

19th June 2014

Whistleblower Desk,
Central Bank of Ireland,
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By Email: confidential@centralbank.ie

Re: Response to Consultation Paper CP 79 on the Handling of Protected Disclosures by the Central Bank

Dear Sir/ Madam,

We welcome the opportunity to make submissions in relation to Consultation Paper 79 (CP 79) on the "Handling of Protected Disclosures by the Central Bank of Ireland". In drafting our response, we have considered CP 79 and international best practice.

The proposals are clearly of interest to the industry and ultimately to both employers and employees in the financial services sector. A robust system to deal with Protected Disclosures is both welcome and necessary. We acknowledge and agree that the CBI must ensure that a balance is struck between;

- a) Encouraging the reporting of good quality information to the Central Bank;
- b) Seeking to protect as much as possible the identity of the person making the protected disclosure; and
- c) Ensuring fairness to the entity against which the allegation is made.

The matters set out in this response are a summary of Deloitte's views on the proposed whistleblowers desk. We welcome the CBI's engagement with the public in relation to the proposals and we lay out our views in relation to the arrangements and policies the CBI intends to put in place in response to the CP 79 under a number of headings below.

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K. Butler	R. Howard	R.J. Nolan	D.J. Butler	J. O'Flynn	D. Dalton	D. Lehane
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D.B. Deasy	M. Larkin	B. O'Callaghan	P. Cullen	P. Reck	M. Flynn	S. Murphy
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G. Gillard	C. MacManus	N.A. Walsh	J. O'Connor			
J.P. Gilmartin	H. Moore					

B. Jennings



Introduction

We agree that a centralised whistleblowers desk will aid and facilitate persons making protected disclosures. However, in Deloitte's view, in order for the whistleblowers desk to be effective, it is crucial for the CBI to provide a clear set of guidance notes which deal with the relevant matters under Part 5 of the Central Bank Supervision and Enforcement Act 2013 (*the Act*).

It will be necessary for arrangements to be put in place to clearly set out the process for an individual who wishes to make a protected disclosure. The measures required to make a disclosure should not be disproportionately burdensome in terms of time and resources. Awareness of the existence of the whistleblowers desk should be raised by the CBI and a duty imposed on firms in this area to ensure its' staff are fully informed of the role and aims of the whistleblowers desk.

Internal Policies

We anticipate that, in light of these new provisions, firms will establish their own internal policies, phone-lines and desks in regard to the making of protected disclosures and in relation to the new obligations on certain categories of persons in firms to disclose breaches of financial services legislation. Deloitte suggests that guidance around internal policies should also be provided by the CBI, in particular, how internal processes would interact with disclosures to the CBI. In addition, guidance in the area of disciplinary actions for breaches of internal whistleblowing policies would be welcomed.

Guidelines

Whistleblowing policies and guidelines should be provided by the CBI which set out procedures which will be followed when handling concerns. These guidelines should provide examples of the disclosures that will and will not be considered a protected disclosure under the Act. This may require a list of what specific breaches or offences under financial services legislation will be protected. Similarly, in the case of concealment or destruction of evidence relating to such a breach or offence, a clear definition of what is considered to be evidence for the purpose of the Act will be required. Providing examples of what does, and what does not constitute protected disclosures will give potential complainants greater certainty in assessing the facts of the matter at hand and in reaching a decision as to whether a complaint is appropriate in the circumstances.

FCA

The Financial Conduct Authority (*FCA*) has clearly set out “Guidelines for dealing with Whistleblowing Calls under the Public Disclosures Act 1998” (*PIDA*). We feel it would be prudent to consider these guidelines which include advice under the following headings;

1. The FCA’s approach to whistleblowing;	7. FCA investigation;
2. Legal Advice;	8. Internal disclosure of whistleblowers identity;
3. Information from whistleblowers;	9. Internal relationships with the FCA;
4. FCA’s expectations of a whistleblower;	10. Recording of information;
5. Initial assessment of information;	11. Timing issues;
6. Whistleblowers identity and reported firms;	12. Continuing contact with a whistleblower

It is important that the guidance is accessible and easy to understand. It should be clear and concise covering all areas which are relevant. The guidance should set out the circumstances under which a person should make a disclosure and it should also provide reassurance to those making a protected disclosure that their concerns will be taken seriously and dealt with appropriately.

The CBI must clearly set out the role of the whistleblower desk which will include what information and advice may or may not be provided by the CBI. The guidelines should also set out the instances where independent legal advice should be sought and whether free legal advice could be availed of.

Guidance should make clear that any concerns are welcomed and will be treated seriously.

Confidentiality

An integral element of the new process is the increased emphasis on confidentiality in the Act. Section 40(5) is, and should be a main focus of the CBI when dealing with the handling and receipt of protected disclosures.

Robust procedures must also be in place which will provide safeguards for a person making a protected disclosure. The implementation of stringent and vigorous procedures which ensure that the identity of the whistleblower will not be disclosed, other than in exceptional circumstances, will not only encourage people to come forward with claims of potential breaches of financial services legislation, but will also provide comfort to them in the knowledge that this disclosure will be made in confidence.

Guidance should make sensible and accurate statements about respecting whistleblowers' confidentiality.

Anonymous Disclosures

As anonymous disclosures will be accepted by the whistleblower desk, Deloitte suggests that the guidance should set out the procedures for dealing with this type of disclosure. This would include the process which would be followed in this instance and the approach of the CBI in relation to informing the person making the anonymous disclosure that they will not be protected under the Act.

PCF- Obligation to Report.

The mandatory reporting requirement for Pre- approval Controlled Functions (*PCFs*) to make reports to the CBI is also noteworthy. It places an obligation on PCF's to report to the CBI; an additional obligation imposed on those holding this position.

According to the Act, the CBI *may* issue guidelines for the purpose of providing practical guidance for a person appointed to perform a pre-approval controlled function. We believe it would be prudent to issue guidelines for PCFs as it is a new area where some uncertainty may exist. As mentioned above, the FCA has provided guidelines for dealing with whistleblowing calls under PIDA. We submit that the same line is followed by the CBI with a clear focus on PCFs.

Section 32(c) of the Act sets out scenarios where the PCF is absolved of the obligation to report including; where the disclosure might tend to incriminate the person or on the ground that the information has already been disclosed by another person. The Act confirms that this is not an exhaustive list of where a PCF may not be required to report a breach or offence. It is submitted that guidance is provided as to what other areas will fall under this section of the Act.

This guidance should also set out what penalties or sanctions a PCF may face for failure to comply with this obligation and whether there will be different levels of penalties depending on the severity of the breach.

Non provision of information to Whistleblowers

The CBI will not disclose what action, if any, has been taken as a result of the disclosure thereby protecting the rights of all parties in line with statutory requirements. Deloitte suggests that this is brought to the attention of the person concerned prior to them making a disclosure, allowing them to make a fully informed decision prior to disclosure.

Flexibility

Elaborate and detailed disclosures will require additional resources. These will be subject to a more in depth analysis and be subject to additional and more sophisticated requirements. However the CBI should aim to deal with all disclosures as soon as possible. The CBI may consider an initial analysis of all complaints made to assess the level of regulatory breach, if any.

Conclusion

In conclusion, we welcome the proposed arrangements and policies the CBI intends to put in place in response to the making of reports regarding alleged breaches of financial services legislation. In the aftermath of the financial crisis and the perceived governance weaknesses, we are in agreement that a centralised whistleblower desk is the correct approach for dealing with Protected Disclosures. Ensuring the CBI has adequate resources, expertise, procedures and policies in place to deal with these disclosures is vital to the success of the whistleblower desk.

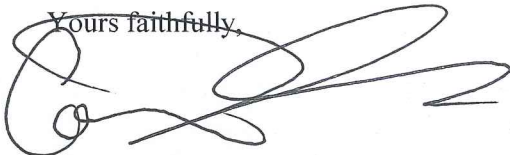
Persons who wish to make a disclosure must be assured that the CBI has stringent policies and controls in place around confidentiality. Awareness by the CBI of the potential damage to a person's reputation, career and relationships is paramount and this should be translated into the policies around confidentiality. The success of the desk will depend significantly on the level of confidence people have in it.

This desk, with the correct publicity and guidance will help eliminate the barriers to whistleblowing that currently exist in this jurisdiction which include reprisals in the work place, concerns about response of colleagues or career damage.

There is at present a lack of clarity in respect to the mandatory reporting requirements for PCF's. It is imperative that guidance is issued to ensure awareness and clarity around how to make contact with the CBI so PCF's understand their obligations under the Act.

Thank you for considering our response to CP79.

Yours faithfully,



Colm McDonnell

Partner Enterprise Risk Services