



SUBMISSION FROM

THE CREDIT UNION DEVELOPMENT ASSOCIATION

IN RESPONSE TO

**The Central Bank of Ireland's Consultation on
Fitness and Probity Regime
for Credit Unions
CP62**

28th February 2013

Introduction

CUDA (Credit Union Development Association) is a progressive representative & development association that was formed in 2003 by Ireland's most progressive and leading Credit Unions, in recognition of the real need for progressive credit union leadership and development in an increasingly complex financial environment.

CUDA is the only legally incorporated representative association for Credit Unions in the Republic of Ireland. Its membership has over 250,000 members.

We would be happy to elaborate further on any points made in this submission, if required. Please direct any queries on the comments that follow to Ms. Elaine Larke, Head of Legal and Compliance at the contact details at the end of this submission.

We have corresponded with our member Credit Unions. General commentary is provided in Part 1. In Part 2 we have addressed the questions as set out in the Consultation Paper.

1. General Commentary

As set out in our Response to the Registry of Credit Union's Information Request on the proposed Fitness and Probity Regime in August 2012, we support the general principle of fitness and probity for the credit union sector and acknowledge the recommendations of the Commission on Credit Unions in this regard.

Our suggestions/ideas in support of the introduction of fitness and probity regime are set out below in Part 2. We also welcome the publication of the Regulatory Impact Analysis at Appendix E that informed the Central Bank's rationale on fitness and probity. However, it does raise some questions. The RIA places considerable emphasis on the findings of a 2011 Strategic Review compiled by Grant Thornton. The weight given to the Report highlights two concerns:

1. The Report is outdated. It does not take into account the Credit Union Act 2012, and the RIA does not acknowledge this.
2. CUDA is already on record with the Central Bank as to concerns in the formulation of the findings of this Report

The Report found that significant deficiencies in standards of governance existed in the credit union sector, concerns were also reported that found the decision making process was not clearly defined, often shared between the Boards and management, and, dominant individuals were exerting a disproportionate influence on policy and decision making.

The RIA concludes that partly based on the findings of the Grant Thornton Report the Central Bank intends to introduce fitness and probity to address these concerns around governance. All of these issues are addressed in a comprehensive and prescriptive manner the 2012 Credit Union Act. The Act resets the boundaries between governance and executive, it provides for oversight and reviews of the Board, Board members and the manager; it provides for clarity around job descriptions and sets requirements that the Board must possess the necessary level of "knowledge, skills, qualifications, experience, competence, capacity and probity" as well as the "relevant financial services expertise, qualifications, and background". The Report - due to its timing, nor the more recent RIA, reflects this.

The required aptitudes of the Board, volunteers and staff required under the Act, and the requirements under fitness and probity are running on separate tracks and at no point appear to join up. Credit unions are obliged to complete an annual Compliance Statement certifying compliance with Part II of the Act. Several oversights are in place under the Act to ensure compliance is in fact achieved – by means of the risk management systems, compliance function,

internal audit function, Board Chair, mandatory nomination committee and the Board Oversight Committee. Yet, under a wholly separate legislative provision credit unions are required to complete a due diligence process to ensure compliance with the fitness and probity regime. Whilst good governance is the corner stone for better managed credit unions going forward we would have welcomed a more consistent approach to the introduction of fitness and probity with the requirements already in place.

Indeed, the RIA puts forward a number of options to address the issues as identified. It states that Option 1 is to “Do Nothing”; this the RIA concludes would not address the governance issues. Credit should surely be given to the Act for addressing governance inefficiencies. The Commission, due to their tremendous time and effort, together with a further lengthy period of debate and consultation during the Bills passage through the Oireachtas lead to a very comprehensive code of governance in the Act - all of which is open to the Regulator to regulate further on.

As suggested we believe there should be more consistency with the 2012 Act. The Act was created specifically for the credit union sector, taking into account the credit union model. Due to its prescriptive nature, the introduction of a fitness and probity regime should compliment the new governance regime – the changes which have already commenced in many credit unions. Furthermore, we do not see a reason why a fitness and probity regime cannot be introduced under the 2012 Act by way of regulatory intervention on the part of the Registry of Credit Unions.

We would welcome a joined up approach to the governance regime under the Act and that under fitness and probity, especially in light of their similarities. We are of the view that the starting point is the 2012 Act. The existing regime applicable to banks cannot be applied to the credit union sector – despite this route listed at Option 3 of the RIA. Whilst we are of the view that the volunteers that make credit unions so successful are resilient and will take on board an appropriate and phased approach to fitness and probity, the existing regime is not a viable or workable solution for a volunteer lead organisation.

We have outlined in many previous Papers that “one size does not fit all” and, that credit unions are unique in their structure and ideologies. Legislation specific to the sector is in existence since 1966. Under legislation a unique department in the Central bank was created to oversee credit unions. Is this sector specific legislation not more appropriately designed to develop good governance with in the sector?

2. Replies to Questions

1. **Do you agree with the tailored approach to the designation of CFs and PCFs for credit unions in the draft Regulations? Do you think any additional CFs or PCFs should be designated?**

We have no difficulty with the tailored approach as set out in the draft Regulations. As stated above however, for complicity and consistency we would prefer to see the introduction of such a regime as regulatory measures flowing from the governance requirements under the 2012 Act.

2. **Do you agree with the phased approach for the implementation of the Fitness and Probity regime for credit unions?**

We support the introduction of a Fitness and Probity regime. We believe the timeframes are reasonably designed to allow credit unions adapt to the concept in light of other monumental changes occurring in the sector. To lessen the impact and uncertainty we would welcome that clear Guidance is issued well in advance of mandatory requirements for credit unions performing due diligence.

3. **Do you think the draft Standards cover all relevant matters for credit unions?**

3.1

The Central Bank states in Section 5 that the draft Standards have been tailored to take account of matters relevant to credit unions, including experience gained in an employment context.

The draft Standards reads that

*“a person shall have the qualification, experience, competence **and** capacity appropriate to the relevant function” (para3.1, pg3)*

We believe this should read *...qualification, experience, competence **and/or** capacity....* This will take account of the fact that volunteers and Directors may have vast and relevant experience that ensures they have the competence necessary to perform a CF or PCF, yet, may not have obtained a qualification. As the condition currently reads an individual is required to have a qualification. Due to the nature of a volunteer Board we are of the view that competence gained through experience is equally valuable, and, that this can then be supplemented by appropriate training.

3.2

We do not agree with the approach adopted in Para 3.2.c). that permits the Central Bank to take into account the competence and skills demonstrated by a

PCF or CF in a credit union that may have required “*financial support*” or “*required action under the Central Bank and Credit Institutions (Resolution) Act 2011*”. We are at a loss as to why Para 3.2.c) is included at all. The provision raises a number of issues:

- i. No similar provision is contained in the existing 2011 Fitness and Probity Standards – despite the fact that banks have received considerable more financial support than the credit union sector will ever require. Furthermore, the Resolution Act, as was reported to us at the time, was introduced primarily with banks in mind;
- ii. A credit union and/or the Central Bank can take many factors into account when deciding if a person is competent and capable, we do not see the reasoning why you make specific reference to the examples given in Para 3.2.c). There is also a possibility that such conduct will also be captured under the requirement for an individual to be honest, ethical and to act with integrity. It is therefore up to the individual in question to prove that his actions did not adversely affect his ability to carry out the role.
- iii. There is a fear amongst credit unions that Fitness and Probity may be used to inappropriately remove or “move on” members of the Board. Directors have a duty to act in good faith and in the member’s best interest. However where that action was subsequently wrong, the Director can ordinarily rely on the defence that he honestly believed his actions were in the credit union’s best interests.
- iv. Perhaps the examples outlined in Para 3.2.c). are better placed in the Guidance to assist credit unions when determining competence and capability.

We could suggest the removal of Para 3.2.c).

4. Do you think that the Central Bank should issue guidance on the Fitness and Probity regime for credit unions?

Yes, we welcome a proactive approach by the Central Bank. By the need to pose the question, one would conclude that sector specific guidance is required. Guidance will help credit unions “get it right” from the off, set and prevent a reactive response or sanction from the Central Bank. Guidance will help inform the Nomination Committee when carrying out their new and comprehensive role. In particular the Guidance should inform existing and new CFs and PCFs of the requirements when carrying out due diligence, and, the expectations of the Central Bank in this regard.

Furthermore, the draft Standards currently makes reference to the Guidance so if the Central Bank does not intend to issue Guidance on the Regime for credit unions, clarity is required on the application of the existing Guidance for the sector, and, obviously the sections therein not applicable to credit unions clearly referenced.

5. Are there any additional areas of the Fitness and Probity regime for credit unions which the guidance should cover?

5.1

Directors come from a wide diverse background, some, but not all, worked in the finance sector. Many fear that they do not have the skills to meet the requirements under the Standards. We do not believe this is the case. Directors bring with them a wide variety of skills. These skills are transferrable and makes the credit union model what it is. The guidance should be credit union specific taking on board the diverse background that volunteers originate and where appropriate identifying the existing skills as suitable.

5.2

Guidance should address the application of the Standards in the credit union sector. Directors already adhere to responsibilities under their fiduciary duties. The application of the standards in their day to day role is what would a reasonable man in a comparable position have done? A director should not be expected to possess any special qualifications as to do so would place fitness and probity beyond the reasonable man test.

5.3

Many Directors, volunteers and staff complete training on an on going basis – some of which are mandatory – a significant volume of training is awarded hours for continuous professional development (CPD). Attendees may or may not have attained QFA, CUA or other certified courses. That said the training ordinarily meets requirement set down by professional organisations such as accountancy bodies. When providing guidance on ensuring a PCF or CF meets the Standards under Fitness and Probity the existing training should be acknowledged and its importance recognised.

5.4

The Guidance should recognise the structure of credit unions and provide specific guidance to the differing entities for example, the Oversight Committee, etc.

5.5

As part of the draft Standards, the individual must be able to “*demonstrate*” to the credit union his ability to perform the role in question (para 4, Pg 4, and, para 5.1, pg 6). Some credit unions have queried what exactly this implies, and, how does not establish the facts. We would welcome guidance and Central Bank’s expectation on this regard.

6. Do you agree with the implementation timeframe for the application of the existing Fitness and Probity regime to those credit unions also authorised as retail intermediaries?

We believe the implementation timeframe is reasonable in this regard.



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