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4 Cultural reforms in Irish banks. Walking the walk during the COVID-19 pandemic

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1. Introduction

This chapter considers whether the previous global shock to hit the banking sector, the Global Financial Crisis in 2008 ('the GFC'), and more particularly the governance reforms which it engendered, underlines the sector's response to the economic crisis which the COVID-19 pandemic has wrought. It will focus on the position of the Irish retail banks and the changes to culture and behaviour which were introduced since then.

The GFC has been attributed to a number of factors including inadequate financial services regulation and supervision, excessive borrowing, risky investment products, a lack of transparency and corporate governance failings.[2] The most

[1] The cut-off date for information included in this article is 6 May 2020.

[2] See, e.g., Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (2011), Financial Services Authority, *The Turner Review: A Regulatory Response to the Global Banking Crisis* (2009), European Commission, *Report of the [De Larosière] High*

immediate response in the EU was to strengthen the prudential framework and the recovery and resolution regimes. As a result, the banks are in a stronger position in terms of capital and liquidity to withstand the current economic tsunami. The regulatory focus then turned to governance and cultural issues within the banks. The Capital Requirements Directive 2013/36/EU ('CRD IV') requires banks to have robust governance structures and arrangements in place to promote sound and effective risk management.[3] Competent authorities in their annual supervisory reviews are tasked with ensuring that this is the case and including within their scope corporate culture and values.[4] Standards of fitness and probity were also prescribed for directors to ensure their suitability.[5] In this area, progress may have been slower, and the 2019 Supervisory Review and Evaluation Process indicated that governance remains a risk area of particular supervisory concern, highlighting inter alia the limited effectiveness of management bodies and weaknesses in internal controls. Mark Carney, the then Governor of the Bank of England, observed that progress risks being 'overshadowed by a crisis of legitimacy' caused by incidents of misbehaviour and cultural failures across the world since the GFC.[6] These included the fixing of LIBOR by major

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Level Group on Financial Supervision in the EU (2009) and Grant Kirkpatrick 'The corporate governance lessons from the financial crisis' (2009) *OECD Journal: Financial Market Trends* 61.

[3] Directive 2013/36/EU, article 74(1).

[4] Directive 2013/36/EU, article 98(7).

[5] Directive 2013/36/EU, article 91(1). See also ESMA and EBA, *Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU*, EBA/GL/2017/12.

[6] Mark Carney 'Policy Panel: Investment and Growth in Advanced Economies' (Remarks at the 2017 ECB Forum on Central Banking, Sintra, 28 June 2018) <www.bankofengland.co.uk/speech/2017/policy-panel-investment-and-growth-in-advanced-economies>.

banks across the world, mis-selling payment protection insurance in UK banks and money laundering investigations involving Danish, Swedish, and German banks. Although the *2020 Edelman Global Trust Barometer* revealed increasing levels of trust in financial services over the last eight years, it still remained low at 56 %, and the sector was the last in the nine industry sectors examined.[7]

In Ireland, the effects of the GFC were particularly severe and rescuing the banks alone cost the State an estimated €41.7 billion, plus an additional €1 billion annually to service the interest on the debt.[8] Three government commissioned reports and one Parliamentary Banking Inquiry report have been published on the Irish banking crisis, and the consensus is that although it bore 'the clear imprint of global influences', it was in crucial ways 'home-made'.[9] It involved a property bubble, compounded by: an exceptional concentration of lending largely for commercial property purposes; poor supervision; weak corporate governance; and inadequate risk management and controls.[10] In relation to the latter, the Banking Inquiry criticised the decisions of bank boards, managers and advisors to pursue risky business practices to protect their market share and increase profits with undue consideration or appreciation

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[7] Edelman Trust Barometer 2020: Global Report <cdn2.hubspot.net/hubfs/440941/Trust%20Barometer%202020/2020%20Edelman%20Trust%20Barometer%20Global%20Report.pdf?utm_campaign=Global:%20Trust%20Barometer%202020&utm_source=Website>.

[8] The Comptroller and Auditor General, *Report on the Accounts of the Public Services 2018.*

[9] Klaus Regling and Max Watson, *A Preliminary Report on the Sources of Ireland's Banking Crisis* 5, (Government Publications Office, 2010) <inquiries.oireachtas.ie/banking/wp-content/uploads/2014/12/Regling-Watson-May-2010.pdf>.

[10] See further Blanaid Clarke and Niamh Hardiman, 'Crisis in the Irish Banking System' in Sue Konzelmann (ed) *Banking Systems in the Crisis: The Faces of Liberal Capitalism*. (Routledge, 2012).

for the consequences of their actions.[11] Unfortunately, since then, further examples of misbehaviour have come to light. The manner in which the banks treated retail customers on valuable tracker-mortgages since 2010 led to an examination by the regulator, the Central Bank of Ireland ('CBI'), and subsequently to the payment of €683 million in redress and compensation to over 40,000 affected customers.[12] Enforcement investigations are ongoing, and already one of the banks has been fined for regulatory breaches with the CBI's Director of Enforcement noting 'Where firms fail to protect their customers' best interests, our response will be robust and the consequences will be serious.'[13]

It is important to note at the outset that the current economic crisis caused by the COVID-19 pandemic ('the COVID Crisis') differs in significant ways from the GFC. Firstly, it is likely to be even more financially devastating than the GFC. The International Monetary Fund has predicted that the global economy will contract sharply by -3 % in 2020 and in the euro area countries, the contraction is projected at -7.5 %.[14] Ireland is an open economy, and the CBI has estimated that Irish real GDP could decline by around 8 % in 2020 with the unemployment rate reaching a peak of around 25 % in the

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[11] Joint Committee of Inquiry into the Banking Crisis, *Report of the Joint Committee of Inquiry into the Banking Crisis* (2016) <inquiries.oireachtas.ie/banking/volume-1-report/>.

[12] Central Bank of Ireland, *Final Report of the Tracker Mortgage Examination* (July 2019) <www.centralbank.ie/news-media/press-releases/press-release-final-tracker-report-16-july-2019>.

[13] Central Bank of Ireland, 'Public Statement Relating to Enforcement Action Against Permanent TSB plc' (19 July 2019) <www.centralbank.ie/docs/default-source/news-and-media/legal-notices/settlement-agreements/public-statement-relating-to-enforcement-action-against-permanent-tsb-p-l-c.pdf?sfvrsn=2>.

[14] IMF, *World Economic Outlook April 2020* <www.imf.org/en/Publications/WEO/Issues/2020/04/14/weo-april-2020>.

second quarter of 2020.[15] Secondly, the COVID Crisis is a health crisis as well as an economic crisis. The objective of the initial public policy response related to the former, ensuring the hospital systems were not overwhelmed and the 'curve is flattened' whilst seeking to protect economies. In most European countries this involved putting them into a form of temporary cold-storage. The duration of the COVID Crisis will depend to a large extent on the progress of the virus, the development of vaccine and therapeutic treatments and the availability of effective testing capacities – all of which are difficult to predict at this time. This means in turn that, as the European Commission has acknowledged, 'the danger of a deeper and more protracted recession is very real'.[16] Thirdly, and of particular importance in the context of this chapter, unlike the GFC, the banks have an opportunity to be part of the solution at this stage rather than part of the problem.

Part II of the chapter will examine the sources of bank culture and the importance of defining, establishing and embedding an appropriate culture and value system within banks. Part III sets out a brief review of stakeholder theories, the purpose of banks and their responsibilities to their customers and the wider community. Part IV will analyse the changes which have taken place in Irish banking culture since the GFC and consider whether a customer-focused culture might be said to be reflected in their recent actions. As has been noted, 'an avowed

[15] Central Bank of Ireland, *Quarterly Bulletin No.2 of 2020* <www.centralbank.ie/publication/quarterly-bulletins/quarterly-bulletin-q2-2020>.

[16] European Commission, *Spring 2020 Economic Forecast* (May 2020) <ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-forecasts/spring-2020-economic-forecast-deep-and-uneven-recession-uncertain-recovery_en>.

commitment to higher standards may mean little in itself without something to back it up'.[17]

2. Bank culture

An important feature in restoring trust in the banks and their leaders is signalling trustworthiness and one of the mechanisms for doing this is by developing and communicating a strong ethical culture.[18] There is evidence that a positive corporate culture leads to numerous benefits including: increased profitability; improved employee engagement and productivity; reduced employee dissatisfaction, absenteeism and turnover; improved risk management and mitigation; a greater ability to focus on longer-term goals over short term pressures; higher levels of customer satisfaction and loyalty; and improved reputation. Research also suggests that once a particular culture is known or even perceived to exist, it is difficult to persuade people of change especially if the culture is viewed as being based on ignorance, recklessness and hubris.[19] This is important given the fact the GFC and many of the bank scandals since then revealed evidence of these characteristics in the banks and their managers.

Culture is determined and guided to a large extent by a firm's sense of its own purpose and values. It is thus up to each board to identify and communicate its own particular values, and a 'one size fits all' approach is not appropriate. That said, a 'good' bank culture has certain recognisable features. These include:

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[17] William Blair and Clara Barbiani 'The Beauty of Ethics: Towards Re-Establishing Trust in the Financial Sector' (2019) 6 *Pensamiento Social* 79.
[18] Reinhard Bachmann, Nicole Gillespie and Richard Priem, 'Repairing Trust in Organizations and Institutions: Toward a Conceptual Framework' (2015) 36 *Organization Studies* 1123.
[19] Guy Claxton, David Owen and Eugene Sadler-Smith, 'Hubris in leadership: A peril of unbridled intuition?' (2015) 11 *Leadership* 57.

integrity; openness; ethics; regulatory compliance and respect; and a focus on reducing the potential for harm. Since the GFC, there has been an increased emphasis on risk and Andrea Enria, Chair of the Supervisory Board of the European Central Bank ('ECB') noted that:

> Only when a strong risk culture and sound standards of conduct are fundamentally embedded in the behaviour of the business areas will good decisions become the norm.[20]

While an institution engenders such a culture in a variety of ways, including embedding a strong set of values and adhering to ethical or behavioural guidelines, organisational leadership is key. Boards must accept responsibility for establishing the company's purpose and defining and articulating its values and strategy. These value statements will be used to guide employees navigating the most challenging areas of behaviour – the grey zones in which adherence to conduct and values principles is a matter of judgment and not of clear-cut legal requirements.[21] The Basel Committee's *Corporate Governance Principles for Banks* advise senior management to develop a written code of ethics or a code of conduct in order to 'foster a culture of honesty and accountability to protect the interest of its customers and shareholders'.[22] The behaviour of boards and senior managers must then be seen to be consistent with these values and ethics if they are to successfully set the 'tone from

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[20] Andrea Enria,'Just a few bad apples? The importance of culture and governance for good banking' (Speech at a Conference of the Federation of International Banks in Ireland, Dublin, 20 June 2019) <www.bankingsupervision.europa.eu/press/speeches/date/2019/html/ssm.sp190620~f9149fe258.en.html>.

[21] G30, *G30 Banking Conduct and Culture Report: Banking Conduct and Culture: A Permanent Mindset Change* (2018) 5 <group30.org/images/uploads/publications/G30_Culture2018_FNL3lo-compressed.pdf>.

[22] See <www.bis.org/bcbs/publ/d328.pdf>.

the top'. The European Commission is considering whether corporate culture could and should be taken into consideration as part of the fit and proper assessment.[23] Such a move would be welcomed. Boards are also responsible for ensuring that the bank's desired values are embedded and continually reinforced and for identifying ethical failings and taking decisive and early action. A key part of this is ensuring that good behaviour which aligns with the bank's stated values is incentivised and rewarded, and poor behaviour is discouraged and not rewarded. This is important because research in behavioural ethics has shown that human responses are highly dependent upon situational and social pressures. There must be a culture not only of doing the right thing but of being able to speak up in a supportive environment to report incidents of poor behaviour secure in the knowledge that they will be addressed. Boards are responsible too for ensuring that effective systems and controls are in place to identify such misbehaviour. Although board support is key, setting the cultural tone is the responsibility of all managers and employees. The G30 in 2018 warned that:

> Only by making culture stewardship a permanent and integral part of how business is conducted [at all levels of the organisations] will organisations avoid culture fatigue and backsliding.[24]

Regulators are becoming increasingly aware of the need to examine how ethical considerations are factored into the behaviour of the banks in order to guard against misconduct. In 2018, the CBI published a report *Behaviour and Culture of the Irish Retail Banks* undertaken in collaboration with the Dutch

[23] European Commission, *Public Consultation Document Implementing the Final Basel III Reforms in the EU* (October 2019) <ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/2019-basel-3-consultation-document_en.pdf>.
[24] *G30 Banking report* (n 21) 11.

Central Bank setting out the outcome of a series of reviews undertaken in the five main Irish retail banks. The report concluded that the banks had made varying degrees of progress in reinforcing the consideration of the consumer interest. However, it found that there was not a sufficient collective understanding of what 'consumer focus' means and what behaviour it requires and that such a focus was not properly embedded in the banks' structures, processes and systems. It proposed the introduction of a new Individual Accountability Framework to include conduct standards for regulated financial services providers and employees, a Senior Executive Accountability Regime, akin to the UK's Senior Managers Regime, and enhancements to the existing Fitness & Probity Regime. While the banks prepared action plans to respond to the failings identified by the CBI, the latter reiterated earlier this year that one of the key risks remains the lack of a consumer-focused culture within the financial services sector.[25] One positive development which demonstrated the commitment of the retail banks to improving bank culture was the funding and establishment last year of the Irish Banking Culture Board ('IBCB'). Its board constitutes senior individuals from the five retail banks, six non-banking directors with experience in consumer financial services, a financial services union director, a CEO and an independent chairman. The IBCB's objective is to rebuild trust in the sector through promoting a change in behaviour and overall culture leading to an environment in which 'ethical behaviour lies at the heart of banking, values are

[25] Central Bank, *Consumer Protection Outlook 2020* (March 2020) <www.centralbank.ie/docs/default-source/regulation/consumer-protection/consumer-protection-outlook-report/consumer-protection-outlook-report-2020.pdf?sfvrsn=4>.

restored, and reputation for competence is rediscovered.'[26] On the basis of two extensive surveys of stakeholders and bank employees, the IBCB identified nine key priorities for 2019-2020: respectful and transparent communications; customers in vulnerable positions; SMEs; bereaved customers; financial education and literacy; support for community and society; speaking up; staff resilience; and ethics and behaviour. All of these priorities remain relevant and will contribute to the proper treatment of stakeholders during the COVID-19 Crisis.

3. Corporate social responsible and the purpose of banks

In evaluating how banks have responded to the COVID Crisis, it is important to consider their role in society, the tools available to allow them to play this role and the challenges they face. One of the key questions that has dominated corporate governance scholarship over the last hundred years is: in whose interests should the company be run? The shareholder primacy norm advocates that companies be operated in the interests of shareholders. A broader stakeholder theory, by contrast, suggests that they should be operated in the interests of a wider group of stakeholders including employees, customers, suppliers, local communities, and society at large.[27] The former

[26] Opening Statement of Mr. Justice John Hedigan, Chair of The Irish Banking Culture Board, at the Oireachtas Finance Committee 1 October 2019 <www.irishbankingcultureboard.ie/opening-statement-of-mr-justice-john-hedigan-chair-of-the-irish-banking-culture-board-at-the-oireachtas-finance-committee/>.

[27] See for example Margaret Blair and Lynn Stout, 'A Team Production Theory of Corporate Law' (1999) 85 Virginia Law Review 247, Lynn Stout, 'Bad and Not-So-Bad Arguments for Shareholder Primacy' (2002) 75 Southern California Law Review 1189, Stephen Bainbridge, 'In Defense of the Shareholder Wealth Maximization Norm' (1993) 50 Washington & Lee Law Review 1423.

theory is generally attributed to an essay in 1970 by Milton Friedman entitled 'The Social Responsibility of Business is to Increase its Profits'.[28] In a seminal article entitled 'The End of History for Corporate Law', Hansmann and Kraakman suggested 'a widespread normative consensus that corporate managers should act exclusively in the economic interests of shareholders'. [29] However, the academic community remains divided, and the conversation continues. The debate might be said to have re-ignited in 2018 when Larry Fink, CEO of BlackRock in his annual letter to CEOs stated:

> Society is demanding that companies, both public and private, serve a social purpose. To prosper over time, every company must not only deliver financial performance, but also show how it makes a positive contribution to society. Companies must benefit all of their stakeholders, including shareholders, employees, customers, and the communities in which they operate.[30]

In a move considered as highly significant, in August 2019, members of the Business Roundtable of the largest US companies committed publicly to protect the interests of all their stakeholders, not only shareholders. This year, Fink drew the obvious connection between social responsibility and shareholder return, explaining:

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[28] Milton Friedman, 'The Social Responsibility of Business is to Increase its Profits' *New York Times* (13 September 1970, Sunday Magazine, 32). A fascinating article suggests that Friedman was merely reflecting the prevailing thinking of the time (Brian Cheffins, 'Stop Blaming Milton Friedman!' (2020) University of Cambridge Faculty of Law Research Paper *No. 9/2020* <ssrn.com/abstract=3552950>).

[29] Henry Hansmann and Reinier Kraakman, 'The End of History for Corporate Law' (2000) Yale Law School Working Paper No. 235 <ssrn.com/abstract=204528>.

[30] Larry Fink, 'A sense of Purpose' (17 January 2018) <corpgov.law.harvard.edu/2018/01/17/a-sense-of-purpose/>.

> a company cannot achieve long-term profits without embracing purpose and considering the needs of a broad range of stakeholders…. actions that damage society will catch up with a company and destroy shareholder value. By contrast, a strong sense of purpose and a commitment to stakeholders helps a company connect more deeply to its customers and adjust to the changing demands of society. Ultimately, purpose is the engine of long-term profitability. [31]

This emphasis on profit, albeit long term profit, might be classified as a form of enlightened shareholder value.[32] Global companies heard the same message at the World Economic Forum this year, and 140 of the world's largest companies agreed to *The Davos Manifesto 2020* which described as the purpose of a company 'to engage all its stakeholders in shared and sustained value creation.'[33] Edward Rock attributes this current focus on redefining corporate purpose to political dysfunction stemming from the GFC, governmental failures, and legislative inaction in addressing societal issues such as climate change, poverty and inequality.[34] Companies, especially multinationals, are being pressed to take responsibility to work with governments and civil society to address big global challenges which cannot be solved by governments alone or by business or civil society alone.[35] Jaap Winter argues that:

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[31] Larry Fink, 'A Fundamental Reshaping of Finance' (14 January 2020) <www.blackrock.com/hk/en/larry-fink-ceo-letter>.

[32] David Millon, 'Enlightened Shareholder Value, Social Responsibility, and the Redefinition of Corporate Purpose Without Law' (2010) Washington & Lee Legal Studies Paper No. 2010-11 <ssrn.com/abstract=1625750>.

[33] WEF, *Compact for Responsive and Responsible Leadership: The Davos Manifesto 2020* <www.weforum.org/agenda/2019/12/davos-manifesto-2020-the-universal-purpose-of-a-company-in-the-fourth-industrial-revolution/>.

[34] Edward Rock, 'For Whom is the Corporation Managed in 2020?: The Debate Over Corporate Purpose' (May 2020) <ssrn.com/abstract=3589951>.

[35] Interview with Klaus Schwab, *Financial Times* (14 January 2020).

> If corporations want to reconnect with society, they will have to be explicit about their ultimate objective, what value they will add to society. Generating shareholder value should not be the objective of this process, but a consequence.[36]

In a subsequent paper written since the COVID-19 outbreak, Winter states 'if ever there was a time that society needs business to take responsibility beyond its own immediate financial success, that time is now'.[37]

It is submitted, the role of banks is even more clear-cut. Although not subject of the same level of academic debate as non-banks in this context, Klaus Hopt has argued recently that for banks, stakeholder governance has prevailed over shareholder governance.[38] In making this argument, he refers to empirical evidence that banks practising shareholder-oriented governance styles fared less well than banks with less shareholder-prone boards and less shareholder influence. The Basel Committee's *Corporate Governance Principles for Banks*[39] has acknowledged the crucial role banks play 'intermediating funds from savers and depositors to activities that support enterprise and help drive economic growth'. It describes the primary objective of corporate governance in banks as 'safeguarding stakeholders' interests in conformity with public interest on a sustainable basis'. The CBI too has

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[36] Jaap Winter, 'Dehumanisation of the Large Corporation' (January 2020) <ssrn.com/abstract=3517492>.

[37] Jaap Winter, 'Addressing the Crisis of the Modern Corporation: The Duty of Societal Responsibility of the Board' (April 2020) <ssrn.com/abstract=3574681>.

[38] Klaus Hopt, 'Corporate Governance of Banks and Financial Institutions: Economic Theory, Supervisory Practice, Evidence and Policy' (2020) European Corporate Governance Institute - Law Working Paper No. 507/2020 <ssrn.com/abstract=3553780>.

[39] The Basel Committee on Banking Supervision, 'Corporate Governance Principles for Banks' (July 2015) 3 <www.bis.org/bcbs/publ/d328.pdf>.

emphasised its expectation that banks 'act in their customers' best interests in tandem with fulfilling their prudential obligations.'[40] If conflicts exist between different stakeholders, the Basel Committee is clear that shareholders' interests should be secondary to depositors' interests.[41] A group of senior UK bankers and financial services professionals in their 2016 report *Banking on Trust* acknowledged this hierarchy. They accepted that following the GFC, banks had work to do to convince people that they can be trusted 'to be safe and responsible custodians of clients' money' and to 'put customers back at the heart of the business model'. The challenge was for banks 'to demonstrably exercise a duty of care to those they serve'.[42] As the next section of the chapter discusses, the COVID Crisis provides such an opportunity.

4. COVID-19 crisis

There is now an immediate and pressing need for banks to support their retail and commercial customers and the communities at large. Their ability to provide this support has been strengthened by the actions of the ECB. Banks were given permission to use various liquidity and capital buffers which the ECB estimated could potentially finance up to €1.8 trillion of lending within the EU.[43] The ECB also introduced supervisory

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[40] Central Bank of Ireland, Behaviour and Culture of the Irish Retail Banks (July 2018) 20. <www.centralbank.ie/docs/default-source/publications/corporate-reports/behaviour-and-culture-of-the-irish-retail-banks.pdf?sfvrsn=2>.

[41] BCBS Principles (n 39) 3.

[42] Banking Futures Working Group, *Banking on Trust Engaging to Rebuild a Healthy Banking Sector: Report on the Banking Futures Consultation* (2016) 5 <www.meteos.co.uk/wp-content/uploads/BankingFutures-Report-1-February-2016.pdf>.

[43] ECB, 'ECB Banking Supervision provides further flexibility to banks in reaction to coronavirus' (20 March 2020)

flexibility regarding the treatment of non-performing loans[44] although further flexibility will be required as the timetable to resolve arrears remains overlytight. It is worth noting however that while the ECB's asset purchase programmes and targeted lending operations have had a positive effect on bank liquidity and market financing conditions, and together with the negative deposit facility rate, have led to increased lending volumes, they have also had a negative effect on bank profitability.[45]

Having identified the important social function played by banks and their need to consider stakeholders and the wider public interest, we might consider how well their actions in the last three months has demonstrated a recognition of this higher purpose and a commitment to the values they espouse. Many of the banks have engaged in social activism. This would include the contribution of €2.4m by AIB to Trinity College Dublin's immunology project tackling COVID as well as the donation by Bank of Ireland of €1m in emergency funding to communities with urgent needs arising from the COVID pandemic. These are significant and commendable actions. Whilst they might be said to fall outside the banks' business operations, they are consistent with the stated values of the banks.

When examining the measures taken by the banks as part of their business operations, we would expect to identify actions which benefit a wider group of stakeholders but which also

<www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm.pr200320~4cdbbcf466.en.html>.

[44] EU and national regulators have indicated that flexibility will guide their supervisory approaches, <eba.europa.eu/eba-provides-further-guidance-use-flexibility-relation-covid-19-and-calls-heightened-attention-risks>.

[45] ECB, '*The Euro Area Bank Lending Survey – First quarter of 2020*' (28 April 2020) <www.ecb.europa.eu/stats/ecb_surveys/bank_lending_survey/html/ecb.blssurvey2020q1~17a1b2b7d2.en.html#toc2>.

benefit shareholders and would not be inconsistent with the shareholder primacy norm. These would include actions, for example, which lead to reputational gain or increase customer loyalty and which would be in keeping with the enlightened shareholder value norm described above. One might also hope to find actions which are taken to protect stakeholders for the sake of their relevant interests themselves in response to what John Parkinson described as 'a supposed moral imperative that may conflict with profit maximisation'.[46] These actions would involve uncompensatable costs which would not improve shareholder returns – stakeholderism in its truest form.

In March, the five Irish retail banks and the Banking & Payments Federation Ireland ('BPFI'), their representative body announced a joint plan to support businesses and personal customers impacted by the COVID-19 pandemic stating that 'we will play our part at this critical time'.[47] The announcement stated that the banks were working collaboratively to ensure that 'continuity of service plans are in place, that critical functions can continue, and that staff remain available to continue to service customers'. This plan was welcomed by the IBCB as a demonstration that the banks 'recognise their responsibilities as financial pillars in our society with a critical role to play in the present and future of the Irish economy'.[48] Despite reduced margins, low growth prospects and falling share prices, banks have indeed stepped up to play a key role in supporting their

[46] John Parkinson, *Corporate Power and Responsibility: Issues in the Theory of Company* Law (Oxford University Press 1995).

[47] Banking & Payments Federation Ireland (18 March 2020) <www.bpfi.ie/news/banks-set-joint-plan-support-businesses-personal-customers-impacted-covid-19-pandemic/>.

[48] IBCB, 'Irish Banking Culture Board welcomes agreement from banks on COVID-19 measures' (18 March 2020) <www.irishbankingcultureboard.ie/irish-banking-culture-board-welcomes-agreement-from-banks-on-covid-19-measures/>.

customers and especially small and medium size enterprises by extending credit to customers facing financial strains.[49] They are also acting as conduits for Governmental financial support to businesses. All the banks have dedicated web pages and bank staff to provide information on COVID-19 supports and tailored solutions. Overdraft facilities and mortgage and loan payment breaks are available, and the latter has been designed to ensure customers' credit records will not be negatively affected. By the end of April, over 65,000 mortgage payment breaks and over 22,000 SME payment breaks had been granted.[50] In addition, priority banking hours in branches and priority phone lines have been introduced for elderly and vulnerable customers, and the BPFI has produced a guide to help those cocooning at home to manage their money.

These are important contributions and although costly in the short-term will build trust and begin perhaps to restore the reputation of the banks. However, transparency and clear communications are key at a time like this and customers must be made aware in advance of the terms of any renegotiated deals and what their repayments will be once the break is over. The IBCB has called on its member banks to communicate clearly and transparently with their customers how fees and charges associated with unpaid direct debits, unauthorised overdraft fees would be treated.[51] It stated, 'How we as individuals and

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[49] An ECB survey conducted between 19 March and 3 April 2020 revealed an upward impact of the COVID-19 pandemic on firms' loan demand, largely driven by emergency liquidity needs (ECB lending survey (n 45)).

[50] BPFI, 'BPFI members confirm Payment Break extension from three months to six months for those directly impacted by Covid-19' (30 April 2020) <www.bpfi.ie/news/bpfi-members-confirm-payment-break-extension-three-months-six-months-directly-impacted-covid-19/>.

[51] IBCB, 'How the banks act now will determine how they are perceived in the future' (6 April 2020) <www.irishbankingcultureboard.ie/how-the-banks-act-now-will-determine-how-they-are-perceived-in-the-future/>.

companies treat those who rely on us during these difficult times will impact on our reputations and trust levels for many years to come.' Banks must avoid any actions which might lead to claims of profiteering or sharp practice. In the UK, the Financial Conduct Authority stated that it had received 'credible reports' of a small number of banks failing to treat their corporate clients fairly when negotiating new or existing debt facilities and using their lending relationship to exert pressure on corporate clients to secure roles on lucrative equity mandates.[52] While there have been no reports of similar egregious actions in Irish banks, the line between applying the usual business model and profiteering is a fine one in the eyes of the public. One Irish bank was criticised by a number of politicians and the popular press for imposing standard quarterly charges in respect of the accounts of customers who had lost their jobs during the COVID-19 crisis.[53] The bank responded by announcing the temporary deferment of such charges for SMEs.

In moves that involve a more immediate effect on shareholders' return and bring the shareholder versus stakeholder model into sharper focus, EU banks were asked by the ECB not to pay dividends or buy back shares at least until October 2020.[54] In its Recommendation, the ECB stated that it was essential that banks conserve capital to support the real economy and absorb losses and that this 'should take priority at present over discretionary dividend distributions and share buy-backs.'[55]

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[52] FCA, 'Ensuring fair treatment of corporate customers preparing to raise equity finance' (28 April 2020) < www.fca.org.uk/publication/correspondence/dear-ceo-ensuring-fair-treatment-corporate-customers-preparing-raise-equity-finance.pdf>.

[53] *Irish Examiner* 31 March 2020.

[54] Recommendation of the European Central Bank of 27 March 2020 on dividend distributions during the COVID-19 pandemic and repealing Recommendation ECB/2020/1 (2020/C 102 I/01).

[55] Ibid, recital 1.

The ECB also indicated an expectation that shareholders would 'join this collective effort'. At the time of writing, three of the Irish banks had announced they would suspend dividend payments. This could be seen as the triumph of the true form of stakeholderism as such steps are not without their costs to pension funds, charities and other savers, who depend on dividends as a source of steady income. Capital conservation is relevant too in the context of bonus pay. Remuneration has been described as one of the most politically controversial culture-related issues.[56] In the aftermath of the GFC, it was recognised that pay had become a driver for excessive risk-taking and short-termism. CRD IV thus regulated both the structure and quantum of remuneration. It gave remuneration committees responsibility for the preparation of remuneration decisions[57] requiring them to consider in doing so 'the long-term interests of shareholders, investors and other stakeholders in the institution and the public interest'[58]. The remuneration principles set out in CRD IV provide further detail on the development of a remuneration policy which should be aligned with an institutions' risk appetite, values and long-term interests.[59] Although senior executives at a number of UK banks[60] have published their intention to take pay cuts in solidarity with the customer, the Irish banks have not yet made statements on this point. In a pre-emptive move, Andrea Enria has warned European banks to exercise 'extreme moderation'

[56]Huw Macartney, *The Bank Culture Debate: Ethics, Values and Financialization in Anglo-America* (Oxford University Press, 2019) 18.
[57] Directive 2013/36/EU, article 93(2).
[58] Directive 2013/36/EU, article 95(2).
[59]Directive 2013/36/EU, article 92(2).
[60] David Crow, 'HSBC, StanChart and Lloyds drop executive bonuses' *Financial Times* (New York 8 April 2020).

on their bonus payments this year, threatening to intervene if they failed to show restraint.[61]

5. Conclusion

While it is not possible to determine definitively that the current actions of the banks are attributable to their commitments to improved corporate culture and customer-focused behaviour, there appears to have been a marked improvement in the behaviour of the banks during the COVID Crisis. Banks are 'walking the walk' after years of 'talking the talk'.

It is heartening to see banks step up to the mark and demonstrate their commitment to their customers and the wider community, living the values in a real and demonstrable manner. This is likely to become more difficult in coming months. Although banks faced into the Covid Crisis with stronger balance sheets, they will encountersignificant challenges in continuing to support their retail and corporate clients during a recession and to provide liquidity even as credit losses mount. In addition, as noted earlier, there are significant societal challenges which will require the co-operation of all corporate players. For example, global warming is projected to be approaching 1.2C above pre-industrial levels, and despite the current reduction of new emissions, the concentration of greenhouse gases in the atmosphere remains a huge concern. As many commentators have noted, the COVID Crisis could present an opportunity to rebuild our economies and to make better choices in so doing. It is noteworthy that there has been a marked difference in the debate surrounding the decisions which needed to be made in the COVID Crisis from previous debates on climate change where scientists have been ignored or discredited. The UK Met

[61] *Financial Times* Interview 31 March 2020.

Office stated, 'A reliance and trust in science to inform action from governments and society to solve a global emergency are exactly the measures needed to seed in plans to solve the next crisis facing mankind: climate change.'[62] Clearly, there will be challenges along the way. There is a possibility that scientists will once again fall into disrepute – there are already signs in a number of countries of politicians seeking to shift the blame onto scientists for their own inadequate or untimely responses. There will also be demands from some sectors of the community to get the economy moving as quickly as possible and without the costs or burdens perceived to flow from environmental regulation. Another concern which has been expressed is that social responsibility will overshadow environmental responsibility in the immediate aftermath of the COVID Crisis. The necessary current focus on the 'S' component of ESG may divert attention from the 'E' component. This would be unfortunate as all elements of ESG are equally important in the long run.

It is submitted that banks have a fundamental role to play in this context through the manner they conduct their own businesses and their support for the sustainable practices of their customers and through their influence in shaping public policy. In the COVID Crisis, banks have demonstrated their ability to exercise their social licence, and a reversion to business as usual would be unforgivable. Investors, of course, need to be rewarded for their investments and the return of dividends and share buy-backs will, in time, be appropriate. However, banks have taken up the mantle of cultural leadership and must not relinquish it. The renowned English historian, G. M. Trevelyan, summed up the revolutionary movements of the mid-nineteenth

[62] Jonathan Watts, 'Meteorologists say 2020 on course to be hottest year since records began' *Guardian* (27 April 2020).

century by noting ‘1848 was the turning point at which modern history failed to turn.’ We must ensure that the same is not said about the post COVID period.

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