



By email: confidential@centralbank.ie

Whistleblower Desk
Central Bank of Ireland
PO Box 559
Dame Street
Dublin 2

19 June 2014

Re: Consultation Paper CP79 – Handling of Protected Disclosures by the Central Bank of Ireland

Dear Sirs,

Introduction

We welcome the publication of the *Consultation Paper on the Handling of Protected Disclosures by the Central Bank of Ireland (CP79)* and are grateful to have the opportunity to comment on its content. This submission is made on behalf of Zurich Insurance plc and Zurich Life Assurance plc.

Zurich and Whistleblowing

Zurich is committed to the highest standards of corporate conduct. The organisation's code of conduct - 'Zurich Basics' - provides a strong foundation for the Group's corporate culture.

An important aspect of this is the 'Zurich Ethics Line'. This provides a means for employees to report conduct they, in good faith, believe violates laws, regulations, internal policies or Zurich Basics. Employees may still raise a concern or make a report directly with a compliance officer, a local general counsel, their HR manager or line manager.

The Zurich Ethics Line is operated by a third party provider who records reports and passes them on to the local compliance team for review. Where employees have concerns they are encouraged to report their suspicion of any violations of laws, regulations, internal policies or Zurich Basics.

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Interplay Between CP79 & Protected Disclosures Bill 2013

In recent years, the approach to the conferral of statutory protection on whistleblowers has been on an incremental, sector by sector basis.

We note that the proposals contained in CP79 derive from the provisions of the Central Bank (Supervision and Enforcement) Act 2013 - an existing piece of sectoral whistleblowing legislation.

We also note that the Protected Disclosures Bill 2013 (currently close to being passed by the Dáil and Seanad), once enacted, will introduce a legislative framework for the handling of whistle-blower disclosure in all contexts – both public sector and private sector.

However, it is not at all clear how the whistleblowing regime provided for under the 2013 Act and elaborated upon in CP79 is to be reconciled with the regime which can be anticipated under the Protected Disclosures Bill 2013. It seems likely therefore that two similar whistleblowing regimes will co-exist.

In anticipation of CBI being designated section 7(2) of the 2013 Bill as being a “prescribed person”, it is imperative that the the final CBI paper which flows from CP79 provides clarity on the interplay between the regime being provided for under CP79 as against the regime envisaged under the 2013 Bill. Currently, CP79 is silent on this issue and consequently this is unhelpful for organisations which need to provide its staff (and for regulated entities, its PCFs) with clear guidance on whistleblowing.

Protections

Section 2.2 of CP79 states that the Bank may not disclose the identity of the person, subject to a number of exceptions. It would be helpful if the final CBI paper which flows from CP79 were to expand upon the exceptions envisaged.

What Constitutes a Protected Disclosure

In section 2.2 of CP79 it is stated that the CBI has no role in assessing what is or is not a protected disclosure as defined in the legislation.

In order to give some measure of comfort to the individual making the disclosure it should be made clear that there is a presumption by the CBI that a disclosure will be a protected unless particular circumstances arise (for example, the disclosure is found to be false or misleading, is clearly frivolous, vexatious or without substance or a court subsequently determines that it is not protected). A presumption of this kind seems to be envisaged as being applicable in certain circumstances under the Protected Disclosures Bill 2013.

It might be helpful if the final CBI paper which flows from CP79 were to suggest that a whistleblower may wish to take independent advice. We understand that such an approach has been adopted under the FCA Guidelines for Dealing with Whistleblowing Calls under the Public Interest Disclosures Act 1998. Such an approach should also be adopted in the context of the arrangements envisaged under CP79, particularly in circumstances where the CBI position remains that it has no role in assessing what is or is not a protected disclosure.

Veracity of Disclosures

We note that section 7(1) of the Protected Disclosures Bill 2013 requires that, in making a disclosure, the worker must “reasonably believe” that the that the information disclosed, and any allegation contained in it, are “substantially true”. However, there is no express requirement in CP79 that that the employee must believe in the truth of the information being conveyed or that the allegation being made is true. This safeguard ought to be a feature of the regime being proposed under CP79.

Also, we note that under section 40 of the Central Bank (Supervision and Enforcement) Act 2013 the whistleblower does not retain protection from civil liability in circumstances where he or she makes a disclosure knowing it to be false or misleading, or where he or she furnishes information that which he or she knows to be false or misleading.

False or Misleading Reports

It would be helpful if the final CBI paper which flows from CP79 were to make clear the action which CBI will take in circumstances where it determines, following its investigation, that a disclosure is knowingly false or misleading. For example, it should be clarified whether or not the employer will be informed.

Form of Protected Disclosures

We note from section 5 of CP79 that there is a requirement that disclosures made by PCFs must be in writing. In respect of the final CBI paper which flows from CP79, consideration should be given to requiring that all disclosures be subject to a requirement that they be set down in writing so that a permanent record containing the details of the concern is devised at an early point in the process.

Sequence of Disclosure

We note that under section 6.7 of the CBI Corporate Governance Code, directors are encouraged to report material concerns about the corporate governance of the institution to the board initially.

In the context of CP79, we suggest that consideration ought to be given to encouraging employees to initially disclose concerns which they may have to their employer on the understanding that the employee would have the option to disclose directly to the CBI if that is their preference.

Such an approach appears to be envisaged by the Protected Disclosures Bill 2013 and we understand that such an approach has been adopted under the FCA Guidelines for Dealing with Whistleblowing Calls under the Public Interest Disclosures Act 1998.

Confidentiality of Disclosures

It would be helpful if the final CBI paper which flows from CP79 were to contain a greater level of detail as to how confidentiality will be preserved *within* the CBI. For example, clarity should be provided on the measures which will be implemented so as to ensure that the identity of the whistleblower is protected as far as possible. In addition, greater clarity should be provided on the circumstances in which it may be permissible for the whistleblower’s details to be passed on to other areas of the CBI if deemed necessary by the whistleblower desk.

Data Protection

The data protection issues which arise in respect of whistleblowing would also require detailed consideration, and in this regard we would highlight in particular the Opinion of the European Commission's Article 29 Data Protection Working Party (Opinion 1/2006).

Legal Privilege

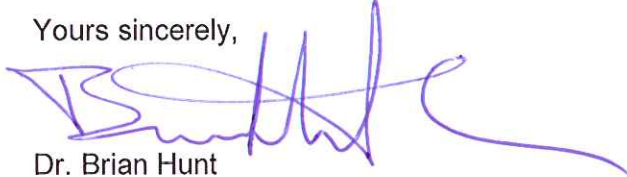
The implications of CP79 on legal privilege require greater consideration. For example, detailed consideration needs to be given to the implications which will flow from the disclosure of legally privileged material to the whistleblower desk.

Concluding Remarks

If it would be helpful, we would be pleased to have the opportunity to explain the measures which Zurich already has in place for facilitating the reporting and handling of employee concerns.

In the event that you have any questions or require further information arising from our submission, please do not hesitate to contact me.

Yours sincerely,



Dr. Brian Hunt
Head of Regulatory Affairs, Zurich