



// FINANCIAL REGULATION

# Preparing for Individual Accountability

## **PART 1** - Conduct Standards

June 2022

## INTRODUCTION

---

In the run-up to the Central Bank's expected Summer 2022 consultation on its proposed individual accountability framework, this is the first of a new series of client briefings on what steps firms should be taking now to prepare for the Central Bank's individual accountability framework which is expected to come into effect in early 2023.

Our previous briefing on the heads of bill on individual accountability published in July 2021 is available [here](#).

In this briefing, we examine conduct standards – one of the four pillars of the individual accountability framework - and we outline the actions that can be taken by firms and individuals to prepare for the enforceability of those conduct standards.

---

## CONDUCT STANDARDS

---

The conduct standards pillar of the proposed individual accountability regime will apply to all regulated financial service providers (**RFSPs**) from when the individual accountability regime comes into effect which is expected to be in early 2023.

Three categories of conduct standards are proposed.

### 1. BUSINESS CONDUCT STANDARDS

Business conduct standards will apply to all RFSPs from the outset as they are designed to create a single benchmark of conduct which all RFSPs are required to meet, regardless of sector.

Proposed business conduct standards include:

- Conducting business professionally, honestly, ethically and with integrity.
- Conducting business with due skill, care and diligence.
- Taking appropriate steps to prevent or effectively manage conflicts of interest.
- Acting in the best interests of customers and treating them fairly and professionally.

- 
- Maintaining adequate financial resources.
  - Controlling and managing its affairs and systems in a sustainable, responsible, sound and prudent manner.
  - Arranging adequate protection of client assets when responsible for them.
  - Dealing with its regulators in good faith, and in an open and cooperative manner.
  - Disclosing to the Central Bank promptly, proactively and appropriately anything relating to the firm of which the Central Bank would reasonably expect notice.

The Central Bank will have the power to supplement these business conduct standards.

Failure to comply with business conducts standards may be enforced against an RFSP under the Central Bank's Administrative Sanctions Procedure (**ASP**).

## 2. COMMON CONDUCT STANDARDS

Common conduct standards will apply to all persons performing controlled functions (**CFs**) and pre-approval controlled functions (**PCFs**) in all RFSPs.

Proposed common conduct standards include:

- Acting honestly, ethically and with integrity.
- Acting with due skill, care and diligence.
- Cooperating with the Central Bank and other regulators or authorities and dealing with them in good faith and without delay.
- Acting in the best interests of customers and treating them fairly and professionally.
- Observing proper standards of market conduct.

---

The General Scheme of Bill published in July 2021 sets out examples of expected behaviours for each of the common conduct standards. The Central bank will issue further guidance on its expectations regarding compliance with the common conduct standards.

The Central Bank will have power to make regulations requiring RFSPs to notify persons performing CF and PCF functions of the applicability of these common conduct standards to them, to provide relevant training to in-scope individuals and to report to the Central Bank disciplinary actions arising from any breach of common conduct standards. RFSPs will also be required to establish and maintain policies setting out how they will embed the common conduct standards throughout their organisation.

Breaches of obligations under or relating to the common conduct standards may be enforced directly against an individual or a RFSP through the Central Bank's ASP. It will be a defence for an individual if they can show they acted reasonably in all the circumstances of the case. A breach of the common conduct standards by an individual may be a basis for the Central Bank finding that a person does not meet the requirements of the fitness and probity regime.

### 3. ADDITIONAL CONDUCT STANDARDS

The additional conduct standards will apply to all persons performing PCF functions in all RFSPs and to all persons exercising significant influence on the conduct of the affairs of an RFSP.

Proposed common conduct standards for individuals include:

- Ensuring that the business for which that person is responsible is controlled effectively.
- Ensuring that the business for which that person is responsible complies with relevant regulatory requirements.
- Ensuring that any delegation of tasks for which they are responsible is to an appropriate person and that they oversee the discharge of the delegated task effectively.

- Disclosing promptly, proactively and appropriately to the Central Bank any information of which the Central Bank would reasonably expect notice.
- Participating effectively in collective decision making.

The Central Bank will have the power to make regulations requiring RSFPs to notify persons performing CF and PCF functions of the applicability of these additional conduct standards to them, to provide relevant training to in-scope individuals and to report to the Central Bank disciplinary actions arising from any breach of additional conduct standards. RFSPs will also be required to establish and maintain policies setting out how RFSPs will embed additional conduct standards throughout their organisation.

Breaches of additional conduct standards may be enforced directly against an individual through the Central Bank’s ASP. It will be a defence if the person can show that they acted reasonably in all the circumstances of the case. A breach of the additional conduct standards may be a basis for the Central Bank finding that a person does not meet the requirements of the fitness and probity regime.

## KEY DATES

Date	Milestone
July 2021	General Scheme of Bill published.
Mid-2022 at the earliest	Subject to the legislative process, Central Bank consultation expected to be launched.
Early 2023 at the earliest	Individual accountability regime expected to come into effect.

## ACTIONS WHICH RFSPS SHOULD BE CONSIDERING NOW TO PREPARE FOR CONDUCT STANDARDS

---

<b>1</b>	<b>DEVELOP A POSITIVE, JOINED-UP INTERNAL COMMUNICATIONS STRATEGY</b>	The individual accountability regime is imminent and it is vital that firms ensure that staff feel the firm is prepared and will support them as they adapt to the regime. This requires a positive internal communications strategy with input from senior management and all relevant functions and avoiding a siloed approach.
<b>2</b>	<b>CONDUCT INITIAL TRAINING</b>	Conduct mandatory initial training on each of the three categories of conduct standards and current proposals regarding regulatory expectations of behaviours required to meet those standards.
<b>3</b>	<b>IDENTIFY REQUIRED SUPPORTS</b>	Consider what ongoing supports staff are likely to require to ensure that the firm and all in-scope individuals comply with applicable conduct standards (e.g. frameworks for delegation of tasks for individuals to whom additional conduct standards apply; adequacy of systems for tracking and communicating updates to regulatory requirements/guidance).
<b>4</b>	<b>IDENTIFY HOW CONDUCT STANDARDS WILL BE EMBEDDED ACROSS THE FIRM</b>	Consider how policies, procedures and documentation will need to be amended to embed conduct standards within the firm (e.g. employment agreements; letters of appointment; fitness and probity procedures; Central Bank reporting procedures; general HR procedures; sales procedures etc).
<b>5</b>	<b>REVIEW WHISTLEBLOWING PROCEDURES</b>	Review whistleblowing procedures to ensure that they capture whistleblowing relating to alleged breaches of the conduct standards.
<b>6</b>	<b>REVIEW D&amp;O COVER</b>	Review D&O cover to ensure it makes appropriate provision for liabilities of individuals for breach of the conduct standards.

## CONCLUSION

---

Many of our clients have been taking steps for some time to prepare for conduct standards coming into effect as part of the individual accountability regime. If you require assistance in preparing for individual accountability please contact any member of our financial regulation team.

## CONTACT US

For more information, please contact any member of the Financial Regulation Unit listed below or your usual William Fry contact



**Shane Kelleher**  
PARTNER  
Head of Financial Regulation  
+353 1 639 5148  
[shane.kelleher@williamfry.com](mailto:shane.kelleher@williamfry.com)



**Lisa Carty**  
PARTNER  
Litigation & Dispute Resolution  
+353 (1) 639 5386  
[lisa.carty@williamfry.com](mailto:lisa.carty@williamfry.com)



**Louise Harrison**  
PARTNER  
Employment & Benefits  
+353 1 489 6580  
[louise.harrison@williamfry.com](mailto:louise.harrison@williamfry.com)



**Patricia Taylor**  
PARTNER  
Asset Management & Investment Funds  
+353 1 639 5222  
[patricia.taylor@williamfry.com](mailto:patricia.taylor@williamfry.com)



**John Aherne**  
PARTNER  
Asset Management & Investment Funds  
+353 1 639 5321  
[john.aherne@williamfry.com](mailto:john.aherne@williamfry.com)



**Derek Hegarty**  
PARTNER  
Litigation & Dispute Resolution  
+353 1 639 5040  
[derek.hegarty@williamfry.com](mailto:derek.hegarty@williamfry.com)



**Ian Murray**  
PARTNER  
Insurance and Reinsurance  
+353 639 5129  
[ian.murray@williamfry.com](mailto:ian.murray@williamfry.com)



**Louise McNabola**  
PARTNER  
Banking & Finance  
+353 1 639 5196  
[louise.mcnabola@williamfry.com](mailto:louise.mcnabola@williamfry.com)



**Ciaran Herlihy**  
PARTNER  
Banking & Finance  
+353 1 639 5234  
[ciaran.herlihy@williamfry.com](mailto:ciaran.herlihy@williamfry.com)

# WILLIAM FRY

DUBLIN | CORK | LONDON | NEW YORK | SAN FRANCISCO | SILICON VALLEY

William Fry LLP | T: +353 1 639 5000 | E: [info@williamfry.com](mailto:info@williamfry.com)

[williamfry.com](http://williamfry.com)

This briefing is provided for information only and does not constitute legal advice

