

## What does it mean for me? What does it mean for my firm? – CBI's Individual Accountability Framework

*In recent weeks the Government published the General Scheme or draft version of the long-awaited Central Bank (Individual Accountability Framework) Bill which will introduce a number of new measures that are intended to greatly enhance the ability of the Central Bank of Ireland to hold individuals within financial services firms to account for their actions.*

### CULTURAL CHANGE AND ENFORCED INTEGRITY

In recent times, particularly in the aftermath of the financial crisis and also its own tracker mortgage examination<sup>1</sup>, the Central Bank of Ireland ("CBI") has emphasised the importance of firms in the financial services sector having the right organisational culture. This legislation is in part the CBI's reaction to the unfavourable view it formed of the organisational culture that was prevalent in certain sectors.

While the CBI has been impressing upon firms the need for them to be conscious of their own organisational culture and to make any necessary changes on their own initiative, it could be said that this Bill indicates that the CBI will no longer sit back and wait for firms to find the right path. This legislation is about imposing a culture of responsibility and accountability on the financial services sector.

The provisions of the draft legislation are considered in detail in the **RDJ Guide to the General Scheme of the Central Bank (Individual Accountability Framework) Bill** which can be accessed [here](#).

However, in this Insight we consider how the really key proposals contained in the draft Bill impact on firms and individuals.

### SIGNIFICANT IMPACT ON FIRMS AND INDIVIDUALS

The new measures which will be introduced by the draft Bill will impose a sizeable compliance burden on firms, not just in the initial period post-enactment, but also on an ongoing basis. However, the real impact of this legislation is likely to be felt by individuals within financial services firms as they will now be subject to a level of scrutiny and accountability which has never before been felt by those in the financial services sector.

#### What Does the Bill Mean for Firms?

Under **SEAR**, firms will be required to set out clearly where responsibility and decision-making lie for their business and they will need to **document the responsibilities of each Senior Executive Function** ("SEF"), as well as devise and maintain **statements of responsibilities** for SEFs, and also **management responsibility maps** (Head 4).

The draft Bill imposes a set of **Conduct Standards on Firms** (Head 6) and a breach of those Standards will constitute a "prescribed contravention" which can be pursued by the CBI.

While the Common Conduct Standards and Additional Conduct Standards (referenced below) will be directed at individuals, firms themselves will be obliged (under Regulations made pursuant to Heads 7 and 8) to **notify individuals** within their respective firms of those Standards and to also **provide training** to them. In addition, firms will also be obliged to **report to CBI any disciplinary action** taken against individuals for breaches of either set of Standards. In respect of the Common Conduct

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<sup>1</sup> <https://www.centralbank.ie/docs/default-source/consumer-hub-library/tracker-issues/update-on-tracker-mortgage-examination---july-2019.pdf?sfvrsn=6>

Standards, firms will be required to **devise policies** which set out how they will embed those Standards.

The draft Bill also introduces a new requirement for firms to **certify that each person in a controlled function** complies with the fitness and probity standards (Head 10).

Affecting both firms and individuals, the draft Bill contains proposals which will have the effect of **extending the fitness and probity regime** to directors and senior executives of **holding companies** of financial services entities (Head 15).

### **What Does the Bill Mean for Individuals?**

Significantly for individuals, the draft Bill imposes a duty on SEFs to take **“reasonable steps”** within their own areas of responsibility to avoid their firm committing a prescribed contravention (Head 5). The question as to what constitutes **“reasonable steps”** will of course vary from one person to another and will also be dependent upon the specific circumstances of any given situation. Head 5 of the draft Bill sets out a series of factors which can be taken into consideration by CBI in determining whether a person discharged his or her duty to take **“reasonable steps”**.

What this means in practice is that when faced with a challenging situation, senior executives will need to approach the issue through the prism of the CBI’s expectations around the taking of **“reasonable steps”**. So for instance, senior executives will need to ensure that they have the ability to take actions that the regulator expects of them in a given situation in order to avoid the firm being in breach. They will need to be well informed and more probing when taking major decisions within their purview and they will need to be engaged, inquisitive and proactive when potential issues arise.

Senior executives will need to be mindful of the need to ensure that their actions are documented whether in emails, meeting minutes or other enduring forms. The requirement to take **“reasonable steps”** is also a key element of the UK’s SMCR regime (i.e. the UK equivalent of SEAR). The FCA has issued guidance on the factors that it will consider when determining whether or not a Senior Manager has taken **“reasonable steps”**<sup>2</sup>.

Another very significant aspect of this draft Bill, is the proposal (in Head 11) to **empower the CBI to conduct an investigation in relation to the fitness and probity of a person who, in the past, performed a CF role**. It is indicated that the ability to exercise this power will be subject to a prescribed time period between the date that the person last performed his or her CF role, and the date of the opening of the investigation. This provision should be carefully noted by persons who are currently serving in CF roles (as well as those considering taking up such a role) as it demonstrates the extent of the personal responsibility that such a role brings and it also makes it clear that in the event of suspected wrongdoing, departure from a role does not place a former CF role-holder beyond the reach of the CBI.

In recent times the CBI has made much of the need to strengthen its enforcement powers, particularly those in respect of individuals whom it believes have committed wrongdoing. The draft Bill seeks to **remove the requirement for the CBI to first hold the firm to account for contraventions as a prerequisite to pursuing individuals** for their own part in any wrongdoing (Head 19). This means that the CBI will have the power to actively pursue individuals for their own wrongdoing, even in circumstances where it has not pursued or concluded an action against the firm with which the individual was connected. This provision greatly increases the likelihood of the CBI opting to pursue individuals for alleged wrongdoing and is yet another aspect of the Bill which makes individual accountability very real indeed.

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<sup>2</sup> <https://www.handbook.fca.org.uk/handbook/DEPP/6/?view=chapter>

The draft Bill imposes a set of obligations - referred to as **Common Conduct Standards** – on individuals performing controlled functions (Head 7). These standards set out in a non-exhaustive way the expected standards of conduct, which will be expanded upon by CBI guidance.

The Bill also provides for **Additional Conduct Standards** to be imposed on persons in Pre-Approval Controlled Function (“PCF”) roles as well as those persons who exercise significant influence on the conduct of the firm (Head 8). A breach of these standards will constitute a “prescribed contravention”, as also will a breach of the Common Conduct Standards.

#### **PREPARE FOR IMPLEMENTATION**

It is helpful that the CBI has indicated that once the Bill has been enacted it plans to publicly consult on the implementation of the IAF. The publication of the draft Central Bank (Individual Accountability Framework) Bill helpfully sheds considerable light on each of the elements that will make up the IAF.

While the emergence of the draft legislation may have allowed Central Bank officials to breathe a sigh of relief, the mantle of hard work now passes to the Boards and senior management teams of firms within the financial services sector.

Gradually, then suddenly is how the sector will find itself amongst the new reality of the long-awaited Individual Accountability Framework. So, as we inch towards the introduction of the IAF, Boards and senior management teams within regulated firms would be wise to begin assessing the impact which this legislation will have on their business and to actively plan for its implementation. Proper implementation will consume a considerable amount of time. Implementation will require the involvement of a number of functions across each firm, and the involvement of the Board in key aspects of the preparations and implementation is something that the CBI will expect to see.

Individuals who fall within the scope of the Bill should give careful consideration to what changes are needed to systems, controls and processes that lie within their remit in order to ensure that they can discharge their responsibilities under the legislation.

*Check out the RDJ Guide to the General Scheme Central Bank (Individual Accountability Framework) Bill. [\[\[insert link\]\]](#)*

*Readers can find additional information on the Individual Accountability Framework and SEAR as well as comparable regimes in other jurisdictions at the [\[\[RDJ SEAR Information Hub\]\]](#). [\[\[insert link\]\]](#)*