

Detailed Answers and Comments upon Questions 1, 2 and 3 in the Central Bank's CP51

Central Bank Question 1

Do you consider that the Standards are comprehensive in setting out the appropriate standards for fitness and probity of individuals working in the financial services industry in Ireland? If not, have you any additional standards or considerations to add?

Yes, we do believe they are comprehensive. We welcome the proposals in relation to the holders of the important Pre-Approved Controlled Functions and other Controlled Functions. If they cannot demonstrate that they have capabilities in internal governance and risk management appropriate to their roles, there should be a formal training requirement. We would add ethics in further answer to your question – it is all part of honesty and probity. It is interesting to note that the majority of CISI members in the survey are in favour of this for at least Pre-Approved Controlled Function holders (and possibly all Controlled Function holders) for risk management (75%), 85% for corporate governance and 80% for ethics. Furthermore, 75% are in favour of a simple test of ethics training (difficult but we have demonstrated that it is very possible – 5,000 people have passed our written example test including Irish members).

The question is should firms have total flexibility in deciding how an individual should be trained in these areas? Or should the regulator give guidance on its expectations through having a list of recommended (but not exclusive) qualifications and training? The CISI members surveyed responded overwhelmingly (95%) in favour of a recommended list.

One practical comment on ethics training was that this should take place on induction and on a regular basis, and not just when a person is appointed to a Pre-Approved Function.

Another interesting issue is whether these criteria should apply only to retail individuals (as in the Minimum Competency Requirements) or to both retail and institutional individuals. The clear answer was that they should apply to both (85%), and that supports the Consultation proposals which make no distinction between retail and institutional individuals and firms. The CISI supports this.

Central Bank question 2

Do you consider that any of the Standards are superfluous, and if so, why?

No, we don't consider that any of the questions are superfluous. However we wondered whether the breadth of the 'honest, ethical and act with integrity' standards (in section 4 of Appendix 2 to the Consultation Paper (CP)) might be too wide; for example (p) and (q) in section 4.1 certainly give the Central Bank a lot of discretion, more than in some other jurisdictions. Should the Central Bank make a judgement that an individual has failed to meet these standards, this could end an individual's livelihood and we therefore suggest perhaps a very clear and tightly defined set of processes before this stage is reached. However a majority of our survey members felt that the Central Bank should have these powers (65%).

Central Bank Question 3

Do you consider that the Standards specified are sufficiently clear to be adopted by firms for their internal fit and proper processes?

Broadly yes (although the CISI is a professional body for individuals and not a trade body representing firms). There was broad acceptance among the individual practitioners surveyed that the standards are sufficiently clear (72%). However, the CISI's recent experience in the UK has shown that a clearer and more detailed description of the internal process inside the regulator (together with any interview procedure/ questions, statistics of applications made, approved, withdrawn or refused) can reduce many of the concerns of firms and individuals and also enable them to meet the regulator's expectations.

Particular suggestions, for example:

- on financial soundness that the judgment upon whether a 'person has failed to manage his or her debts or financial affairs satisfactorily' should have an objective measurable basis e.g. a court judgment rather than speculation,
- guidance needed as to whether an individual was likely to be approved if he or she had been part of a non-financial syndicate or business that had gone into Administration, and
- on complaints concerning competence, that the Central Bank's powers should be clarified e.g. that the complaint was material, or had been upheld.

There is one immediate question which might merit further clarification, either through definitions in the rules or through guidance. This is on the scope of 'Controlled Functions'.

Clause 3 of Schedule 1 refers to the '*person responsible*' for:

- (a) the giving of advice or assistance to a customer
- (b) dealing in or having control over property of a customer

Does this refer to the head of a function who has overall responsibility rather than to the individual advisors?

Separately Part 2 refers to PCF-16 as the Head of Compliance with responsibility for Anti-Money Laundering and Counter-Terrorist Financing Legislation. How does this apply where the roles are held by different people given that there is a separate PCF (PCF-13) for the Head of Compliance?