 May 2018 to date (in euros)<sup>31</sup>



\* Not all information in relation to fines by the different German DPAs is made publicly available, therefore the real figure is likely to be higher than reported.

\* In Lithuania, data in relation to minor fines imposed is not available and therefore the figure provided does not include the value of minor fines.

31 This report does not include fines that have been successfully appealed.

■ Aggregate fines more than EUR100m  
 ■ Aggregate fines between EUR25m and EUR100m  
 ■ Aggregate fines between EUR1m and EUR25m  
 ■ Aggregate fines up to EUR1m  
 ■ No fines recorded/data not publicly available  
 ■ Not covered by this report



## HIGHEST INDIVIDUAL FINE LEAGUE TABLE

#1

### Luxembourg – €746m

Luxembourg's data protection supervisory authority, the CNPD, takes pole position this year with a fine of EUR746m (USD843m/ GBP619m) against a US online retailer and e-commerce platform. The fine is not publicly available and is subject to an ongoing appeal.

#2

### Ireland – €225m

On 2 September 2021 the Irish Data Protection Commission ("DPC") issued a fine of EUR225m (USD254m/GBP187m) against WhatsApp Ireland Limited for various findings of failings to comply with the GDPR transparency requirements as well as a reprimand and order to bring its processing into compliance. WhatsApp has appealed to the CJEU to annul the decision (Articles 5(1)(a), 12, 13 and 14 GDPR).

#3

### France – €50m

The Luxembourg and Irish fines have moved last year's top fine issued by France's data protection supervisory authority, the CNIL, into third place. The CNIL fined Google EUR50m (USD56.5m/GBP41.5m) for various findings of failings to comply with transparency requirements and for failing to have an adequate legal basis for processing in relation to personalised advertising (Articles 5, 6, 13).

## SCHREMS II FALLOUT

The decision of Europe's highest court in Schrems II in July 2020 was seismic. The CJEU invalidated the Privacy Shield regime and left standard contractual clauses on life support – which are by far the most common mechanisms to legitimise transfers of personal data from Europe. It was also expressly stated that a controller established in the EU and the recipient of personal data are required to verify, prior to any transfer, whether the level of protection required by EU law is respected in the third country concerned.

On 18 June 2021 the European Data Protection Board finalised its recommendations on how organisations should comply with the judgment. These

are not legally binding but will be followed by supervisory authorities to inform enforcement decisions and will carry weight in the courts. Among other things, the recommendations require comprehensive mapping of data transfers and transfer impact assessments where individual transfers rely on standard contractual clauses or binding corporate rules.

In June 2021 the European Commission helped to reduce the compliance gap to some extent by issuing updated standard contractual clauses which take into account the EDPB recommendations so far as they relate to contractual supplementary measures. However, these new clauses still require

organisations to complete transfer impact assessments and may not be sufficient to achieve equivalent protection without additional organisational and technical measures.

Meeting the requirements of Schrems II and the EDPB recommendations is a very significant undertaking requiring a complicated assessment of the laws and practices of typically multiple third countries to which personal data are transferred or can be accessed from. It is a challenge even for the most sophisticated and well-resourced organisations and is beyond the means of many small and medium-sized enterprises.

# The Business of Ethics ... or the Ethics of Business



**AUTHOR:** Ed McDonald, FCOI, MA in Ethics and Corporate Responsibility, MBS, member of Compliance Institute's Ethics Committee.



**“Business ethics is the application of ethical values to business behaviour. Business ethics is relevant both to the conduct of individuals and to the conduct of the organisation as a whole.”**

## Values Set the Base

What Values does a company, a business, an organisation, have that a person doesn't have? Are there diverse kinds of Values that are unique to them in some way? And if so, how did they get those Values? Who gave them those Values? What are the differences between corporate values and personal values that a person must learn to work out how he/she should practise the corporate values in their roles in a business? After all, we are in an era where companies and organisations are described as having a Purpose, a Mission, a Goal, and a Code of Conduct to govern how “it” acts or is portrayed. In addition, is it not the case that most actions or initiatives “undertaken” by a business, are performed by a person in the name of the business? I say “most” because I’m not sure what actions and responsibilities for them might be done by technology applications (robots, algorithms, or whatever forms they might take), or is there someone - a person – who is responsible for them.

## The Way we Do Things

There is a broad agreement that good ethical practice is essential in all aspects of our lives and society, but because there is no one single right interpretation of what “the right thing to do” is, there is also disagreement. Theoretically, Ethics is a societal construct – and it is based on mutual understandings, expectations,

presumptions and broad consensus on what is right or wrong. And that varies in many societies throughout the world. At its most basic, Ethics and the Values that underpin it, are based on customs and practices in a society (back to the oft-quoted expression “the way we do things around here”) but in most developed societies it has gone beyond just that as we seek to agree standards we should expect and aspire to. Despite any societal variations, we still feel there is a need for something that helps to distinguish right from wrong, good from bad.

## Business Ethics – their What and Who

That need applies across the world of business and the world of professions. For businesses, the concept of being ethical is summed up by the Institute of Business Ethics (the IBE) – “Business ethics is the application of ethical values to business behaviour. Business ethics is relevant both to the conduct of individuals and to the conduct of the organisation as a whole. It applies to all aspects of business conduct.....” The conduct of organisations or businesses is reflected in the conduct of their people and staff – all of them in varying ways, at all levels in the organisation, no exceptions. And to round this off, the IBE says, “Ethics goes beyond the legal requirements for a company and is, therefore, about discretionary decisions and behaviour guided by values.”





The nature of businesses, what they each do and the sheer number of them, is so diverse, (global, international, big, small), that it begs the question of what common ethical standards should they have, what should be expected of them, what consumers and other stakeholders should rely on. And then add on extra standards for selected businesses that undertake extensive applications. It surely is such that there will be variations among them in what they see as their objectives and the values by which they operate in the industry sector that they are in. That might sound too sweeping and expecting too much, that there could be such a high commonality among them. Even in the world of financial services, don't Regulators recognise the need for companies to define their own particular purpose and the Values that they profess in order to achieve those purposes? But when we refer to companies and businesses as

"they" or "them" do we really mean the businesses or the people who own them, run them, organise them, decide for them what their purpose and values are?

Various professions set out what they consider to be core values special to the nature of what those professions do, that should be respected and adhered to by the persons who are qualified to be members of that profession. Think of medical practitioners, people who are critically important to many of us. "... the medical practitioner must attempt to uphold four important principles: respect for patient autonomy, beneficence, nonmaleficence, and justice. When these principles conflict, resolving them depends on the details of the case."

Think of engineers. The Engineering Council and the Royal Academy of Engineering have created a Statement

of Ethical Principles for all engineering professionals. "Engineering professionals work to enhance the wellbeing of society. In doing so they are required to maintain and promote high ethical standards and challenge unethical behaviour. There are four fundamental principles for ethical behaviour and decision-making. These are: 1. Honesty and Integrity. 2. Respect for life, law, the environment and public good. 3. Accuracy and rigour and 4. Leadership and Communication" and each of them is explained in detail.

## Ethical Words and Ethical Practice

So back to "Business" Ethics, the ethics of business. The IBE says that "Building an ethical culture starts with a clear set of values and an understanding of the purpose of the organisation" and that "A code of ethics is the foundation of your ethical culture." By the time the Code is



**“Various professions set out what they consider to be core values special to the nature of what those professions do, that should be respected and adhered to by the persons who are qualified to be members of that profession.”**

written, presumably a lot of discussion about the desired Values has been gone into by people in the company (the bigger the organisation the more difficult it is to have consulted everyone). IBE says that “If ethical values are the compass which guides how you do business, then a Code of Ethics is like a map, offering guidance on what route to take when there is a choice to make” and adds that “A code of ethics sets out the expectations that the company has for how employees should behave in any given situation, to assist with decision-making”. It further states that Codes of Ethics have gone beyond just guidance for employees to now be statements to its wider stakeholders setting out the values the company holds, and it notes, as does the Central Bank, that one size does not fit all.

## What Ethics Involves

For any organisation, choosing what it wants to be known for in terms of

its Values and Behaviours is a hugely serious matter. Key to all of this is to be aware that an essential aspect of ethics is that it has in fact many aspects: requires thinking about the desirable Values – thinking of the purpose, reflecting on what that implies, visualising how they would work and be applied, imagining how you would use them and in what circumstances, and visualising the range of outcomes that they may produce and their impact on others. Behind all that is awareness of how and by whom were those Values decided as being the ones that should apply to how your company should behave. Was there widespread consultation? Was there extensive discussion and even argument? Or was it done by a small well-intentioned team? And how is all that discussion and argument explained to everyone in the organisation and being understood by them? The final written Code is invariably like a written list of short

statements about different Values. But a written list needs to be inculcated into each person and clearly understood as to what they mean and how they should be practised. Remember the many organisations that have had what were described as the best Codes, subsequently did not practise them in the way they were outlined – Enron in the USA had its famous 64-page Code and Johnson & Johnson had its renowned Credo code, both of which were highly regarded as ethical guides.

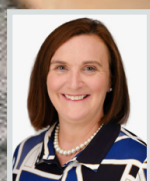
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# Why Outsourcing is a Hot Topic for Compliance Teams



**AUTHOR:** Carina Myles, Partner, Governance, Risk & Compliance, EisnerAmper Ireland and Chair of Compliance Institute's Funds Working Group.





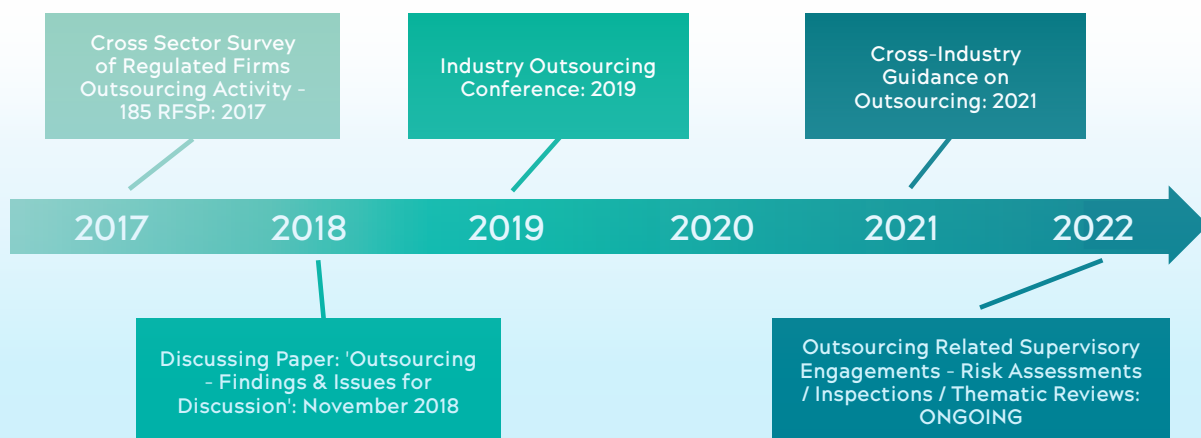
In this Outsourcing update, Carina Myles, Partner, Governance, Risk & Compliance at EisnerAmper Ireland,

discusses why Outsourcing is a hot topic for Compliance teams and the key elements of the Central Bank of Ireland's "Cross-Industry Guidance on Outsourcing" which was published in December 2021.

Outsourcing is a key area of focus for regulators across Europe including the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the Central Bank of Ireland (Central Bank). In its "Cross-Industry Guidance on Outsourcing" (Guidance), the Central Bank notes that it is strongly focused on Outsourcing due to its increasing prevalence across the financial services sector and its potential, if not effectively managed, to threaten the operational resilience of Regulated Financial Service Providers (RFSPs).

The Central Bank has undertaken a significant programme of activity on outsourcing over the last number of years to ensure that Boards of RFSPs do not seek to rely on either third-party providers or group companies to the point where they are inadvertently delegating accountability to those entities. On this basis, the Central Bank seeks to ensure that accountability and responsibility ultimately remains with the Board and that certain processes and principles are followed to mitigate outsourcing risks. Compliance professionals will be required to help the Board understand and implement the Guidance. The following article includes key considerations when reviewing the outsourcing risk management framework of the RFSP.

**“The Guidance is being introduced to supplement existing sectoral legislation, regulations and guidelines on Outsourcing.”**



The Central Bank's programme of work in relation to outsourcing is illustrated below and includes its latest publication in December 2021: "Cross-Industry Guidance on Outsourcing" (Guidance), following its February 2021 Consultation (CP138). The Guidance recognises that outsourced service providers (OSPs), including both intragroup entities and third party OSPs, both regulated and unregulated, support the provision of activities and services considered central to the successful delivery of the RFSP's strategic objectives. The Guidance also notes that the changing landscape for the provision of financial services is leading to new service delivery models such as strategic partnering, cross-industry shared service centres, staff sharing and extensive sub-outsourcing. The development and use of these new models to deliver critical and important services or functions by RFSPs will be regarded as outsourcing and as such, RFSPs will be expected to apply the Guidance.

The Guidance is being introduced to supplement existing sectoral legislation, regulations and guidelines on Outsourcing, by setting out the

**“The Guidance also notes that the changing landscape for the provision of financial services is leading to new service delivery models such as strategic partnering, cross-industry shared service centres, staff sharing and extensive sub-outsourcing.”**

Bank's expectations of good practice for effective management of outsourcing risk. The Guidance expects firms to take a firm-wide approach to analysing and managing their outsourcing risks through to the implementation of a robust strategy, framework, policies and procedures. Some of the key expectations on firms include:

**1. Risk Assessment** – the expectation on firms to risk assess the criticality or importance of the activity or service to be outsourced either to a third party, intragroup or delegated arrangement. In assessing the risks, firms are expected to consider a number of factors including taking a holistic approach to outsourcing and the concentration risk across the entire firm and/or

industry where several firms outsource to the same outsourced providers, for example, cloud service providers.

**2. Governance** - the Board, as ultimate accountable owners, must ensure they have demonstrable due diligence, oversight and monitoring frameworks in place to provide the appropriate assurance that outsourcing risk is effectively managed and the right controls are in place to mitigate the risk.

**3. Policy** – regulated firms are expected to have a documented outsourcing strategy that takes account of outsourcing risk appetite and clearly articulates:

- the types of activities and functions they will consider outsourcing;
- the associated risks;



- the ability, skills and competencies required to appropriately monitor and oversee outsourcing arrangements.

**4. Record Keeping** – maintenance of a register of the firm's outsourcing universe is required to facilitate centralised management.

**5. Outsourcing Risk Management Framework** – the Central Bank's

expectation is that firms develop and implement a robust and strong outsourcing risk management framework that incorporates comprehensive risk assessments to enable adequate oversight out outsourced activities.

An approach we have found to be beneficial when supporting our clients' Boards and Senior Executives is to benchmark existing outsourcing

risk management frameworks to the guidance to enable the effective identification, oversight and management of outsourcing risks.

In supporting our clients, we have explored the entire lifecycle of the risk of their outsourcing arrangements and underpinned the framework with existing legislation, regulations and guidelines relevant to the firms' sector.

# MiFID Suitability – Common Supervisory Action

The Suitability requirements were introduced in MiFID I, and expanded on in MiFID II, and are a cornerstone of investor protection.

**AUTHORS:** Compliance Institute's Consumer Protection Working Group.

**M**iFID Suitability requirements ensure that investment firms providing investment advice or portfolio management have to provide suitable personal recommendations to their clients or must make suitable investment decisions on behalf of their clients.

Where a firm is providing these services, they must complete a suitability assessment, which involves obtaining information necessary to enable the investment firm to recommend to the client or potential client those investment services and financial instruments that are suitable for the client and, in particular, are in accordance with his or her risk tolerance and ability to bear losses. This includes:

- 1) Obtaining sufficient evidence that the client possesses sufficient knowledge and experience in the investment field relevant to the product/service being offered;
- 2) Gathering information on the client's financial situation, including their ability to bear losses; and
- 3) Understanding the client's investment objectives, including their risk tolerance.

MiFID II added additional considerations in relation to completing cost benefit analysis when recommending switching of financial instruments to clients, enhanced suitability reporting and record keeping requirements.

In December 2021, the Central Bank of Ireland (CBI) published a 'Dear CEO' letter outlining their findings from the Common Supervisory Action (CSA) that was undertaken in credit institutions and MiFID investment firms across the European Economic Area (EEA). The CBI advised that the letter should be read in conjunction with the ESMA public statement outlining the results of the CSA. Many of the findings identified align with the ESMA findings.

**“MiFID Suitability requirements ensure that investment firms providing investment advice or portfolio management have to provide suitable personal recommendations to their clients or must make suitable investment decisions on behalf of their clients.”**







The main findings were:

### Firms must adopt a client-focused approach

The CBI observed an absence of a personalised, comprehensive and client-focused approach to suitability, prioritising positive client outcomes. Poor practices observed were inadequate training frameworks, poor reporting and disclosures to clients, and a failure to establish clear procedures for the identification of potentially vulnerable clients.

### Firms must improve their assessment of clients' knowledge and experience, financial situation and investment objectives

Firms are recommended to improve their assessment of clients' knowledge and experience, financial situation and investment objectives, collecting all necessary information to recommend products/services that are suitable. Firms were reminded to consider all relevant information in their assessment, and not solely focus on client's risk tolerance, ensuring that there are clear procedures in place for calculating client's capacity for loss.

Firms were reminded that where digital channels are used in the suitability assessment, it must ensure that the requirements are adhered to.

Shortcomings were evident in poor record keeping, and retention of evidence, how the suitability assessment was conducted and how information was used to inform the recommendation.

### Suitability reports need to be sufficiently detailed and personalised

The Suitability Report should be a personalised document that enables the investor to understand how and why a product has been deemed suitable for them, based on their individual circumstances.

The review found instances where Suitability Reports were not sufficiently detailed or personalised, with information on the client's financial situation sometimes missing or limited and relied on automated templates and standardised wording that provides little value to clients.

As outlined in the ESMA findings, firms must reassess their suitability report to ensure they are avoiding a generic, 'tick-box' approach.

## “Firms must have documented processes in place which demonstrate the transaction was initiated by the client.”

### Controls on ‘Exception’ processes need to be stricter

The CBI expressed concern at the quality of oversight of ‘exception’ processes, should clients insist on proceeding with the transaction at their own initiative and against the firm’s suitability advice.

Firms must have documented processes in place which demonstrate the transaction was initiated by the client and the review found instances where there was inadequate rationale or records to support this.

Firms also failed to demonstrate that they have effective training or oversight procedures in place to ensure sales advisors are not unduly influencing clients to avail of these exceptions and invest in unsuitable products. Several additional ESMA findings:

- ESMA recommended in 2018, that firms should build client sustainability preferences into the Suitability assessment. This was not evident in the majority of cases.
- Inadequate product classification, with firms treating all products in a given group as equivalent, even if costs and complexity are different.
- A lack of a common interpretation of “switching” or use of a narrow definition which could increase the risk of circumventing the MiFID II requirements.

#### Next steps:

The CBI require firms under their

supervision, providing investment advice and/or portfolio management to retail clients to perform a thorough review of sales practices and suitability arrangements. The review must be completed against the CBI and ESMA findings and details of any actions taken to address the findings must be documented. This assessment and action plan must be discussed and approved by the Board of each firm by end Q1 2022.

Compliance Officers should familiarise themselves with the findings highlighted in both documents and, when the Business have concluded the mandated review, should complete second line check and challenge against the outcomes identified. Evidence of Compliance challenge and interaction in relation to the review should be documented and agreed actions to address challenges raised should be reported to the Board and tracked through appropriate governance forums to completion.

As part of proposed remediation, Compliance should work with the Business to provide advice/support in relation to the revision of procedures/processes, methods for compiling suitability letters, etc. as per the standard review processes.

Compliance may also wish to support their business areas in respect of future regulation in this regard. On 27 January 2022, ESMA published a consultation paper in relation to their proposed Guidelines on certain aspects of the MiFID II suitability requirements.

The main topics covered are:

- **Collection of information from clients on sustainability preferences** – Firms will need to collect information from client’s on their preferences in relation to the different types of sustainable investment products and to what extent they want to invest in these products;
- **Assessment of sustainability preferences** – Once the firm has identified a range of suitable products for client’s, in accordance with the criteria of knowledge and experience, financial situation and other investment objectives, it shall identify - in a second step - the product(s) that fulfil the client’s sustainability preferences; and
- **Organisational requirements** – Firms will need to give staff appropriate training on sustainability topics and keep appropriate records of the sustainability preferences of the client (if any) and any updates of these preferences.

The review of this set of guidelines is also the opportunity to consider other relevant factors such as:

- the integration of the good and poor practices identified in the CSA to complement the current guidelines. These good and poor practices give practical guidance to firms in the areas where lack of convergence was observed; and
- the amendments introduced through the Capital Markets Recovery Package to Article 25(2) of MiFID II.

The consultation closes on 27 April 2022 and the expectation is that final Guidelines will be published in Q3 2022.



# Pensions Authority Code of Practice for Trustees of Occupational Pension Schemes and Trust Retirement Annuity Contracts

AUTHOR: **Caroline Griffin**, Pensions Working Group.

## Background

The Pensions Authority ('the Authority') published its Code of Practice ('the Code') for trustees of occupational pension schemes and trust retirement annuity contracts (RACs) in November 2021. The Code sets out the Authority's expectations for the conduct and practice of trustees of funded occupational pension schemes and trust RACs. The expectations outlined within the Code are the minimum that the Authority views as necessary to comply with specific requirements. From a proportionality perspective, the Authority has noted that trustees may consider it appropriate to implement additional measures beyond what is specified in the Code depending on the size, nature, scale and complexity of a scheme.

The Code covers seven main areas:

- 1) General Governance Requirements
- 2) Administration
- 3) Internal Control System
- 4) Investment

- 5) Defined Benefit (DB) Financial Management
- 6) Fit and Proper Requirements
- 7) Additional Requirements for Defined Contribution (DC) Master Trusts

## Focus on Key Areas

### General Governance Requirements:

Trustees are expected to ensure their scheme has an effective system of governance that provides for its sound and prudent management including having written procedures for scheme management. Trustees are also expected to have a written data policy, a written policy on conflicts of interest, written contracts for outsourcing or use of external service providers, a written remuneration policy and a written policy regarding the ways in which they will engage with members.

**Administration:** Trustees are expected to ensure the effective administration of their scheme which encompasses managing member records (including

keeping them up to date) and adequate communication with the scheme's members and the Authority. To support the effective administration of their scheme, trustees are required to have a written administration policy and to have a full understanding of the employer's role in the administration of the scheme including the processes used by the employer to provide information to the administrator.

**Internal Control System:** Trustees are expected to put in place an effective internal control system that provides reasonable assurance that a scheme is compliant, properly administered and managed, and has appropriate reporting systems. This internal control system includes having accounting procedures, an internal control framework and appropriate reporting arrangements. The internal control framework covers items such as:

- **Risk Management** – there must be a risk management policy and a risk





“ Trustees are expected to put in place an effective internal control system that provides reasonable assurance that a scheme is compliant, properly administered and managed, and has appropriate reporting systems.”

management function which is to be overseen and executed by a risk management key function holder (KFH). There must also be a documented Own Risk Assessment process to identify and assess material risks that threaten the achievement of the scheme's objectives.

- **Internal Controls** – there must be internal controls in place that are sufficient to ensure the scheme is managed well and in accordance with relevant requirements. Trustees are responsible for ensuring the controls are properly identified and implemented.
- **Internal Audit** – trustees must establish and maintain an effective internal audit function that is overseen and executed by an internal audit KFH in order to assist the trustees with the monitoring and review of internal controls. Trustees must also have a documented internal audit policy.

**Investment:** The investment requirements cover both DB and DC schemes. For both types of schemes,

trustees must have a statement of investment governance which outlines the governance process whereby investment objectives and strategy will be decided upon and implemented. Trustees must ensure there is a written contract in place for each investment manager appointed by the trustees and the trustees must specify in writing how they will define satisfactory performance of the investment manager. Trustees are also expected to conduct regular performance reviews of the investment manager.

#### **Defined Benefit Financial**

**Management:** this section outlines the kinds of studies and evaluations trustees must commission and consider in their management of DB schemes including assessment of the solvency, sustainability and financial risks of the scheme.

**Fit and Proper Requirements:** this section outlines the fit and proper requirements that apply to trustee boards, directors of sole corporate trustee

companies and KFHs. The trustees are responsible for ensuring that the fit and proper requirements are properly applied, this also extends to ensuring that the fit and proper requirements are being met on an ongoing basis.

**Additional Requirements for Defined Contribution Master Trusts:** this section outlines additional actions trustees must undertake to ensure satisfactory governance of DC master trusts. These additional actions cover areas such as: Conflicts of Interest; Capitalisation; Continuity Plan, Marketing of the scheme and Wind-up procedures.

The Authority has stated that it will monitor compliance with the requirements set out in the Code as part of its ongoing forward-looking risk-based supervision and have noted that the Code will be updated and adapted over time to incorporate market developments and the outcome of supervisory activities.

# Organisational Culture



**AUTHOR:** Dr. Gerry Gallagher,  
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former academic in MTU (Munster  
Technological University)

## Introduction

For many years, organisational culture was something that was often talked about in the workplace, but in reality, managers paid little attention. Perhaps one explanation is that it cannot be represented on a balance sheet. In the industrial age, plant and machinery were tangible assets, the value of which was clearly defined. In the 'knowledge economy', up to 80 per cent of a company's value is accounted for by its human capital. It is recognition of the importance of people in the organisation and the value they create, that has now prompted a deeper interest in culture. In 1992, the Cadbury Report on Corporate Governance was published by the Financial Reporting Council (FRC) in the UK. It took until 2016 for the FRC to issue guidance on culture: "Corporate Culture and the Role of Boards". The realisation has come that a healthy corporate culture plays a vital role in value creation, and executives need to give it careful consideration.

Culture is often described as "the way things are done around here". Every organisation has its own culture. The purpose of this article is to lift the veil on culture and examine how it impacts on organisations. In particular, it will explore how culture plays an essential role in risk management and compliance.

## What is Culture?

Culture is quite a complex phenomenon. According to Edgar Schein, organisational culture can be observed at three different levels:

- **Level 1** – the artefacts
- **Level 2** – the espoused beliefs and shared values
- **Level 3** – the basic assumptions.

**“Culture is often described as ‘the way things are done around here’. Every organisation has its own culture.”**

## Level 1 - The Artefacts

The first layer - the artefacts are the visible tangible phenomena that represent the organisation's culture to outsiders such as buildings, employee dress code, rituals and ceremonies etc. This is an area where managers have considerable control over any change that is required.

## Level 2 - Values and Beliefs

The middle layer – the values and beliefs are the core element of culture. All groups will develop a shared understanding of what will work for the group. This is summed up in the definition of culture by French et al: *"The system of shared values and beliefs that develops within an organisation and guides the behaviour of members"*.

Almost all organisations have stated values which are displayed on their website and other public locations.

Values define what the organisation believes to be important, and they are the principles by which people operate. People bring their own values when they join an organisation. These are formed over time and there are layers of influence including societal culture, customs and language, people's ethnic background, as well as the political setting and economic circumstances. An individual's values are integrated into a value system and are ranked according to their relative importance. Organisational values are the collective values of the organisation and they

also impact on personal values. This has important implications for the socialisation process when people join an organisation, or perhaps when a change in values is required. Collins and Porras described an organisation's core values as "essential and enduring tenets – a small set of timeless guiding principles". The organisation's value system will influence culture as companies subscribe to numerous values: both conflicting and compatible. These include how tasks are accomplished and how the company maintains internal cohesion and solidarity. It is important that the company's value system is aligned with both its organisational structure and its reward system. When it comes to decision-making, both organisational and personal values are relevant.

A company's espoused values are the explicitly stated values that are preferred by an organisation. They reflect the image that the organisation wants to portray to the outside world. They are often aspirational and may or may not reflect the reality on the ground. Enacted values are the values and norms that are actually practiced by the employees on a day-to-day basis. If there is a gap between the two, it can have a significant effect on culture and employee behaviour (and how culture might be changed). This leads to the distinction between norms and values.

Norms are shared and generally accepted prescriptions for other people's behaviour in a group setting. They give a mutual

“Trustworthy leadership is vital for driving employee engagement and delivering the right culture.”

sense of “right” and “wrong” for the group. Unlike values, norms cannot be held by an individual – they dictate how a group of people behave in a social setting. Norms often include sanctions when people do not adhere to them: either sanctions by the organisation in the form of disciplinary measures, or informally by being ostracised or bullied by the group itself. Alignment of norms and values is therefore vital, and the embedding of the appropriate norms in the organisation plays a central role in regulatory compliance.

### Level 3 - Basic Assumptions

To get a fuller understanding of an organisation’s behaviour, one must understand the basic assumptions. These are the unconscious, taken-for-granted beliefs held by people in the organisation. They are deep beneath the surface and cannot be readily observed by outsiders. It is how the group perceives reality and they tend to be non-debatable and mutually-reinforcing. Basic assumptions are very powerful in how they guide people in

how to think, perceive and feel, and are difficult for management to change.

#### Functions of Culture

Culture fulfils four important functions in every organisation. Firstly, it gives employees a collective identity that binds them together. Secondly, it gives people a sense of purpose and pride. Thirdly, it provides a stable social system that provides support for members, and finally, it enables employees to make sense of their work environment and what it required of them.

While organisational culture focuses on values and beliefs, “climate” refers to the prevailing atmosphere in the organisation as perceived by its employees. Climate is the felt or affective dimension of culture. A positive climate is more likely where the values of an organisation coincide with those of its employees. In times of change, if the company does not get buy-in from its members, a negative work climate can ensue. Leadership is essential for driving desired behaviour in organisations, and this

also requires trust. Such trust must be earned by leaders and has four pillars:

- **Ability** – where leaders have competence;
- **Benevolence** – leaders demonstrate concern for others;
- **Integrity** – adherence to a set of principles; and
- **Predictability** – consistent behaviour by leaders over time.

Trustworthy leadership is vital for driving employee engagement and delivering the right culture. It must be aggressively authentic.

#### Dominant Culture

When we speak of organisational culture, there is often an assumption that there is one homogenous culture throughout, with all employees sharing the same values. In larger organisations, there may often be sub-cultures which represent smaller groups that have a different set of values and philosophy. This is often linked to educational background, professional identity, or geographical locations. Sometimes, conflict may arise between sub-cultures and





the dominant culture which in turn, can develop into a “counter-culture” which rejects the main culture. This might happen, for example, when a company has been acquired by a larger organisation. Counter-cultures can be beneficial for example when they challenge group-think or where the existing culture and strategy is failing.

### Risk Culture

All strategic objectives entail some element of risk, and this risk needs to be managed. A risk-aware culture must therefore be an integral part of the organisation’s culture. A risk culture consists of the values, beliefs, knowledge and understanding about risk, shared by a group of people and

with a common intended purpose in particular, the leadership and employees of a company. Risk culture is a way of framing risk in the organisation’s overall culture and management system. Ultimately it is the responsibility of the board to ensure that the company is clear about its risk appetite, and that this is communicated throughout the organisation. The risk culture must be aligned with the company’s purpose, (ethical) values and strategy. A code of conduct can translate general values into more specific policies, which in turn, influences behaviour. Over time, this creates a risk culture. Such behaviour should then be the means by which leaders and employees are assessed, rewarded, and held accountable.

## Conclusion

The evolving nature of organisations is creating many challenges for the development of the right culture. Much of the literature presupposes a group of people who go through a training period that includes being socialised in the company’s value system and who are then working constantly together. Zero-hour contracts, remote working, and a geographically-dispersed workforce all present significant challenges in creating a high-performance culture based on sound risk management principles. Yet, there must be no doubt about the value of such a culture. It requires solid leadership, based on ethical values and trust, and where leaders walk the talk.

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# Governance Code – Your Adoption Journey



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## What is a Governance Code?

There are many formal definitions of a Governance Code that can be found, but in general it can be defined as “A governance code is **a document that contains all the principles and rules for managing the organisation**. It is a kind of written corporate constitution that is necessary for the group to set the framework for collective functioning”.

The formalisation of the “Charities Governance Code” in 2019 crystallised a movement towards all major regulated sectors having their own code of governance. The regulators are trying to codify what a lot of organisations and company’s may already be doing but from a compliance perspective they now must ensure that the processes are understood and documented.

## Why Adopt a Governance Code and Benefits Accruing?

Each sector is constantly waging an invisible war against an outside intruder. The intruder is that sector’s perception of its own weakness. For the Charity sector that may be the inherent fear of being the next headline story, this fear is rooted in the risk of fraud. For financial services firms the inherent fear may be from mismanagement of funds, this fear is rooted in the risk of poor strategic planning. A strong overarching Governance Code is designed to establish and implement a baseline of governance practices and rules against which organisations can be measured. Governance codes provide regulation which drives transparency, accountability, creditability, public perception, funder confidence and by extension, increased funding.

## How do you Eat an Elephant?

If you were to present a Governance Code to your Board of Directors and instructed them to complete their self-assessment, would they be more likely to resign or just throw it back at you? The only way to eat a code is to break the code down into sections, obligations and tasks. For example: The Charities Governance Code document is 51 pages in total but broken into 6 Core Principals. Each Principal has a set of “Core Standards” applicable to every charity and a set of “Additional Standards” applicable to complex charities. In total there are 32 Core Standards and 17 Additional Standards, of which there are 140 clear obligations to assess compliance against. To be compliant with some of the standards may require multiple tasks but the review and application of these standards should be achievable for all charities.



Code	Pages	Sections	Appendix	Risk	Compliance	Audit	Strategy	Governance
CRA	51	10	3	5	25	2	2	74
FRC	20	5	0	20	1	31	13	28
THEA	150	10	14	318	81	542	21	369
STATE	74	10	6	105	41	202	22	112
AHB	23	3	4	59	20	30	6	61
HSE	96	8	1	52	37	83	14	174

## Types of Governance Codes and their Differences

Are all governance codes equal or are they significantly different? Fundamentally they are all very similar and trying to achieve the same overarching objectives, just the level of detail and how prescriptive they are differs. To demonstrate this, I have broken down the 6 different codes in the table above. It is important to understand the codes emphasis, its size and make-up. By searching for key words, such as, Risk, Compliance, Audit, Strategy and Governance, this will give you a good feel for what you are in for on your adoption journey.

## Regulatory Expectation

A regulator will always expect the entity to be fully compliant and have evidence to support the compliance assessments, in the event of a regulatory audit. If you are in breach, you will need to be able to explain why.

An explanation would incorporate a remediation/action plan, date the breach was identified, date reported to the Board of Directors, a risk assessment, a materiality impact review, allocation of ownership, resources required, expected date of remediation. Before closure/ resolution of the breach you will need to re-test the compliance obligation. Look at other regulatory expectations not just Charities Regulator, e.g. The

Charities Commission (UK), Central Bank of Ireland (CBI), Financial Reporting Council and adopt best practice and go beyond expectation. Achieving minimum competency may keep your head above water but if you're only ever treading water, you will eventually drop below the tide.

## Comply or Explain

Compliance with regulations and statutory instruments will for the most part be binary. Your organisation is compliant or not compliant with the regulation. Compliance with a Governance Code can require more judgement-based assertions. When it comes to 'Comply or Explain' this concept allows for organisations to provide an

explanatory narrative for non-compliance with the codes. There's an opportunity to control the narrative and provide the regulator or funder with a reasoned explanation but more critically a roadmap of how your organisation is going to achieve compliance.

## Penalties or Implications

In the 6 codes examined above, there is no reference to fines or penalties. But the implications for non-compliance with a governance code may have multiple impacts both internally and externally.

### 1. Regulatory Response – Fines, Publication, Deregistration

Does your regulatory authority have a weighted review system? Are all breaches treated equally or do they factor in the materiality of the potential impacts? Non-compliance with Code provisions may trigger an inspection or review from your regulator if the non-compliance is material to the organisation. Where non-compliance has been identified and reported by a Board in one year and the same issue has not been resolved in the following report, this may constitute a pervasive breach regardless of how the risk was initially assessed. In addition, many regulators have extensive powers to restrict the activities of the entities under their supervision. CBI often issue Risk Mitigation Programmes (RMP's) to financial services companies because of PRISM inspections.

### 2. Funder Impact – Loss of Funding

Regulators are constituted to regulate the organisations in their sector. Non-compliant entities comply or explain. The regulator has the remit to maintain oversight of the organisation so long as they continue to trade. A funder can and will just move on. Funders have less impetus to stick

around whilst you get your house in order, so significant compliance breaches of the governance code, may change a funders perception and lead to a loss of material funding. The implications for non-adherence to the governance code is usually outlined within the terms, conditions, or covenants in grant agreements.

### 3. Service-Users and Customer

Like the impact on funders adverse reputational damage relating to code breaches or regulatory inspections can damage the relationship and trust that the organisation has built with their customers and service users.

## Assessing Compliance with Governance Code

I would recommend that any organisation commencing its initial assessment of a governance code or any other compliance schedule whether it's a regulatory code or a piece of legislation, should work from a baseline that the organisation is non-compliant, and they must prove to themselves that they are compliant. Demonstrable Compliance not "Ah I'm nearly sure we have that Policy" compliance is an evidence-based approach. Create an audit trail and reference documents directly to each compliance obligation.

## Internal Assessment vs External Assessment

Try to be subjective as much as possible when you are considering the obligations, however your proximity to the people or organisation will allow for human bias. When you know that the governance process is strong and that the people are working in the best interest of the organisation you may be inclined to soft judgement. Ask yourself if there was no documented process or the minutes didn't reflect the level of

discourse would an external reviewer make the same judgement. What you think is compliant could be completely different to an External Third Party.

Would your organisation benefit from having a Governance, Risk Management and Compliance (GRC) Consultancy firm throw the kitchen sink at the Board with a report and a roadmap to compliance rather than sleepwalk into a regulatory review. If you are fortunate to have an independent internal resource i.e., Audit & Risk Committee or Internal Audit, it would be valuable to utilise this resource with a tailored governance code review.

If you have completed the initial review with a focus on demonstrable compliance and you have tracked all areas of weakness or non-compliance and you have followed up with an external review, it is fair to assume that the heavy lifting has been done in year one. Subsequent annual reviews should be a gatekeeping exercise. The Board are informed of any material changes to the governance landscape and the compliance review is focussed on any changes in the process or areas previously noted for concern.

## Reporting

There are many types of reporting styles – summary, detailed narrative, dashboard, expectation, graphical, comparison to previous period. Ultimately the report should have recommendations for the reader to consider/debate i.e., Board of Directors/Executive. These recommendations will then create an action plan to be implemented by the management team and in some cases the Board of Directors. It is important that management information is clear and understandable by the reader, so their opinion on the style and content of reporting is vitally important.





## Adopting a Uniform Approach

Know what you must be compliant with, as this is your Compliance Universe. From this, develop your Compliance Plan, and ensure you maintain a Breach Register, where ownership is allocated and treated. A Materiality Statement needs to be adopted to treat breaches in a uniform way and risk assess them. Report material vs. non-material breaches, e.g., policy out of date vs. serious breach in regulatory obligations. Impact must be considered and this needs to tie back into your Risk Appetite Statement (RAS). Yet most Companies Limited by Guarantee (CLGs) don't have a RAS or even know what it is. It is the Board of Directors' responsibility to adopt same, i.e., the rules of the game for the management team and this needs to be tied back to the strategic plan.

**“ Know what you must be compliant with, as this is your Compliance Universe.”**

## How can Technology Help

Spreadsheets/Word documents will only bring you so far. They are a flat reporting tool and lack audit trails, ability to allocate ownership and oversight. Also, the associated evidence to demonstrate compliance cannot be attached and version control becomes an issue, where each time there is a change, a new version must be saved. Consider a dedicated compliance management system which addresses these weaknesses and allows for

complete oversight by the Board of Directors. Systems normally incorporate other related modules in the GRC world such as: Policy Management, Governance, Risk, Strategy, Data Protection, and IA.

## Summary

So, if you are just starting out your adoption journey or travelling a well-trodden path, implement some of these practical observations and recommendations to assist you on the way, and you will eventually get there!

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# Risk and Compliance Professionals: Transitioning the Transferrable



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## Demand Side - Finding the Talent

It is very difficult to have a conversation with anyone involved in the Financial Services industry in 2022 without a reference to the difficulties in recruiting talent and building teams.

Demand is being predominantly driven from the tailwinds of Brexit and the Central Bank of Ireland's insistence new entrants substantively establishing their operations locally. Risk and compliance is a specific area of concern, and there is increasingly anecdotal evidence hiring practices are adjusting to address this challenge.

As the recently released CPL Salary Guide<sup>1</sup> for Ireland remarks:

'Risk and Compliance continues to present an abundance of opportunities across Banking, Payments Funds, and Insurance. Regulatory pressures from the Central Bank of Ireland will continue to drive hiring across this area.'

This article explores the current supply-demand imbalance, and looks at the potential to embrace both financial and non-financial professionals with so-called 'transferrable skills' to ensure the Irish Financial Services Industry optimises current and future growth opportunities.

## What are 'Transferrable skills'?

First, a couple of definitions.

Very simply:

'Skills used in one job or career that can also be used in another'

Or, slightly more detailed:

Transferable skills are exactly what they sound like: the skills that you use in every job, no matter the title or the field. Some transferable skills are hard skills, like coding, data analysis, or other technical skills, and some are soft skills like communication and relationship building.



Commonly referenced ‘transferrable skills’ include: communication; dependability; teamwork; organisation; adaptability; leadership; decision-making; empathy, numeracy, and technological literacy.

The challenge is, literally, how to transition these skills to meet the more specific competencies required in contemporary risk and compliance roles.

How can we – as a Financial Services industry – improve the supply to address not just current demand, but also position Ireland to take advantage of post-Brexit/COVID opportunities?

## Supply Side - Sourcing the Talent

From an evolving risk and compliance perspective, there are several potential sources of talented professional who are equipped with both the transferrable skills and technical competencies to meet the market demand.

Donal Whelan, Director of Compliance, Risk and Financial Services at Lincoln Recruitment, recently observed: ‘In general terms, across the Risk and Compliance professions, we saw firms more and more consider candidates not just on their technical skill sets but also on their softer skills.’

## So, where to find these candidates?

Legal professionals are probably the most obvious source. The key transferrable skill within this area is the ability to interpret legislation and assess how it impacts the business. Accountancy professionals tend to be numerically and analytically strong, skills that potentially transfer very well into compliance monitoring roles. Advisory positions can also be very suitable for individuals with this background, as well as investment compliance roles, given

the complexity of these positions. Operations professionals with a background in operations can not only bring knowledge of products and markets to a role, they also have experience and understanding of the operational side of a business. These skills could be extremely useful when assessing and conveying the impact that regulation has on a firm. Ex-regulators can offer firms a unique insight into how businesses should deal with regulatory change. Having a relationship with the regulator is a key element in the compliance function, so someone who has previous work experience there can have a lot to offer. **Analytical individuals** with excellent project management skills and a strong interest in financial markets, products, securities laws, and regulations also have highly transferrable skill sets.





In addition, we have strong cohorts of financial professionals – for example in domestic retail banking – who are, or will be, seeking opportunities to transition their careers, and new entrants to the industry, often with linguistic and other skills, looking to transition into risk and compliance roles.

## Transitioning the Transferrable

Education, and training, is clearly an important ‘bridge’ in this transition

In my capacity as Director of PAT Fintech, I see a broad mixture of all these potential candidates, their diversity and their abilities, and can personally attest to their capacity to make the transition into the appropriate risk and compliance roles. This hopefully reflects in a changing ‘hiring’ attitudes.

As it becomes harder and harder to hire ‘like for like’ and build new teams,

**“As it becomes harder and harder to hire ‘like for like’ and build new teams, evidence now suggests the industry is exploring opportunities to open up new sources of risk and compliance talent.”**

evidence now suggests the industry is exploring opportunities to open up new sources of risk and compliance talent.

Further to his previous comments, Donal Whelan recently stated: ‘I am seeing a lot more of now and I welcome the development where regulated Financial Services firms are open to looking at the cross transferable skills of Compliance professionals rather than insisting on finding individuals with specific technical regulatory knowledge.’ The challenge is to continue to

equip both future graduates and current practitioners of varying experience with the skills to transition into these evolving roles.

Collectively, as stakeholders in the Irish Financial Services ecosystem we need to not just support an environment of learning and development, but also look to non-traditional candidates, to provide the talent that is not just central to the compliant provision of financial services, but also to realise the potential risk-adjusted scalability of the whole sector.



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2022 will see a year-long celebration and we do hope that you all will get a chance to celebrate with us.

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