

Submission to the Central Bank of Ireland

**Re: Public Consultation on
Guidance on the Standards of Fitness and
Probity
Consultation Paper 160**

Introduction

CUDA (the Credit Union Development Association) welcomes the opportunity to make a submission on behalf of its member credit unions to the public consultation by the Central Bank of Ireland on draft Guidance on the Standards of Fitness and Probity.

As a representative body and development association for many of Ireland's largest and most progressive credit unions, CUDA's membership is supportive of a robust Fitness and Probity regime and a consumer-focused culture. Credit unions operate under a culture and ethos of service to their membership. This ethos is enshrined in legislation that helps improve the well-being of its members' and communities¹. Credit unions recognise the relationship with their members as paramount. It is this ethos and culture, together with their cooperative business model that make credit unions naturally aligned with the principles of a people-first approach. This is enhanced by a Fitness and Probity regime tailored for credit unions to ensure that they can continue to provide financial services whilst rooted in the co-operative model.

Credit unions welcomed the introduction of a Fitness and Probity regime for credit unions in 2013. This resulted in the establishment, on a phased basis, of a tailored Fitness and Probity regime for the sector. The most recent phase introduced on the 22nd September 2023 with the publication of Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions) (Amendment) Regulations 2023 (S.I. No. 454 of 2023) and came into operation on the 1st October 2024. The tailored Guidance on Fitness & Probity for Credit Unions ("CU Guidance") most recent version was updated in September 2024.

Notwithstanding the tailored approach for the sector, we acknowledge the Central Bank's proposal to consolidate the existing guidance documents into one single document. In the most part, commonality exists across the current guidance documents for all regulated financial service providers. That said, whilst the enhanced guidance is useful, there is also useful and practical guidance in the tailored approach currently applying to credit unions that is lost in a single document catering for all financial service providers. We elaborate further on this point below.

We appreciate the new approach is to help provide greater clarity and transparency of supervisory expectations as recommended by the Enria Report. Section 1.24 provides that the Guidance on the Standards of Fitness and Probity represents the Central Bank's expectations. In creating a single or standardised approach, the draft Guidance weaves in interlinked documents and requirements including Corporate Governance Requirements, SEAR and European legislation including SSM Framework and European Supervisory Authorities Guidelines. Whilst in the most part these areas do not apply to the legal structure of credit unions, some requirements do spread into the credit union sector in the draft Guidance. We elaborate on this point further on in this Paper and note that this will require additional consideration for credit unions.

¹ Credit Union Act 1997, Section 6(2)

Questions and Responses

- (a) *Do you agree with the proposed revision to the draft Guidance?*
- (b) *Are the enhancements to the draft Guidance useful to you?*
- (c) *What other elements could the Central Bank include within the draft Guidance?*

We have addressed the three questions by reviewing Chapters 2 – 5 of the **draft Guidance** as set out below. In considering the revisions to the **draft Guidance** we also took into consideration the current **CU Guidance**. This helped identify enhancements in the **draft Guidance** that will be useful for credit unions going forward. We have also identified other elements which could be included in the **draft Guidance**, such as the interlink between the sections of the **draft Guidance** and a specific Standard. This approach is applied in the current **CU Guidance** and is useful and practical.

Chapter 2: Population of CFs and PCFs and Identification

Chapter 2 of the **draft Guidance** sets out the approach when identifying the CF population, incl. outsourcing (2.1 – 2.21) and the approach to identifying the PCF population, incl. outsourcing, CBI Declaration of PCF, Temporary Officers, Exemptions from F&P Standards (2.22 – 2.48).

Part A of the current **CU Guidance** provides for identifying persons in CFs and PCFs (s.3.4); How to know if a person is performing a CF or PCF? (s.4); and Outsourcing (s.5). Part B provides for the approval process for PCFs (s.6); Interviewing PCFs (s.7); Offers of appointment to PCFs (s.8); and Persons performing PCFs on a temporary basis (s.9).

Whilst the **draft Guidance** expands provisions and is helpful in identifying CF and PCF roles generally and provides guidance on identification of specific CFs and PCFs, the approval process for PCFs is provided for in less step-by-step detail, than in the current **CU Guidance**.

Likewise, other provisions in the current **CU Guidance** (s.9.1 – s.9.4) provides more transparency and clarity for credit unions than the enhanced provisions in the **draft Guidance**. For example, the current **CU Guidance** helpfully provides the wording of Regulation 10 on Temporary Officers (s.9.1) followed by step-by-step requirements when considering temporary officers in the credit union.

Whilst a tailored approach for credit unions provides the most clarity for the sector, we are also in favour of a single guidance document. That said, where each document provides different aspects of guidance the concern is that credit unions are now referring to two guidance documents in order to obtain understanding and clarity of supervisory expectations. This is not conducive. The preference is that the **draft Guidance** is developed in a more inclusive manner for the sector that would avoid the need for a credit union to reference both guidance documents.

Chapter 3 - Fitness & Probity Standards, Due Diligence

Chapter 3 of the **draft Guidance** sets out the Standard of Fitness (3.1 – 3.4); Standard of Probity (3.5 – 3.7); Standard of Financial Soundness (3.8 – 3.10); Due Diligence incl. Legal Obligation (3.11-3.20); Fitness Due Diligence (3.22); Probity Due Diligence (3.23 – 3.25); Due Diligence and Elected CFs/PCFs (3.26 – 3.33); Criminal Civil & Regulatory Action (3.34 – 3.41); and Financial Soundness Due Diligence (3.42 – 3.44).

Part B of the current **CU Guidance** provides for PCFs and the Related Process for Approval and Appointment. Whilst Part C provides for Determining the standard of fitness that is appropriate to a particular CF (s.11); Due diligence to be undertaken by a CU to assess a person's fitness to perform a CF (s.12); Determining the standard of probity (s.13); Due diligence to be undertaken by a CU to assess a person's probity to perform a CF (s. 14); Due Diligence – criminal offences (s.15); and Persons prohibited from holding roles in a credit union under the Credit Union Act 1997 (s.16).

Clarification in the **draft Guidance** of continuing legal obligation, including key steps (3.12), is helpful. There is no change to standards of fitness or probity, but standard of financial soundness is enhanced with new guidance by supervisory expectations for credit unions to consider (3.8). This is helpful.

The **draft Guidance** provides updated and expanded requirements on due diligence for fitness regarding considerations of concurrent responsibilities and conflicts of interest (3.22(vi)). Credit unions are very mindful of their legal obligations under the Credit Union Act 1997, such as for directors having sufficient time to fulfil their roles (Section 53), and on conflicts of interest which can apply to all officers holding CF roles (Section 69). Therefore, additional practical guidance of this nature is helpful for credit unions when implementing and enforcing those obligations. Additional guidance at 3.23 – 3.25 is also beneficial.

We note a policy change to the current **CU Guidance**, with respect to due diligence for credit unions' Board Oversight Committee members. Current **CU Guidance** provides the "*nomination committee and the board oversight committee should have joint responsibility for conducting due diligence on the members of the board oversight committee*" (s.18.1.3). The **draft Guidance** sets out revised expectations of the Central Bank that due diligence on Board Oversight members is the sole responsibility of the Nomination Committee (3.27 & Table 2). This is a change to existing policy, procedures and general practice. We appreciate it is not conducive for a Board Oversight Committee to carry out due diligence on themselves, that said given the role of the Board Oversight Committee they operate independently of the Board of Directors (as set out in Part IVA, Credit Union Act 1997). Specific dialogue with the sector in this issue is warranted.

We note the expanded guidance in relation to criminal, civil and regulatory actions with clarifications regarding how to assess past actions (3.34 - 3.41) in the **draft Guidance**.

Chapter 15 of the current **CU Guidance** sets out Central Bank expectations on due diligence for criminal offences (s.15.1), pursuant to Section 4.1(g) of the Fitness and Probity Standards for Credit Unions. The current **CU Guidance** does not provide guidance on other aspects of Section 4.1 of the F&P Standards for Credit Unions, with no reference to civil convictions and related due diligence investigations. The clarity and additional guidance in the **draft Guidance** are helpful. There is a concern with lack of sufficient public databases for this task of due diligence and a reliance on self-certification (as noted in the Table, Appendix 4).

The Central Bank expectations (as noted at 3.23 and 3.36) that the exercise is repeated annually for the purpose of Certification requirement is noted (and we acknowledge the expectation is on foot of ensuring the Certification process is meaningful as well as continued adherence to legislative and regulatory requirements) albeit with some trepidation – due to time elements, increasing number of CFs, and lack of ease in obtaining appropriate confirmations, as noted above.

As noted in the opening paragraphs, under the tailored approach for the credit union sector, the current **CU Guidance** is helpful in the manner in which the guidance is set out to reference directly back to the specific Standards. For example, in Chapter 3 **CU Guidance** reference to a specific Standard is followed by guidance relating to that Standard (eg. Standards 3, 3.1 & 3.2(c)). This provides additional clarity and is somewhat lost in a single document that is not tailored for any one sector. This link between specific Standards and the **draft Guidance** would be beneficial. As noted above, for clarity as to Central Bank expectations and transparency, credit unions could find themselves referring to two guidance documents.

Chapter 4 - Key Considerations that form part of an F&P assessment

Chapter 4 of the **draft Guidance** sets out expectations on Time Commitments (4.3 – 4.13); Sharing of PCF roles (4.14 – 4.17); Conflicts of Interest (4.18 – 4.23); Independence of Mind and Independence (4.24 – 4.33); Requirements of role/Inherent responsibilities (4.34 – 4.39); Levels of knowledge & experience (4.40 – 4.50); and Collective suitability, diversity & inclusion (4.51 – 4.65)

This chapter is welcome. While there is some overlap with various sections throughout the current **CU Guidance**, there is no corresponding or compatible chapter in the current **CU Guidance**.

This *new* chapter provides guidance for credit unions when considering matters relating to time commitments, sharing of PCF roles, conflicts of interest (both existing and potential with examples given and expectations of CBI set out), independence of mind, requirement of role / inherent responsibilities (with specific sections dedicated to credit unions), levels of knowledge & experience (with specific sections dedicated to credit unions) and collective suitability, diversity and inclusion of Boards.

We have acknowledged the benefits of guidance on areas such as time commitments and conflicts of interest above (being a legislative consideration under the Credit Union Act 1997 also). Other aspects of Chapter 4 of the **draft Guidance** echo existing obligations such as individual and collective responsibilities of Boards.

That said, Chapter 4 also introduces additional considerations for credit unions:

- References new terminology (eg “Independence of Mind”). Such terminology / concepts are already established in other financial service providers due to the interlink between the **draft Guidance** and the Corporate Governance Requirements;
- Includes more prescriptive requirements for credit unions (eg diversity of skills and experiences of Boards); and
- Outlines new expectations for consideration by credit unions. Examples being:

“While the SEAR and the Inherent Responsibilities under the SEAR Regulations apply to certain sectors only, the Inherent Responsibilities define relevant roles in broad terms and as such the Central Bank considers that they are relevant for all such roles across all sectors” (@ 4.34).

“The Central Bank’s Corporate Governance Requirements for credit institutions and insurance undertakings and certain sector specific legislation require firms to establish a written policy on diversity with regard to selection of individuals for nomination to become members of the board. The Central Bank supports establishment of a diversity policy in all firms as best practice” (@ 4.65).

As a result of the above considerations, it will be necessary for credit unions to review and update policies, procedures and processes and provide additional CF training and awareness. We believe these factors should be considered when determining the effective date of the new guidance document. To meet other expectations in the Guidance (eg diversity) new or revised policies and procedures will also be required.

In addition, whilst credit unions fully endorse the purpose of a Fitness and Probity regime, other considerations are also at the forefront, such as the dependence on the voluntary sector in order to achieve the governance structure in credit unions. We note the Tables in Chapter 4 setting out:

- “Inherent Responsibility as per SEAR”,
- “Summary of Role”,
- “Level of Experience” – including years of experience, and
- “Level of Knowledge”.

The guidance set out in the Tables is useful to better understand supervisory expectations. That said, when filling Board vacancies (and whilst credit unions are mindful to ensure directors are fit and proper) concerns over some requirements in the **draft Guidance** emerge, including requirements relating to years of experience. The inclusion of Section 4.48 in this regard is noted and very important. For the credit

union sector, it acknowledges that where years of experience' requirement is not met, a person may be fit and proper where there is "*appropriate justification*".

Chapter 5 - Ongoing obligation to comply: certification

Chapter 5 of the **draft Guidance** sets out guidance on the Certification process (5.1 – 5.29); and Material Changes or Concerns (5.30 – 5.33). This is aligned with the most recent current **CU Guidance** - Certification (s.10); and Material changes or concerns regarding fitness and/or probity (s.17), with some enhancements included (as set out @.5.5 and 5.32 of the **draft Guidance**). Supervisory expectations in Chapter 5 are useful to assist the certification process being fully and appropriately embedded as a new requirement.

Again, we thank the Central Bank for the opportunity to comment on the revised draft Guidance, and we look forward to further dialogue on any matters raised above.



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