CUMA Submission

in response to

CP 138

Cross-Industry Guidance on Outsourcing

26th July 2021

Introduction

CUMA, the representative body for credit union managers in Ireland, welcomes the Central Bank of Ireland (CBI) 'Consultation on the Cross-Industry Guidance on Outsourcing, following on from the publication of the paper 'Outsourcing – Findings and Issues for Discussion' in November 2018 and the hosting of an industry Outsourcing Conference in April 2019.

The most recent publication is particularly appropriate at a time of very significant economic and social disruption worldwide.

1. Are there are any aspects of the Guidance that are unclear? If so, please advise what these are and provide suggestions on the additional clarity required.

A detailed description of the Central Bank's minimum expectations and standards would be a welcomed resource for regulated firms in navigating and meeting requirements going forward.

2. What, if any, are the other areas/topics that should be covered in the Guidance (specify sections) or in future versions of the Guidance?

The Guidelines represent a guide to good practice for outsourcing and set out the CBI's expectations concerning governance and management of outsourcing risk.

Credit unions should consider the nature, scale and complexity of their outsourcing operations when applying the Guidelines and apply a risk-based approach to managing outsourcing risk. The CBI acknowledges the significant benefits that outsourcing can bring but is also of the view that outsourcing can pose significant risks if not managed effectively.

The Covid-19 pandemic highlighted the need for further global consistency and coordination in the approach to operational resilience, the value of a cross-sectoral approach to the development of global operational resilience principles, and the need to maintain flexibility for financial institutions to adapt to challenging circumstances and to their own respective business models.

Reliability and resilience of key technology third parties / outsourced arrangements has been well demonstrated during this time. Given the reliance and limitations of control and visibility into a vendor's operations, third party risk management and operational resilience programs take on a greater priority in the operating environment and have worked well.

Remote access also played a vital role. The importance of communication is also important with respect to internal and external stakeholders.

A prolonged period like Covid-19 required additional assessment and enhancements to meet demands of a changed work environment. Many operations / processes are still carried out by people. More focus needs to be placed upon this ”people-component”.

The guidelines should reflect regulatory forbearance, the vital role of third party / outsourced arrangements and management thereof and the importance of ensuring business continuity plans are properly and regularly tested and fully enabled to be operational when invoked.

3. What, if any, are the significant issues /or concerns or unintended consequences that might arise due to the provisions of the Guidance?

CUMA notes that the consultation paper relies over-much on the boards challenge role without due regard to capacity of the board members (and most particularly directors on a voluntary, unremunerated board, as is the statutory composition of credit union boards) to meet such stringent standards, as opposed to this type of board's obligation to have the necessary professional risk management in place. This expectation may not be met.

We believe that the following sentence in paragraph 1 of 4.1 is critical in identifying responsibility: "While the performance of functions and activities can be outsourced, boards and senior management of regulated firms cannot outsource their responsibilities."

It is therefore critical, particularly in light of the volunteer, unremunerated nature of the Board of a credit union, that this shared responsibility be reflected throughout this part.

Yet, in a number of areas throughout the document, senior management is not included in the sharing of responsibility, thus excluding a senior manager who may be the most technically able.

Section 4[g], for example, on Outsourcing, while designating reporting to the volunteer board, omits any mention of necessary reporting to the CEO.

Section 4J of the same subsection details a level of microscopic decision reporting that borders closely upon undefined cross-over between the executive and non-executive functions and may be unattainable and unfeasible.

Section (h) [page 15] states: "Ensure that appropriate skills and knowledge are maintained within the regulated firm to effectively oversee outsourcing arrangements from inception to conclusion. This is especially important where the activities being outsourced are technical and/or complex in nature, for example in the case of outsourcing to CSPs.

Acknowledging the importance of this point, we must however draw attention to a particular dilemma here, namely that scale and capability are critical factors in this consideration. For many smaller entities, such as credit unions in Ireland, the decision to outsource, and indirectly sub-outsource, is driven by the lack of resources and capacity in the subject-area of outsourcing. This will mean that the maintenance of "appropriate skills and knowledge" within the credit unions may be possible only for a limited number, given that a significant number did not have them in the first place.

Throughout the paper there is an emphasis upon assembling a Board of Directors whose members have a high-level of skills in technology and in outsourcing in particular. These skills, combined, are not in abundant supply, and come at a significant cost. The blanket imposition of this requirement upon a sector that is precluded by legislation (The Credit Union Act 1997, as amended) makes compliance with this requirement virtually impossible.

The expectation that highly technical challenge can be mounted by non-technical people is not realistic.

The exclusive focus of responsibility on to directors instead of inclusion of Senior Executives will make the recruitment and retention of volunteer directors even more difficult than it is now.

Exclusive reporting to non-technical boards on outsourcing, as opposed to reporting to the Board and the Chief Executive, could lead to ineffectiveness and divisiveness.

4. The Central Bank has considered existing sector specific legislation and guidance as they pertain to outsourcing and is of the view that this Guidance serves to provide additional clarity on the Central Bank's expectations and best practice when firms utilise outsourcing. Are there any particular aspects of the Guidance that appear to be at odds with existing sectoral requirements and could give rise to confusion/ misinterpretation? If so, please provide details on any aspects which you believe may cause confusion and suggest how best to address such issues.

The guidance clearly suggests an executive board that the CEO is a member of (if one reads the reporting lines on outsourcing reporting). We have outlined already some (of many) examples of where the CEO is excluded from reporting.

The Credit Union Act 1997 as amended clearly delineates between board and executive functions. The guidance is clearly at odds with these requirements.

The Credit Union Act 1997 as amended clearly excludes the CEO from Board membership. This guidance implies otherwise.

The section on Ongoing Monitoring and Challenge (8) states: "In conducting appropriate monitoring and challenge of the outsourcing framework, the underlying outsourcing arrangements and the operational functioning of same, regulated firms should incorporate outsourcing assurance into its three lines of defence."

Account needs to be taken of the ability for this challenge and assurance prerogative to be effectively delivered when internal audit, risk and compliance functions in credit unions can be outsourced, as provided for in the Credit Union Act 1997 as amended, and most particularly where more than one of these functions can rest with the same third-party firm.

As regards addressing confusion instanced, there is a case to be made for a refinement of language used so as not to compromise existing legislation and issuing sector-specific additional guidelines. Consideration also needs to be given to the need to take account of the volunteer, ethical and non-remunerated director model of credit union governance and to tailor the system (without compromising standards) to fit the sector rather than seeking to force a sectoral governance sea-change to fit a model tailored for significantly larger entities.