



Banc Ceannais na hÉireann
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Eurosystem

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Feedback Statement on CP62 Fitness and Probity Regime for Credit Unions



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Introduction

1. On 18 December 2012 the Central Bank of Ireland (the “Central Bank”) published Consultation Paper CP62 *Fitness and Probity Regime for Credit Unions* (“CP62”).
2. CP62 sets out the Central Bank’s proposals for the introduction of a tailored Fitness and Probity regime for credit unions, including:
 - (i) An Overview of the Fitness and Probity regime for credit unions;
 - (ii) Standards of Fitness and Probity for credit unions;
 - (iii) Guidance on Fitness and Probity for credit unions;
 - (iv) Credit unions authorised as retail intermediaries;
 - (v) Phasing and transitional arrangements; and
 - (vi) Processing Fitness and Probity applications.
3. CP62 raised six specific questions for respondents to address on these proposals and also included a Regulatory Impact Analysis examining the impact of different policy options for the implementation of the Fitness and Probity regime on credit unions, and their associated costs and benefits.
4. The closing date for receipt of comments was 1 March 2013 and 13 responses were received. The responses received can be broken down as follows:
 - Eight individual credit unions;
 - Three representative bodies;
 - One advisory body; and
 - One accountancy firm.All individual responses are available on the Central Bank website at: www.centralbank.ie/regulation/poldocs/consultation-papers/Pages/closed.aspx.
5. The Central Bank has considered the responses received to CP62 and where considered appropriate has taken on board specific feedback, particularly in relation to the development of non-statutory guidance. In the main, however, the Central Bank will proceed as outlined in CP62. Credit unions

and other stakeholders should assume that unless expressly stated herein the proposals as described in CP62 will apply.

6. This paper summarises the responses received to CP62 and outlines our considered decisions. The sections in this feedback statement reflect the sections and questions used in CP62. Each section sets out a summary of the responses received to each question along with the Central Bank's comments and decisions. A general section has also been included with responses to general comments made that did not directly relate to the six specific questions.
7. This feedback statement is being published at the same time as the final Regulations, Standards and Guidance on Fitness and Probity for credit unions. These documents have been amended to incorporate changes resulting from the consultation process. As now published, the documents provide the credit union sector with a clear description of the Fitness and Probity regime which will apply to credit unions.
8. The final Regulations, Standards and Guidance will be effective from 1 August 2013. Nothing in this feedback statement should be read with, seen as a clarification of or a supplement to the Regulations, Standards and Guidance. This feedback statement is published to promote understanding of the policy formation process within the Central Bank and is not relevant to assessing compliance with regulatory requirements.
9. Finally, the Central Bank is grateful to all parties who responded to CP62 and wishes to thank them for their time and effort.

Section 1: Overview of the Fitness and Probity regime for Credit Unions

Question (i) – 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? If you have other suggestions please provide them along with the supporting rationale. It should be noted that the Act is prescriptive in setting the relevant criteria applying to functions and positions which may constitute CFs and PCFs.

10. All respondents generally agreed with the tailored approach to the designation of Controlled Functions (“CFs”) and Pre-approval Controlled Functions (“PCFs”) in the draft Regulations.
11. One respondent requested clarification as to why there were no additional PCF roles for larger credit unions as envisaged by the Report of the Commission on Credit Unions. Another respondent suggested that the vice-chair and the secretary of the credit union be designated as PCFs due to the importance of these roles. A third respondent indicated that credit unions (depending on size) will have difficulty with the tailored approach proposed.

Central Bank: The Central Bank notes that many of the respondents viewed the tailored approach to the designation of CFs and PCFs in the draft Regulations favourably. Accordingly, these provisions have been retained.

In response to the matters raised by the other respondents, CP62 takes account of the recommendations of the Commission on Credit Unions. However, it was deemed appropriate to have two PCFs for all credit unions initially. It should be noted that the other PCFs¹ proposed by the Commission on Credit Unions for larger credit unions will be designated as CFs and accordingly these roles will fall within the scope of Fitness and Probity Regime for credit unions. In addition, the vice-chair and secretary will also be

¹ The other PCFs proposed by the Commission on Credit Unions are board members, the chair of the nomination committee and the chair of the board oversight committee.

designated as CFs.

As indicated in CP62, following implementation, it is intended to conduct a review of the Fitness and Probity regime for credit unions taking account of the new regulatory framework and the restructuring of the credit union sector. Consideration will be given at this stage to introducing additional CFs and PCFs.

12. One respondent was of the view that many of the issues previously identified relating to governance and Fitness and Probity have been dealt with in the Credit Union and Co-operation with Overseas Regulators Act 2012 (the "2012 Act"). In addition, the respondent felt that the governance functions of the board of directors, as outlined under the 2012 Act, and the Fitness and Probity requirements do not join up, and suggested that Fitness and Probity be introduced as regulatory measures flowing from the governance requirements under the 2012 Act.

Another respondent was of the opinion that there was a "lost opportunity" in the Fitness and Probity regime to address known credit union governance weaknesses.

Central Bank: The Central Bank Reform Act 2010 sets out the framework and legal basis for the introduction of Fitness and Probity for all regulated financial service providers, including credit unions. The 2012 Act sets out governance requirements for credit unions but does not contain requirements or powers in relation to Fitness and Probity, as these are dealt with under the Central Bank Reform Act 2010.

A key goal of the introduction of the Fitness and Probity regime for credit unions is to ensure that persons that exercise significant influence and control in a credit union are capable, competent and financially sound persons with the appropriate skills, experience, knowledge and integrity to manage and govern the credit union for the benefit of all stakeholders.

The Central Bank is of the view that the introduction of a Fitness and Probity regime for credit unions, through the application of the Central Bank Reform

Act 2010, along with the new governance requirements contained in the 2012 Act will provide a framework to improve governance standards across the credit union sector and will assist in addressing governance weaknesses in credit unions.

13. One respondent requested that the Central Bank clearly state in the regulations what roles are required for CFs. Another respondent also suggested that the role of loan officer should be a CF role, while a third respondent suggested that customer facing roles be considered as additional CFs.

Central Bank: Roles that fall within CFs will vary across different credit unions and will depend on the functions performed by the individual, and for that reason it is not deemed appropriate to provide a prescriptive list of CF roles in the Regulations. However, guidance on CFs has been included in the document "Guidance on Fitness and Probity for Credit Unions" to assist credit unions in assessing which roles may fall within the specific CF categories.

Question (ii) – Do you agree with the phased approach for the implementation of the Fitness and Probity regime for credit unions? If you have other suggestions please provide them along with the supporting rationale.

14. 10 of the 13 respondents agreed with the phased approach for implementation of the Fitness and Probity regime for credit unions, while one respondent considered the introduction of the first phase by 1 July 2013 to be a tight implementation schedule.
15. One respondent suggested an additional transitional arrangement where credit unions with total assets of greater than €10 million but less than €25 million would not have to comply with the Fitness and Probity regime for credit unions until July 2014, while another respondent did not agree that credit unions with total assets of less than €10 million should be outside the regime until 2015, but rather in the interests of good governance that all credit unions should be included in the regime from the outset.

Central Bank: The Central Bank notes that many of the respondents agreed with the phased approach for implementation of the Fitness and Probity regime for credit unions. Accordingly, the phased approach remains unchanged. The implementation date of the regime however has been extended by one month to 1 August 2013, which should provide credit unions with some additional time to familiarise themselves with the regime while still ensuring implementation in Quarter 3 2013.

Section 2: Standards of Fitness and Probity for Credit Unions

Question (iii) – Do you think the draft Standards cover all relevant matters for credit unions? If you have other suggestions, please provide them along with the supporting rationale.

16. Five respondents were of view that the draft Standards covered all relevant matters for credit unions. A number of respondents requested clarity on different areas of the draft Standards. These are dealt with separately below.
17. One respondent was of the view that the draft Standard in relation to competence and capability was insufficiently detailed and sought further assistance in this area.

Central Bank: The Central Bank is of the view that Section 3 of the Standards – Conduct to be Competent and Capable is sufficiently detailed. However, the “Guidance on Fitness and Probity for Credit Unions” which has been developed contains details on the minimum due diligence the Central Bank expects a credit union to undertake when assessing a person’s competence and capability, such as obtaining records of experience or skills gained through a previous role.

18. Four respondents queried whether the wording of Section 3.1 (“A *person shall have the qualifications, experience, competence and capacity appropriate to the relevant function*”) means that qualifications are mandatory for all roles, raising concerns that if this was the case, it would make it difficult for a credit union to get directors. One respondent also sought clarification of Section 3.1 as they felt that it does not facilitate the appointment of volunteer directors that historically gain training and experience while in the role.

Central Bank: The Standards require that a person shall have qualifications and experience appropriate to the relevant function. The requirement to have a qualification is therefore dependent on the requirements of the role. Where the

role requires a specific professional qualification, the credit union should satisfy itself that the person has that specific qualification. It is however, a matter for the credit union to determine if the role requires a specific qualification.

19. One respondent felt that Section 3.2, which provides details on how a person can demonstrate competence and capability, was prohibitive on members being considered for election for a CF. Another respondent was also of the view that the introduction of the regime will result in a number of existing volunteers not seeking election and that this should be factored into the phasing of the regime.

Central Bank: Section 3 of the Standards requires that CFs have the competence and capability appropriate to the function they are performing and does not prohibit any person that is competent and capable to be a member of the board of directors from seeking election to the board of directors.

As outlined in the Regulatory Impact Analysis contained in CP62, the average current board size is 12 (significantly in excess of the minimum required number of seven). Additionally there is a strong volunteer culture within the credit union sector. Therefore we consider that the introduction of a Fitness and Probity regime will not have a significant impact on volunteers in the credit union sector and could prove attractive for individuals with the competence and capability to join the credit union and could assist succession planning and volunteer development.

The Fitness and Probity regime for credit unions is being introduced on a phased basis and includes transitional arrangements which will provide credit unions with time to prepare for the introduction of the regime, including succession plans and volunteer development strategies, while ensuring governance standards in the credit union sector are strengthened.

20. One respondent requested the deletion of Section 3.2(c), which refers to competence taking into consideration any role the person may have had previously in a credit union that may have contributed to the necessity for the credit union to receive financial support or be subject to regulatory action, as the respondent was of the view that no similar provision is

contained in the Standards for the existing Fitness and Probity regime. The respondent was also of the view that Section 3.2(c) is already captured under the requirement for an individual to be honest, ethical and to act with integrity.

Central Bank: The Central Bank is of the view that this provision should remain as it is based on the Section 3.2(c) in "Conduct to be Competent and Capable" section of the existing Fitness and Probity Standards but has been tailored for the credit union sector.

21. One respondent requested more detail on Section 3.2(d) of the draft Standards, which includes the requirement to "*have a sound knowledge of the business of the credit union as a whole*", on what constitutes "*sound knowledge*".

Central Bank: Section 3 of the Standards requires a person's conduct to be competent and capable. Under Section 3.2(d), a person is expected to have sufficient and comprehensive knowledge and understanding of the business of the credit union to support them in carrying out his / her role in a competent and capable manner.

The "Guidance on Fitness and Probity for Credit Unions" contains guidance on the due diligence a credit union is expected to undertake when assessing standards of fitness a person must have, which include the requirement to have a sound knowledge of the business of the credit union as a whole.

22. One respondent suggested that a limit be placed on the exact number of additional roles which can be held under Section 3.2(f).

Central Bank: The time required to perform any additional role will vary depending on the role. Therefore placing a limit on the number of additional roles a person may perform may not ensure that the person has the ability to perform the role subject to the Standards if one of those additional roles requires a significant allocation of time. The Standard is worded to ensure the person has the ability to discharge the duties of the function that is subject to

the Standards and it will be a matter for the person to manage any additional roles to ensure they can comply with this Standard.

23. One respondent considered Sections 4 and 5 of the draft Standards which relate to probity, place too much responsibility on a candidate to demonstrate where they do not meet the Standards, and that the sections were open to interpretation that would make consistency of application difficult.

Central Bank: The Central Bank is of the view that the Standards adequately explain what is required for a person to be considered fit and proper. Sections 4.1 and 5.2 of the Standards in particular provide details in relation to the assessment of a person's probity. In addition, guidance on the due diligence the Central Bank expects credit unions to undertake when assessing a person's probity has been included in the "Guidance on Fitness and Probity for Credit Unions".

24. Five respondents commented on Section 4.1(I) of the draft Standards which requires a person to demonstrate that his / her ability to perform a controlled function is not adversely affected to a material degree where "*the person has held in the past five years or currently holds a loan with the credit union which has been or is in arrears for a period of greater than nine weeks*". Many of these respondents felt that the requirement was too onerous. Specifically,
- one respondent requested that the section be deleted;
 - one respondent asked that a more realistic timeframe be considered;
 - one respondent was in agreement that a person in arrears for nine or more weeks should not hold a CF role, but that the proposed requirement of arrears for a period of greater than nine weeks over the past five years was too onerous;
 - one respondent suggested that the nine week period be extended to 12 weeks; and
 - one respondent suggested that this requirement was more appropriate under the "Financial Soundness" draft Standard and that an aspect of materiality should be introduced.

Central Bank: Having considered respondents' views, the Central Bank has amended Section 4.1(l) of the Standards to reduce the time period from five years to one year and increased the time period of arrears to 90 days.

Accordingly, the Standard has been updated to reflect that a person must be able to demonstrate that his or her ability to perform the relevant functions is not adversely affected to a material degree where they currently have / had arrears of 90 days or more during the past year. Where a person's circumstances fall within with this provision, it is a matter for the credit union to determine whether this affects that person's ability to perform the relevant role to a material degree.

This Standard is within the "Conduct to be honest, ethical and to act within integrity" section as it relates to any potential conflict of interest that may exist between the circumstances outlined and the person's role in the credit union.

25. One respondent requested more detail on Section 5.1 of the draft Standards on what constitutes "sound and prudent".

Central Bank: In relation to Section 5 – the Financial Soundness Standard, the Standards require an individual to manage his / her affairs in a sound and prudent manner. Section 5.2 sets out further detail on matters that may indicate a person has not managed his or her affairs in a sound and prudent manner. In addition, the "Guidance on Fitness and Probity for Credit Unions" contains guidance on the due diligence the Central Bank would expect a credit union should undertake in relation to Financial Soundness.

Section 3: Guidance on Fitness and Probity for Credit Unions

Question (iv) – Do you think that the Central Bank should issue guidance on the Fitness and Probity regime for credit unions?

26. All respondents were of the view that guidance would be of benefit. Some respondents highlighted particular areas on which they would like to see specific guidance. These are outlined below.

Central Bank: The Central Bank notes that many of the respondents were of the view that guidance would be of benefit. In response to this, the Central Bank has developed "Guidance on Fitness and Probity for Credit Unions".

Question (v) – Are there any additional areas of the Fitness and Probity regime for credit unions which the guidance should cover? If you have other suggestions please provide details along with the supporting rationale.

27. Many respondents requested that the guidance be prescriptive on how a credit union should conduct due diligence, what the expectations of the Central Bank were in relation to this and who within the credit union is responsible for conducting the due diligence, to ensure consistency of application and compliance across the credit union sector. Many respondents also requested prescriptive guidance on what minimum levels of experience, skills, training, qualifications and capacity are required for CFs and PCFs.

Central Bank: Guidance has been provided on the due diligence that the Central Bank expects credit unions to undertake when assessing a person's Fitness and Probity. It will be a matter for each credit union to assess whether an individual's level of experience, skills, training, qualifications and capacity are appropriate to the relevant CF or PCF role taking account of the responsibilities of the role.

28. Two respondents requested that guidance should be provided on the timely assessment of candidates in advance of a credit union's AGM and how this links in with the election and nomination processes.

Central Bank: Where a CF is subject to an election process, credit unions need to allow sufficient time in advance of the election for the credit union to conduct due diligence on a person that is proposed to hold that CF and in the case of a PCF to obtain approval from the Central Bank. Guidance has been provided on the process for electing CFs / PCFs in the "Guidance on Fitness and Probity for Credit Unions".

29. One respondent asked if a person who has been elected to the position of chair at the board meeting following the AGM can act as chair while awaiting approval if they have not already been pre-approved.

Central Bank: In accordance with section 23 of the Central Bank Reform Act 2010 a credit union will be required to obtain approval in writing from the Central Bank before appointing a person to perform a PCF role. Therefore if the person who is elected to the position of chair at the board meeting following the AGM has not been pre-approved in writing by the Central Bank they will not be able to perform the role of chair until pre-approval has been received. Guidance on this has been provided in the "Guidance on Fitness and Probity for Credit Unions".

30. One respondent sought clarification on the term of office / appointment for the chair, in particular in relation to the maximum term of office / appointment of an in situ chair upon re-election, to ensure that the in situ chair can see out their term to a maximum of four years, and the new chair is not required to seek approval each year.

Central Bank: In situ PCFs that are subject to re-election or re-appointment are required to seek pre-approval when their role is subject to re-election or re-appointment. Therefore an in situ chair of a credit union will require pre-approval if they wish to seek re-election. Once a person has been approved to a role that is subject to re-election it is the intention of the Central Bank that the approval given shall state that s/he shall not be required to undergo the

approval process again as long as s/he remains in that role. Guidance on the pre-approval process for the chair is contained in the "Guidance on Fitness and Probity for Credit Unions".

31. One respondent sought clarification on the term of appointment / contract of a manager, in particular as to whether an in situ manager who is currently on a fixed-term contract would be required to seek pre-approval from the Central Bank if the credit union opts to extend their contract, or make the manager permanent, or if their fixed-term contract with the credit union expires.

Central Bank: Persons who are in situ in PCF roles who are subject to employment contract renewals may also be subject to the approval process. There may be situations where contracts contain certain provisions which mean a contract renewal is not a re-appointment as such. Ultimately it will be for the credit union to determine based on the terms of contracts, in conjunction with legal advice if appropriate, whether they need to comply with the obligation of section 23 of the Central Bank Reform Act 2010 in this regard or not. Guidance on the re-election / re-appointment of in situ PCFs is provided in the "Guidance on Fitness and Probity for Credit Unions".

32. One respondent queried how the transitional arrangements of the Fitness and Probity regime will operate while considering section 53(6)(b) of the Credit Union Act, 1997 ("the 1997 Act"). Section 53(6)(b) of the 1997 Act would require the full board to be re-elected at the next AGM following the commencement of this provision. The respondent sought clarification as to whether directors and the chair will continue to be considered in situ if section 53(6)(b) is commenced during the transitional arrangement period.

Central Bank: Section 53(6)(b) of the 1997 Act which would require the re-election of the full board at the AGM following commencement may have an impact on in situ PCFs depending on the timing of the commencement.

33. One respondent queried if a chair or manager vacates their position for a period of time, will they be required to seek re-approval from the Central Bank, and if so, would exceptions be made for extended absences due to extenuating circumstances e.g. ill health?

Central Bank: A person who has been pre-approved to perform a PCF would not require re-approval if his / her absence was for a short period, for example due to ill health, and there had been no change in circumstances that could impact the person's Fitness and Probity. Where a person has not been performing the PCF role for an extended period, the Central Bank would consider on a case by case basis whether pre-approval is required.

Guidance has been provided on persons performing PCF roles on a temporary basis (including acting and / or interim appointments) in the "Guidance on Fitness and Probity for Credit Unions".

34. Three respondents sought guidance on how to manage a situation where a person does not meet the Standards on an on-going basis.

Central Bank: Section 21 of the Central Bank Reform Act 2010, states that a credit union shall not permit a person to perform a CF unless the credit union is satisfied on reasonable grounds that the person complies with the Standards and that the person has agreed to abide by any such Standards. Credit unions should develop appropriate HR and / or governance procedures, in consultation with their legal advisors where appropriate, to ensure compliance with this legal requirement.

35. One respondent requested specific guidance around the minimum standards for CFs and PCFs, given the level of uniformity of organisational structure, business model and services amongst credit unions.

Central Bank: Guidance has been included in the "Guidance on Fitness and Probity for Credit Unions" on determining the standard of Fitness and Probity that is appropriate to a CF. Guidance has also been provided on the due diligence that should be undertaken by a credit union to assess a person's

Fitness and Probity to perform the CF.

36. One respondent requested clarity on who is responsible for assessing the competency of a person holding a role as a CF or PCF.

Central Bank: Responsibility for assessing competence of a CF resides with the credit union. As required under section 21 of the Central Bank Reform Act 2010, a credit union must not permit a person to perform a CF unless the credit union has satisfied itself on reasonable grounds that the person complies with the Standards and has agreed to comply with them. To this effect the credit union is expected to conduct due diligence on the person's compliance with the Standards. Guidance on this is contained in the "Guidance on Fitness and Probity for Credit Unions".

37. One respondent commented that the outsourcing of certain support activities to companies that provide services to credit unions should be governed by the Fitness and Probity regime where necessary.

Central Bank: A section on outsourcing has been included in the "Guidance on Fitness and Probity for Credit Unions".

38. One respondent suggested that FAQs and guidance on the Online Reporting System be included in the guidance.

Central Bank: A FAQ document has been developed for the Fitness and Probity regime for credit unions.

A separate guidance document ("Fitness and Probity individual Questionnaire Application Guidance for Credit Unions") has also been created to explain how to use the Online Reporting System to submit an Individual Questionnaire.

All documentation on Fitness and Probity, including the documents referred to above are available on the Central Bank website.

39. One respondent requested clarity on what was meant in the Section 4.1 of the draft Standards by being “able to demonstrate” the ability to perform the role in question.

Central Bank: Section 4.1 of the Standards relates to the assessment of a person’s probity. Where the person confirms that one or more of the circumstances set out in Section 4.1 (a)-(l) apply, the person must be in a position to demonstrate that his or her ability to perform the CF is not adversely affected to a material degree by that matter(s). The credit union should require that the person concerned submit to the credit union any underlying documents relevant to the matter (for example, a final decision or report and / or key correspondence). Guidance on this is available in the “Guidance on Fitness and Probity for Credit Unions”.

40. One respondent requested that the guidance cover conflicts of interest procedures and appeals procedures.

Central Bank: Guidance has been provided on the appeals process in the case of a decision by the Central Bank to refuse to grant prior written approval for an appointment to a PCF, this decision may be appealed to the Irish Financial Services Appeals Tribunal (“IFSAT”) pursuant to Part VIIA of the Central Bank Act, 1942².

Credit unions should ensure they have appropriate HR and governance procedures to deal with appeals and conflicts of interest. Section 69 of the 1997 Act sets out requirements for credit unions in relation to conflicts of interest.

41. One respondent requested consideration be given to the impact of the Personal Insolvency Act 2012 on candidates.

Central Bank: The Central Bank is aware of concerns credit unions and

² Part VIIA of the Central Bank Act, 1942 does not currently apply to credit unions. The 2012 Act contains an amendment which will apply Part VIIA of the Central Bank Act, 1942 to credit unions. This provision has yet to be commenced.

persons may have in relation to the Personal Insolvency Act 2012 ("PIA") and the impact this may have on a person's ability to comply with the Standards. In relation to personal insolvency and the Financial Soundness Standard, the Standards require individuals to manage their affairs in a sound and prudent manner. A person must be able to demonstrate that his / her role in a relevant function is not adversely affected to a material degree by any of the factors listed, including where the person has defaulted upon any payment due from a compromise or scheme of arrangement with his / her creditors.

The Standards apply in the same manner to the personal insolvency regime as they would to any compromise or scheme of arrangement between debtor and creditor. The fact that the debtor has a PIA arrangement in place will not automatically prevent that person being approved as a PCF or from failing to comply with the Standards. As explained in the "Guidance on Fitness and Probity for Credit Unions", it is for the person to demonstrate that his or her ability to perform the relevant function is not adversely affected to a material degree by, for example, defaulting upon a payment due under a scheme of arrangement.

Each case should be decided on its own merits and facts and each situation should be analysed individually. Ultimately the onus is on the applicant to demonstrate that the fact that there is a PIA arrangement in place (or if they have large judgements registered against them for example) will not adversely affect the role for which they are applying.

42. Two respondents felt that the draft Individual Questionnaire should have been included as part of the consultation process.

Central Bank: The Individual Questionnaire is designed to capture the information necessary to check whether a PCF meets the Standards. Therefore, the Individual Questionnaire is consistent with and reflective of the Standards. The Individual Questionnaire is based on the Individual Questionnaire created for the existing Fitness and Probity regime, but has been tailored to account for the credit union sector. In August 2012, a draft of the Individual Questionnaire was issued to a sample of credit unions and the credit union representative

bodies for comment. These responses were considered in finalising the Standards that were issued for consultation and the development of the Individual Questionnaire. Any changes made to the draft Standards as a result of this consultation have been reflected in the final Individual Questionnaire.

Section 4: Credit Unions Authorised as Retail Intermediaries

Question (vi) – 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? If you have other suggestions please provide them along with supporting rationale.

43. Six of the 10 respondents that answered this question, felt that the implementation timeframe for the application of the existing Fitness and Probity regime to those credit unions also authorised as retail intermediaries was reasonable.

Central Bank: The Central Bank notes that many respondents viewed the implementation timeframe for the application of the existing Fitness and Probity regime to those credit unions also authorised as retail intermediaries favourably. Accordingly, this implementation timeframe has been retained.

44. Four respondents were of the view that the requirements for credit unions authorised as retail intermediaries to comply with the existing Fitness and Probity regime from 2015 was too onerous. One respondent did not agree with the proposed implementation timeframe and suggested that the implementation timeframe be extended to July 2017. One respondent indicated that these requirements should not be applied given that credit unions are restricted in the range of services they can offer as a retail intermediary and that the retail intermediary service compromises a small amount of a credit union's overall income. One of these respondents suggested that the additional PCFs that will apply to credit unions authorised as retail intermediaries should be restricted to the executive of the board only.

Central Bank: The Central Bank notes the concerns raised by a number of respondents in relation to extending the existing Fitness and Probity regime to credit unions authorised as retail intermediaries.

Credit unions that are authorised as retail intermediaries are currently subject

to all other requirements that retail intermediaries are subject to for their retail intermediary business, including the Minimum Competency Code 2011 and the Consumer Protection Code 2012.

In order to ensure there is a level playing field between those credit unions that are authorised as retail intermediaries and all other retail intermediaries, the Central Bank is of the view that credit unions authorised as retail intermediaries should be subject to the same Fitness and Probity regime as other retail intermediaries for their retail intermediary business. As outlined in CP62, transitional arrangements will be provided so that credit unions that wish to continue operating as retail intermediaries will have time to put the necessary arrangements in place and credit unions that do not wish to continue operating as retail intermediaries will have time to wind down this aspect of their business.

45. One respondent sought clarification as to whether the application of the existing Fitness and Probity regime to those credit unions that are authorised as retail intermediaries will apply to customer facing staff who do not sell insurance products.

Central Bank: The existing Fitness and Probity regime consists of 11 CFs, some of which are customer facing CFs. The requirements of the existing Fitness and Probity regime will apply to that part of a credit union's business activities that offers retail intermediary services. The existing Fitness and Probity regime will therefore apply, as appropriate, to staff that are engaged in that part of a credit union's business that offers retail intermediary services, including customer facing staff that fall within the CF definitions.

Section 5: General Comments

46. One respondent suggested an 18 month post implementation review following the introduction of the Fitness and Probity regime for credit unions.

Central Bank: As outlined in CP62, it is intended to perform a post-implementation review following the implementation of the two phases of the Fitness and Probity regime for credit unions, taking into account the new regulatory framework for credit unions and the restructuring of the credit union sector.

47. One respondent raised concerns that the pre-approval required for the role of manager would discourage mobility of managers within the sector, and would therefore consequently also discourage mergers / transfers of engagements as the manager may want to avoid the risk of the Central Bank pre-approval process.

Central Bank: All managers within the credit union sector will be subject to the same Fitness and Probity Standards and credit unions will be required to conduct due diligence on managers to confirm that they comply with the Standards and that they have agreed to comply with them on an ongoing basis. Therefore, the Central Bank is of the view that pre-approval for managers appointed following commencement of the Fitness and Probity regime is not likely to discourage mobility of managers within the sector and could assist credit unions in ensuring they attract competent and capable candidates for roles such as manager.

In relation to credit unions that undergo transfers of engagements or amalgamations, guidance has been provided in the "Guidance on the Fitness and Probity for Credit Unions" on the Fitness and Probity requirements that apply in these circumstances.

48. One respondent was of the view that there was a role on the board of directors of credit unions for a small number of members who do not meet the competency and capability requirements but still had a contribution to

make. The respondent requested flexibility in considering candidates who may not meet the competency and capability standard. Another respondent contended that an overall view of the competence and skills of the board be taken.

Central Bank: It is a matter for each credit union to determine the competency requirements for each individual role that falls within the scope of Fitness and Probity, including the competency requirements for each member of the board of directors and to ensure that board members fulfil those requirements.

In accordance with section 21 of the Central Bank Reform Act 2010 a credit union cannot permit a person to perform a CF if they do not comply with the Standards, including Standards in relation to competence and capability.

49. One respondent was of the view that the Fitness and Probity regime for credit unions was in conflict with a credit union's democratic election process for certain CF and PCF roles, and that there was a greater role for the nomination committee in the process, which would align with the functions of the nomination committee as outlined in section 56B of the 1997 Act.

Central Bank: The Central Bank agrees that the nomination committee has a role in the election process of certain CF roles and has referred to this in the "Guidance on Fitness and Probity for Credit Unions", especially on the role of the nomination committee in assessing due diligence of the board of directors.

The Central Bank does not agree with the view that the Fitness and Probity regime is in conflict with the democratic election process in a credit union. Any member that is fit and proper can seek election to the board of directors of the credit union.

50. One respondent sought clarification regarding the Fitness and Probity regime for legal money-lending firms.

Central Bank: Licensed Moneylenders are subject to the existing Fitness and Probity regime and therefore have to comply with all of the requirements of that regime.

T +353 1 224 2000 F +353 1 224 4209 www.centralbank.ie rcu@centralbank.ie



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Bosca PO 559, Sráid an Dáma, Baile Átha Cliath 2, Éire
P.O. Box No 559, Dame Street, Dublin 2, Ireland