



Irish Banking Culture Board Submission on the Central Bank of Ireland's Consultation Paper 153 –
'Enhanced governance, performance and accountability in financial services - Regulation and Guidance
under the Central Bank (Individual Accountability Framework) Act 2023'

13 June 2023

Introduction

The purpose of the Irish Banking Culture Board (IBCB) is to work with our member banks¹ to build trustworthiness with the public. We proceed from the proposition that a robust and trusted banking sector is essential to the future prosperity of Ireland. The Irish people deserve nothing less.

This submission reflects the views of the IBCB Board and draws on issues highlighted to us by subject matter experts drawn from across our member banks and by perspectives and expertise from Professor Blanaid Clarke of Trinity College Dublin and Deputy Chair of the IBCB. Given our membership and remit, it should be noted that this submission focusses primarily on issues of relevance to retail banking, with some reference to the wider Financial Services sector.

Individual accountability is a cornerstone of positive behaviour and culture. To regain trust, it is imperative that stakeholders recognise that the banking industry's commitment to behavioural and cultural change is more than just words. Rather it is a real commitment that involves changes to how business is done and is underpinned by a framework which enables individuals, as well as organisations, to be held to account. In addition to enhancing trust with stakeholders, the introduction of the individual accountability framework in Ireland has the potential to yield further positives for those institutions subject to it, via clearer decision-making and overall governance processes, and, by extension, better and more transparent risk management.

The IBCB and each of our member banks strongly welcome the introduction of an effective accountability regime in Ireland, similar to that in successful operation in other jurisdictions. From our regular interactions with our member banks, we are aware that each of them has detailed internal programmes underway to plan and prepare for the commencement of the requirements. Significant resources have been deployed and it is clear that there is senior executive and Board level involvement and oversight. While there is absolute commitment to implementing all relevant aspects of the framework, the scale of the implementation, particularly in relation to the design and delivery of training tailored to differently impacted cohorts of staff, is challenging. The differing commencement dates currently applicable to the conduct standards and enhanced fitness and probity regime (December 2023) and the regulations on inherent and prescribed responsibilities and other SEAR, including the development of Statements of Responsibilities and Responsibility Maps, (July 2024) is adding to this complex implementation challenge, as is the fact that the consultation process on the associated Administrative Sanctions Procedure has not

¹ AIB, Bank of Ireland, Permanent TSB and KBC Bank Ireland



yet commenced. In this context, any flexibility that the Central Bank could provide in relation to the timeframe for implementation of the first elements by December 2023, would be very positively received.

We commend the Central Bank, Department of Finance and other state bodies for their significant efforts in developing the elements of the Individual Accountability Framework (IAF). The tone and language used within the Consultation Paper are pragmatic and balanced and will, we believe, go a long way in allaying potential trepidation within the financial services sector and specifically with staff in relation to the operation of the IAF and its implications for individuals. Furthermore, recent public speaking engagements by Central Bank officials have emphasised the intention of the Central Bank to proceed in a balanced and consultative manner with a clear message that the objective of the IAF is to 'support positive outcomes' and that it is not expected that 'the main benefits will be enforcement driven'. This stance is to be welcomed. Our strong view is that an IAF which is embraced positively both by the regulated and the regulator has the potential to further fuel the transformation of behaviour and culture within the sector thereby delivering better outcomes for all. To really deliver on this potential it will also be important for the Central Bank itself to reflect on its own behaviour, culture and accountability and the impact of these on the sector it regulates. Public commitment and transparency in this context by the Central Bank would, we believe, assist with building confidence in the IAF and go some way in enhancing overall trust levels between the regulator and the regulated - trust which will be essential for the success of the IAF.

We welcome the references within the consultation document to the importance of the ongoing review of the framework from a cost benefit perspective, however it is unclear to us how the findings of such reviews will be used in advance of the proposed three-year full review. While the latter is supported, we would also recommend that any identified efficiencies, unintended consequences, clarifications etc. are addressed (where feasible) promptly rather than waiting for three years to pass. The establishment of a forum for ongoing two-way feedback between the industry and the regulator could facilitate this process and build confidence and advocacy in the framework.

We would be very happy to attend a meeting in due course to discuss this submission as required, together with wider issues relating to the ongoing work of the IBCB on behavioural and cultural change in banking.

The IBCB intends to focus on some of the practical implications of the implementation of the IAF over the course of Autumn/Winter 2023. In particular, we will focus on the implications for staff training and for Non-Executive Directors. We will share any resulting outcomes with the Central Bank.

We have set out below our responses to specific questions within the Consultation Paper, noting that we have responded just to those questions of direct relevance to the remit of the IBCB. The operational impact of some of the guidance will be the focus of submissions from other banking industry bodies.

Questions

Q1. What are your views and comments on the draft SEAR Regulations and related draft guidance?

We agree that to ensure accountability, for in-scope firms, an individual (PR 1) will be assigned 'Responsibility for the firm's performance of its obligations under the Senior Executive Accountability Regime' (Annex 2 Section 2.4.9). This must be read in the context of the Guidance in 2.4.10 that a PR "should be allocated to the most senior individual, with the appropriate authority, responsible for that area taking into account the governance structures of the firm."

See below for comments on paras 2.4.14 and 6.1.3 as well as Table 1 (pg. 26, annex 2).

The IBCB welcomes in particular PR 6 "Responsibility for overseeing the development of, and embedding positive ethical culture, consumer protection and conduct risk into, the firm's remuneration policies and practices." It is essential that Boards of regulated entities accept and embrace their leadership role in this respect. This is consistent with the principled approach taken by the UK Corporate Governance Code on this issue. In our view, this will also help in time to dispel a misunderstanding by some in the sector that culture cannot be measured. There are a range of means for culture to be meaningfully measured and overseen by the Board. IBCB member banks have developed a range of metrics in this regard to date and via ongoing discussion internally and with the IBCB Board, these metrics continue to be improved.

The text under the heading "Responsibilities in respect of NEDs and INEDs" in para. 2.4.11. (p.27) is very useful in describing the role of NEDs and explaining the consistency in approach with the existing legal framework including corporate governance codes and statutory duties.

In relation to the duty of responsibility, para 2.8.9 notes that "It may however be necessary to look beyond [the Management Responsibilities Map and Statements of Responsibilities] where circumstances require it." The explanation which follows is clear i.e. that responsibility is a matter of substance, not form, and is not determined only by reference to the documents required under SEAR. However, the paragraph then notes that a failure "to ensure that these documents are up-to-date and that they accurately reflect its activities ... does not negate an individual's responsibilities nor create responsibilities where there are none". In our view, the reference to not negating responsibilities makes sense in circumstances where a person has accepted additional undocumented responsibility. However, does the reference to not creating responsibilities leave it open to an individual to avoid accountability by claiming that despite signing a statement of responsibility, they are not accountable because there are no responsibilities? We consider that the wording here would benefit from further clarification.

We welcome the clear statement in para.2.9.1. that "the introduction of the IAF does not alter the concepts of collective responsibility shared by directors as board members, and collective decision-making, which is dependent on the contributions of individual members of senior management." (Similarly in 5.3.6) This is consistent with the generally held view that the collective responsibility of directors is "operationalised" by converting it into an individual responsibility and liability. To this extent, rather than undermining the important principle of collective responsibility, the Guidance explains that SEAR bolsters and supports it. Para. 3.15.3. provides useful guidance on the approach which might be

taken by the individual to participating effectively in collective decisions “including but not limited to: ensuring a sufficient level of attendance at, participation in, and contribution to, relevant meetings; ensuring that they were sufficiently and appropriately informed of the relevant matter(s) at hand; and exercising due care, skill and diligence in contributing to such decisions.”.

Para. 3.1. describes the importance of “Proportionality, predictability and reasonable expectations” to the Central Bank’s approach to implementation of the IAF. We welcome the emphasis put on the role of judgement exercised by those in senior roles and the adoption of a business judgement rule where individuals may make, what with the benefit hindsight may not have been optimum decisions, and yet may be able to prove how their judgement may have been reasonable at the time. This is vital and will provide assurance to regulated entities that it is permissible to take reasonable risks consistent with appropriate risk management frameworks. This is consistent with the language of the Act. It is not possible to anticipate every circumstance but the inclusion of a non–exhaustive list (paragraphs 3.9 to 3.15) of considerations is useful.

Q2. Do you agree with our proposed approach to the Inherent Responsibilities?

Yes. No specific comments.

Q3. Do you agree with our proposed approach to the Prescribed and Other Responsibilities?

Yes. No specific comments.

Q4. Do you agree with our proposed approach to the sharing of roles and responsibilities including job sharing?

Yes, overall, we consider it positive that the proposed approach facilitates job-sharing (para.2.3). However, we would highlight the difference between job-sharing and part-time staff and consider this distinction needs to be referenced within any final guidance. We comment on these two related but distinct issues below:

In relation to job-sharing, the proposal is that the default position will be that both individuals will have full accountability for the relevant responsibility but that the expectation will also be that each party must demonstrate they took reasonable steps to discharge the responsibility, including in relation to the manner in which activities and tasks were shared amongst the job sharers and in respect of their completion on that basis. Is this something that the Central Bank expects to be reflected and described in the two Statement of Responsibilities?

In relation to part-time staff, we consider that further detail and clarity are required. While job-sharing may apply in some cases, in the vast majority of part time arrangements, there is no other party to “share” the job with. This could potentially give rise to queries and concerns relating to the period of time those role-holders are not present in the office, for example if an employee works 4 days per week, what are

the expectations for the period of time they are not present? It is important that part-time staff, the majority of whom are women², do not feel unduly exposed under the IAF by virtue of their part-time arrangements. Clarity from the Central Bank in this regard will be particularly important from a diversity and talent retention perspective.

Q5. Do you agree with our proposed approach to the inclusion of INEDs/NEDs within scope of SEAR?

Yes. While we acknowledge there has been some concern expressed at the inclusion of non-executive directors within the scope of SEAR, the view of the IBCB (previously shared) is that although there may be challenges in explaining the expectations of NEDS, their inclusion was essential in order to achieve the policy objectives of the new regime. As the primary decision-making entity in the organisation, the board must collectively and individually be held accountable for their actions. This is essential in emphasising the Board's role in setting the right 'Tone from the Top' and "setting and maintaining high standards of behaviour for the entire business"³. However, we understand the concerns which were expressed by some that this could blur the line between executive and non-executive responsibilities. The listing in the Guidance (Table 1, p.26) of Non-executive Prescribed Responsibilities which must be allocated to NEDs is particularly welcome in this context. In our view, it may not "eliminate" but it will reduce any potential misallocation of executive or non-executive PRs (p.25). Para.2.4.14 states clearly that "The responsibilities for which NEDs and INEDs are accountable are limited to non-executive responsibilities and considerations in respect of reasonable steps will be limited to what should reasonably be expected of individuals in that context." We agree. In our view the responsibilities assigned to the NEDs in-scope are no more onerous or executive in nature than those which might be deemed to apply to NEDs pursuant to their fiduciary or statutory duties or under the UK Corporate Governance Code representing best practice. It will not require them to become more involved in the operational running of the firm or blur the distinction between non-executive and executive functions. The Guidance will provide reassurance in this regard and is likely thus to achieve the goal set out in the CP (p.17-18) of not imposing increased obligations in that regard. Para 6.1.3 provides similar assurance in relation to additional Standards. The inclusion of good practice examples/ or hypothetical scenarios in final Guidance would be helpful.

As with the introduction of anything new, there may be unintended consequences as a result, and there will be a necessity to monitor whether any arise from the introduction of IAF and SEAR, such as the risk of the "chilling effect" acknowledged in the consultation. Another potential unintended consequence to the inclusion of INEDs/ NEDs in the regime could be a knock-on impact to the dynamic in the Board room. There is a risk that minutes of Board meetings, sub-committees and other key decision-making forums could become over-burdened with verbatim commentary, as opposed to their ultimate objective of

² Central Statistics Office, "Labour Force Survey" (Quarter 2 2021)
<https://www.cso.ie/en/releasesandpublications/ep/p-lfs/labourforcesurveyquarter22021/employment/>

³ Institute of Directors, "Tone from the Top Research Report: Boardroom Ethics in Ireland", page 2. Available at:
https://www.iodireland.ie/images/uploads/downloads/loD_Tone_from_the_Top_Research_Report_2017.pdf

documenting the key decisions, challenge and review presented at those meetings. This is an area on which Company Secretaries and governance professionals at in-scope firms will require support and any relevant guidance and/or good practice case studies from the regulator would be useful in that regard.

Q6. Do you agree with our proposed approach to the Statements of Responsibilities?

The Central Bank states it does not want to cause structural change to well-run organisations which is helpful as a principle, however in practice assigning responsibility to only one person under the Statement of Responsibilities may cause unintended structural challenges for in-scope firms, many of which are large complex businesses. In some cases, the organisational structure is designed in a way which means responsibilities are not assigned to one individual in isolation. While Statements of Responsibility will provide clarity and transparency, this needs to be considered in the context of avoiding over-burdening individual role holders or creating duplication. In addition, while CF1s are not subject to the SEAR (due in 2024) and therefore do not require a Statement of Responsibility, they are in-scope for the Additional Conduct Standards (due year end 2023), which creates an inconsistency. It would be helpful to understand the Central Bank's rationale in this regard and whether it would be preferable that there be a requirement to have Statements of Responsibility in place for all CF1s, in due course.

Q7. Do you agree with our proposed approach to the Management Responsibilities Map?

Yes. No specific comments.

Q8. Do you agree with our proposed approach to submission of documents?

Yes. No specific comments.

Q9. Do you agree with our proposed approach to outsourcing in the context of SEAR?

Yes. No specific comments.

Q10. Do you agree with our proposed approach to reasonable steps in respect of SEAR and the Conduct Standards?

Yes⁴. The detail provided in relation to the proposed approach is very welcome, however given the potential for subjectivity in the interpretation of 'reasonable' further, more detailed, guidance and/or the issuing of examples of good practice and case studies by the Central Bank would be very welcome. In this context we would encourage the Central Bank to consider including a requirement for explicit reference

⁴ See also response to question 1 above.

to consideration of the customer perspective in 'reasonable steps'. A lack of adequate consideration of the customer perspective was a root cause of many issues in the sector in the recent past and it is important that this lesson is learned and enshrined in any new approach. In this context we welcome the inclusion of Common Conduct Standard 5.5 "Acting in the Best Interests of Customers and Treating Them Fairly and Professionally".

The application of proportionality and support for 'reasonable steps' will be essential for the effectiveness of the regime and for building confidence in it by those who are subject to it. In this context, we welcome the references within the Consultation Paper to proportionality and how the Central Bank intends to apply this to its assessment of actual or suspected breaches and subsequent use of enforcement actions. Proportionality in terms of expectations is also important. It is correct for example as para.3.9 notes, that a large complex firm with multiple product lines would be expected to have more extensive risk management frameworks and controls in place than a smaller less complex firm. However, it is our view that the prospect of an enforcement action should be a real possibility for all firms irrespective of the scale and complexity of their business. It should not be considered to be a sanction only for large high-risk firms. In order to constitute a disincentive, the likelihood of detection and prosecution must be high for all regulated entities.

The variance in language between reasonable steps for PCF role holders (Duty of Responsibility Section 2.8) and other staff (Para 3.4 "should consider what would constitute reasonable steps") could cause some confusion and ambiguity and it would be helpful for the Central Bank to clarify how it expects this difference to be demonstrated and supported in practice. Furthermore, it would be beneficial to understand the Central Bank's expectations in relation to how proportionality will operate in the context of reasonable steps from the perspective of the different in-scope populations (i.e. INEDs Vs NEDs Vs PCFs Vs CF1s Vs CF2-CF11s).

Finally we welcome the Central Bank's comment that the Conduct Standards '... will set out the behaviour expected of individuals working in all regulated firms, seeking to provide a sense of shared values and empower individuals at all levels in the organisation to question and challenge issues that arise in their firms.' (CP pg. 15). As borne out by our own IBCB éist surveys of bank staff, supporting and promoting the ability of staff to speak freely and feel empowered are critical elements in building positive internal culture.

Q11. Does the guidance assist you in understanding the Duty of Responsibility and the non-exhaustive list of factors to be considered with regard to reasonable steps?

Yes, the guidance is helpful in this context. *[see also response to question 1 above]*

In relation to the acceptance in par. 3.10.2 of the guidance, that individuals coming into a more senior or different role for the first time will be on a learning curve, we consider that it would be helpful for the Central Bank to indicate how long it considers reasonable for such an allowance to be made.

The guidance notes in para. 3.11.2, that a relevant consideration is “how they informed themselves of material changes to risks in a timely manner and verified, challenged and considered any broader implications” . We consider that it would be helpful for further guidance to be provided in relation to the expectation of the Central Bank that NEDS are expected to inform themselves outside the board channels. There are different views on this. One view is that the NEDS should not undermine the executive and the Chairman by sourcing information independently and for example approaching staff for information outside that made available in board packs or the usual secretarial channel. An alternative view is that NEDS should source information independently. Para. 3.15.2 refers to a consideration of whether an individual “sought out additional information where necessary”. (CP86 Guidance requires directors to have a good understanding of all relevant aspects of the investment manager’s business and policies and notes that this might require site visits and/or meetings with senior management, in addition to the regular presentations and reports from the personnel working directly on the account where practicable.) The relevant point in considering the two different views is that the channels through which such information is sought is what is relevant.

Another issue which has caused concern for NEDs in the context of an IAF and satisfying themselves they have taken reasonable steps, is the extent that they may need to be satisfied that the authority they have delegated has been properly exercised. They are aware that they can delegate authority but not responsibility and thus the issue of oversight and safeguards are key. For this reason, the detailed and appropriate guidance set out in para. 3.12 is welcome as is the guidance in para.5.3.4 in relation to Acting with Skill Care and Diligence in Common Standards. One key point we would note is the lack of reference to artificial intelligence and the extent to which it will be considered in determining whether appropriate checks were carried out. Further guidance in relation to this would be beneficial.

Para 3.14.3 considers the extent to which an individual took steps to prevent breaches of customers’ consumer protection rights and/or contractual rights. This will include consideration of “in the firm’s dealings with customers, whether an individual sought to put the interests of the firm’s customers at the centre of their, and the firm’s approach”. It would be very beneficial for the Central Bank to provide guidance on how this might be considered to work in practice when there is a conflict between the economic interest of the firm and a customer’s interest? The same question applies in relation to the Standards (CP p.34).

Para. 3.17 sets out a non-exhaustive list of records or the steps taken that the Central Bank may seek to review or obtain which may include “other internal materials such as emails, training materials, manuals, regulatory correspondence, telephone recordings, presentations and escalation briefings in respect of issues identified”. Does the use of the word “internal” exclude emails or calls to external persons or calls on private emails or phones? Clarification in this regard would be useful.

Q12. What are your views and comments regarding the guidance on the Common Conduct Standards and Additional Conduct Standards?

Our overarching comment in relation to the guidance on the Common Conduct Standards and the Additional Conduct Standards relates to the significant challenge these represent for firms in designing and delivering appropriate training to the different cohorts of staff impacted. This training will need to ensure that all cohorts feel both adequately informed of the requirements as they pertain to their role and also adequately protected and supported by the internal processes, tools and guardrails which will be put in place. We would encourage the Central Bank to acknowledge this challenge and the timeframe associated with it. As noted in the introduction section above, any flexibility that could be provided in relation to the timeframe for implementation in this regard would be very positively received by industry.

Effective, tailored training and use of tools such as ethical decision-making frameworks will be key to the overall success implementation and application of the conduct standards, in particular to ensure they are perceived to be something that staff should embrace in a positive manner rather than fearing the risks of breaching them and the resulting consequences.

In relation to more specific issues regarding the Conduct Standards we would make the following points:

In relation to collective responsibility, one issue which NEDS often seek advice on is the extent to which they can rely on subject specific experts on a Board? Para 5.3.8. is useful in that respect. It provides that “CF role holders should be fully informed of matters for which they are collectively responsible, even if other individuals are responsible for those specific areas, so that they can actively contribute to and challenge relevant decisions.” Para. 5.3.9. elaborates further on the need to attend and actively contribute to relevant meetings and be appropriately informed of the matter(s) at hand. In terms of Additional Standards, para 6.2.2 advises that “PCF role holders in attending and contributing at meetings at which collective decisions are made, should ensure they have sufficient information and understanding of the matter(s) at hand to participate effectively in the collective decision making, commensurate with the parameters of their role including any broader responsibilities in the running of the business where relevant.” The benchmark thus is sufficient understanding to be able to “participate” though whether NEDS would be qualified to “rationally challenge and debate the matters” will be a taller order in our opinion. One area of concern to NEDS is what they should do if they disagree with a collective decision and whether they might still find themselves liable. Para 5.3.10. does not really address this. It states, “Where an individual considers a decision may not be in the best interests of customers based on facts and the information at hand on the matter and following appropriate and effective challenge, they should take appropriate follow-up action, including reporting to relevant regulatory bodies where required.” It thus applies only to a certain type of disagreement, and it provides little guidance on the “appropriate follow-up action”. Would it include a resignation for example? It would be helpful for the Central Bank to provide more detail of its expectations in this regard.

In paras. 4.10-4.14., a distinction is made between the honesty and integrity requirement in the Fitness & Probity (F&P) Standards and in the Common Conduct Standards - notably that the purpose of the former is “to set a standard that staff in CF roles must meet to ensure that they are sufficiently skilled and have the requisite integrity to be trusted in their role” whereas the purpose of the Conduct Standards is different “in that they govern the conduct of individuals in CF roles, imposing positive, enforceable legal obligations on individuals to act in accordance with a single set of standards of expected behaviour”. Although it is correct of course to note that the Conduct Standards only apply once the individual is in the role, this seems a slightly tenuous comparison given, as noted, the F&P Standards also apply on an on-going basis. It is difficult to distinguish between being honest for example and acting honestly and to retain the F&P classification, one would have to act honestly in accordance with the suitability guidance.

The standard of skill, care and diligence described in para. 5.3.2 is consistent with that applying under section 228 of the Companies Act and the guidance is useful.

In terms of satisfying themselves that they have a clear and comprehensive understanding of the relevant business activities of the firm and developments relevant to their role/function, the guidance that “an individual should consider if they have sufficient knowledge to explain an issue and if not should seek the relevant expertise on a timely basis” in para. 5.3.3 is correct.

Para 6.3.3. provides guidance on Additional Conduct Standard (b) relating to the firm’s compliance with financial services legislation. This is useful but it suggests, inter alia, that an individual should be satisfied, that: “undue weight is not given to a staff member’s contribution to the firm’s financial performance when considering the above.” This suggests that there is a degree of tolerance for non-compliance where the perpetrator brings in revenue and this would not be appropriate. In our view these two words should be removed.

Q13. What are your views and comments on the guidance in relation to obligations on the firm in respect of Conduct Standards?

In this context we would reiterate our comments above in relation to the challenge to firms to design and implement training to the different cohorts of staff within the prescribed timeframe.

More specifically, under Regulation 9 of the Certification Regulations, a firm must report to the Central Bank disciplinary action taken against a person performing a CF role where that disciplinary action is relevant to compliance with the F&P Standards, in particular, disciplinary action relating to breach of a provision of the additional conduct standards, the common conduct standards, or any other provision of financial services legislation. The Guidance (paras.4.35 and 4.36, footnote 16 and 17) refers to related reporting obligations but is expressly non-exhaustive. It would be helpful if the Guidance listed the reporting obligations for firms and individuals relating to F&P, Standards and suspected prescribed contraventions in a table in the Guidance.

In relation to the timing of notification of breaches of the conduct standards, some further clarification in relation to the expectations of the Central Bank in this regard would be helpful – for example is it acceptable for a firm to conduct some internal due diligence to establish facts and/or to conduct disciplinary proceedings (including expiry of any time allowed for appeals) before reporting breaches? Given the career and reputational implications for individuals, it will be essential that due process is followed and there is consistency of approach across firms (and indeed the wider industry) in relation to the reporting of actual or suspected breaches of the conduct standards. It would be helpful to understand the Central Bank's expectations in this regard, in particular whether all such reporting should be done from one central point within the firm.

Q14. Do you agree with our proposed approach to temporary appointments within scope of SEAR and the Conduct Standards?

We agree in principle with the statement in the guidance (paras. 2.9.12 and 4.21) which states that temporary appointments to a PCF role under Regulation 11 of the PCF Regulations will only be used in exceptional circumstances. It also notes that “during the temporary occupancy of a PCF role whereby the individual has been preapproved by the Central Bank”, while the Conduct Standards will apply, the consideration of reasonable steps will reflect the particular circumstances of the individual. Does that include a situation where they have been preapproved for any PCF role in the firm?

Q15. What are your views and comments on the draft Certification Regulations and related guidance?

Para 7.2.13 requires the firm “to undertake appropriate due diligence to satisfy itself that each individual performing a CF role is fit and proper to perform that role and to be in a position to certify same” and reference is made to Guidance on the Fitness and Probity Standards which is to be updated (para.7.2.14). The new reference is to “all due diligence must be performed ... on an ongoing basis” (para 7.2.15) with some limited exceptions will potentially impose onerous obligations on firms. Table 3 for example refers to ongoing Gardaí checks. Accepting that it is not possible to “address every possible check”, further Guidance is required. What for example is meant by “ongoing” in relation to Garda checks? Is the requirement to undertake due diligence linked to the timing i.e. to be done prior to annual certification? Greater clarity from the Central Bank in this regard would be useful.

Q16. Do you agree with our proposed approach to roles prescribed as PCF roles for holding companies in the draft Holding Companies Regulations?

No comment.

Q17. Do you agree with our proposed approach to reporting of disciplinary actions?

In our view, the proposed conduct standards will positively underpin the industry's commitment to improving behaviour and culture, however it is important that they are consistently applied across in-scope firms and that any reporting of proven breaches of the standards be dealt with in accordance with applicable GDPR, HR and disciplinary procedures.

As noted in our response to question 13 above, further clarification on the expectations of the Central Bank in relation to the timing, format and responsible person of such reports is necessary. For example, a disciplinary action may commence with an interview to obtain more information and a breach of the conduct standards may be dis-proven at that point. Guidance should be given as to whether the notification should be given during the investigation stage, or when the breach has been evidenced and the associated disciplinary action applied. If there are to be timelines associated with the process, they should also be clearly articulated and specified, i.e. the regulator must be notified with X amount of time/ at year end? The process for in-scope firms to provide these notifications should be explained and outlined. The person responsible for providing the notifications should also be identified, i.e. does ownership of this role need to be assigned? In the context of inherent responsibilities versus prescribed responsibilities, as mentioned above, it should be clarified as to who is responsible for the submission of these reports – will they be the responsibility of the line manager (inherent responsibility as it goes with their role), or it is expected that these reports will be submitted by an assigned individual within the organisation (i.e. a prescribed responsibility).

Furthermore, the reporting obligations referring to “disciplinary actions” are defined in Regulation 5(c) as “the issuing of a formal written warning to a person, the suspension or dismissal of a person or, the reduction or recovery of any of a person’s remuneration.” It is notable that the F&P suitability requirements also include earlier stages such as “pending ... criminal, administrative or regulatory proceedings”. The Central Bank’s perspective on how the two separate, but related, processes should best operate would be helpful. There are concerns too that there will be tensions with individual’s due process rights and the right not to self-incriminate and an understanding of the Central Bank’s perspective in this regard would be very helpful.

Finally, the guidance refers to disciplinary procedures for staff members – as NEDs are not employees of the company they are not encompassed in the proposed approach. If a wrongdoing by a NED occurs, the Central Bank should specify their expectations in that regard, particularly with regard to reporting.

Q18. Do you agree with our proposed approach to introducing the Head of Material Business Line role for insurance undertakings and investment firms?

No comment.