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## Fitness and Probity for Credit Unions Frequently Asked Questions



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## Introduction

This document (“the FAQs”) is drawn up by the Central Bank of Ireland (“the Central Bank”) to address commonly asked questions which have been raised in relation to the operation of the Fitness and Probity regime for credit unions under Part 3 of the Central Bank Reform Act 2010 (“the Act”).

The FAQs have no legal status. Interested parties should consult their legal advisers concerning any matter of legal interpretation of the Act, the Regulations or any Codes issued thereunder.

Version	Date	Amendments
1	June 2013	
2	March 2015	Updated to reflect new Fitness and Probity requirements from 1 August 2015 for <ul style="list-style-type: none"> <li>• credit unions with total assets of €10m or less; and</li> <li>• credit unions that are also authorised as retail intermediaries.</li> </ul>
3	January 2016	Updated to reflect the commencement of the second phase of the Fitness and Probity regime for credit unions from 1 August 2015.

## Application of Fitness and Probity for credit unions

### 1. What is Fitness and Probity?

Fitness relates to an individual's competence and capability. Probity means acting honestly, ethically, with integrity and being financially sound.

The Central Bank's Fitness and Probity regime for credit unions sets out the minimum standards of Fitness and Probity that apply to individuals carrying out certain functions in credit unions.

### 2. Where can I find information on the Fitness and Probity regime for credit unions, including those authorised as retail intermediaries?

Information on the Fitness and Probity regime for credit unions, including those authorised as retail intermediaries is available on the "Fitness and Probity – Credit Unions" section of the Central Bank's website at the following [link](#). This includes the documents referred to below.

The Central Bank has issued a Statutory Instrument<sup>1</sup> prescribing controlled functions and pre-approval controlled functions for credit unions ("**the 2013 Regulations**").

A second Statutory Instrument<sup>2</sup> was issued on 24 March 2015 prescribing controlled functions and pre-approval controlled functions for credit unions that are also authorised as retail intermediaries ("**the 2015 Regulations**").

A Statutory Instrument was also issued on 2 March 2012, "The Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2012".<sup>3</sup>

The Central Bank has also issued a code under Section 50 of the Act setting out Standards of Fitness and Probity for Credit Unions ("**the Standards**").

For guidance purposes the Central Bank has issued the following non-statutory guidance documents in relation to Part 3 of the Act:

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<sup>1</sup> S.I. No. 171 of 2013.

<sup>2</sup> S.I. No. 97 of 2015.

<sup>3</sup> S.I. No. 56 of 2012.

- Guidance on Fitness and Probity for Credit Unions (“**the Guidance**”);
- Guidance on Investigations under Part 3 of the Act.

The Central Bank has published the “**Online Individual Questionnaire Template for Credit Unions**” along with the “**Fitness and Probity Individual Questionnaire Application Guidance for Credit Unions**” for fitness and probity applications.

The Central Bank has also published the “**Fitness and Probity Service Standards**” which outline target turnaround times for processing Individual Questionnaires in respect of individuals proposed to hold PCFs within regulated financial service providers.

### **3. What are the key changes to Fitness and Probity in 2015?**

Since 1 August 2015, fitness and probity applies to

- credit unions with total assets of €10 million or less; and
- credit unions that are also authorised as retail intermediaries, for that part of the business that the credit union undertakes as a retail intermediary.

Transitional arrangements will apply and these are outlined in Question 4 below and in the Standards which have been updated. The Guidance has also been updated to reflect the new requirements and to include additional information such as governance requirements that should be considered when carrying out due diligence for members of the board of directors, the chair and the board oversight committee and informing the Central Bank following a PCF’s election / appointment / resignation.

This FAQ has been restructured and questions grouped together under sub-headings for ease of reference. Some new questions<sup>4</sup> have been added and some existing questions<sup>5</sup> have been updated.

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<sup>4</sup> Questions 3, 10, 11, 17, 21, 22, 23, 25, 26 and 27.

<sup>5</sup> Questions 2, 4, 7, 8, 9, 12, 14, 19, 20 and 24.

## Transitional Arrangements

### 4. When does Fitness and Probity apply to credit unions?

The Fitness and Probity regime for credit unions has been introduced on a phased basis with transitional arrangements. The **first phase** began on **1 August 2013** and introduced fitness and probity requirements for those credit unions with **total assets of greater than €10 million**<sup>6</sup>. Fitness and Probity has now been fully implemented for these credit unions.

The **second phase** commenced on **1 August 2015** bringing **all remaining credit unions** within the scope of the regime.

Since 1 August 2015, credit unions that are also authorised as retail intermediaries<sup>7</sup> are subject to additional Fitness and Probity requirements.

Transitional arrangements apply for the implementation of each phase of the regime. The information below sets out the transitional arrangements for

- credit unions with total assets of €10 million or less; and
  - credit unions that are also authorised as retail intermediaries, for that part of the business that the credit union undertakes as a retail intermediary:
- From 1 August 2015, the Standards shall apply to persons performing CFs which are also prescribed as Pre-approval Controlled Functions (PCFs) with effect from that date;
  - From 1 November 2015, the Standards shall apply to all persons performing Controlled Functions (CFs) from the date that such appointment takes effect (other than CFs which are also prescribed as PCFs);
  - The Standards will apply to all persons occupying CFs as at 1 August 2016.

See Section 1.5 of the Standards and Section 3 of the Guidance for further information on phasing and transitional arrangements.

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<sup>6</sup> Figures will be according to the credit union's latest audited balance sheet.

<sup>7</sup> These are credit unions that also hold an authorisation pursuant to the Investment Intermediaries Act, 1995 and / or the European Communities (Insurance Mediation) Regulations 2005.

## The Standards

### 5. What are the Standards?

The Standards are a code issued under Section 50 of the Act that individuals performing CFs and PCFs in credit unions are required to comply with.

The Standards provide that an individual performing a CF, including a PCF, is required to be:

- competent and capable;
- honest, ethical and to act with integrity; and
- financially sound.

See the Standards for further information.

A credit union must not permit a person to perform a CF unless it is satisfied on reasonable grounds that the person complies with the Standards and has obtained confirmation that the person has agreed to abide by those Standards. Credit unions are responsible for ensuring that persons performing CFs meet the Standards both prior to appointment and on an on-going basis.

See Sections 4.5, 7 and 10 of the Guidance for further information on credit unions obligations with respect to CFs.

### 6. What Standard of Fitness and Probity is appropriate to a particular CF?

Section 21 of the Act requires that a credit union, including those authorised as a retail intermediary, satisfies itself on reasonable grounds that a person complies with any code setting out standards of fitness and probity issued by the Central Bank under section 50 of the Act (e.g. the Standards). The person in a CF role is also required to agree to abide by any standards of fitness and probity issued under section 50 of the Act.

In complying with section 21 of the Act, the Central Bank expects credit unions to consider the responsibilities of a particular function and to determine the specific competencies and level of probity that should be expected of a person performing that particular CF in the credit union.



Role descriptions could assist credit unions in determining the specific competencies, experience, qualifications, capacity and level of probity that are required to carry out the responsibilities of CF and PCF roles.

See Section 4.3 of the Guidance for further information.

## **CFs and PCFs**

### **7. Who does Fitness and Probity apply to in credit unions?**

Fitness and Probity applies to individuals in credit unions that perform CFs and PCFs.

In the case of credit unions that are also authorised as retail intermediaries, Fitness and Probity also applies to individuals that perform CFs and PCFs **for that part of the business that the credit union undertakes as a retail intermediary.**

### **8. What are Controlled Functions (“CFs”)?**

CFs are functions in relation to the provision of a financial service which are prescribed by the 2013 Regulations and the 2015 Regulations as CFs.

The Central Bank has prescribed CF roles for credit unions in Schedule 1 of the 2013 Regulations as follows:

- CUCF-1: Significant influence function;
- CUCF-2: Ensuring, controlling or monitoring compliance function.

See Section 4 of the Guidance for further information on CFs.

The Central Bank has also prescribed CF roles for credit unions that are also authorised as retail intermediaries in Schedule 1 of the 2015 Regulations. These include the CF (CUCF-1 and CUCF-2) roles in the Fitness and Probity regime for credit unions. Nine additional CFs are also prescribed as follows:

- CUCF3-9: Member facing functions which are likely to involve one or more of the following tasks:

- i) giving of advice to a member of the credit union under its authorisation as a retail intermediary, in the course of providing, or in relation to the provision of, the financial service (CUCF-3); or
  - ii) arranging, or offering to arrange, a financial service for a member of the credit union under its authorisation as a retail intermediary (CUCF-4); or
  - iii) assisting a member in the making of a claim under a contract of insurance or reinsurance (CUCF-5); or
  - iv) determining the outcome of a claim arising under a contract of insurance or reinsurance (CUCF-6); or
  - v) acting in the direct management or supervision of those persons who act for a credit union under its authorisation as a retail intermediary in providing the services referred to in subparagraphs (i) to (iv) (CUCF-7); or
  - vi) adjudicating on any complaint communicated to a credit union by a member in relation to the provision of a financial service under its authorisation as a retail intermediary (CUCF-8).
  - vii) in respect of a person referred to in paragraph (a) or (b) of Regulation 15(1) of the European Communities (Insurance Mediation) Regulations 2005, the function of a person described in that Regulation (CUCF-9).
- CUCF10-11: Dealing in property functions under its authorisation as a retail intermediary.

See Section 12 of the Guidance for further information on CFs for credit unions that are also authorised as retail intermediaries.

### **9. What are Pre-approval Controlled Functions (“PCFs”)?**

PCFs are a sub-set of CFs which, by virtue of the nature of the role, require the pre-approval of the Central Bank. Therefore PCFs are, by definition, also CFs.

The Central Bank prescribed PCF roles for credit unions in Schedule 2 of the 2013 Regulations and the 2015 Regulations as follows:

- CUPCF-1: Chair of the board of directors;
- CUPCF-2: Manager.

See Section 5 of the Guidance for further information on PCFs. The process for pre-approval of PCFs is outlined in Section 6 of the Guidance.

#### **10. What categories of person are not eligible to become a director or a member of the board oversight committee?**

Section 53(10) of the Credit Union Act, 1997 sets out the categories of persons who are not eligible to become a director (a role that would fall within CUCF-1) of a credit union. Section 76N(4) of the Credit Union Act, 1997 sets out the categories of persons who are not eligible to become a member of the board oversight committee (a role that would fall within CUCF-2) of a credit union.

The categories of persons not eligible to become a director of a credit union or a member of the board oversight committee of a credit union include:

- An employee of any credit union;
- A voluntary assistant or member of the board oversight committee of the credit union;
- A director of any other credit union;
- The auditor of the credit union or a person employed or engaged by that auditor;
- A solicitor or other professional adviser who has been engaged by or on behalf of the credit union within the previous 3 years;
- A person who is a spouse or civil partner, parent or child of a director, board oversight committee member or employee of that credit union<sup>8</sup>.

This list is not exhaustive and credit unions should refer to sections 53(10) and 76N(4) of the Credit Union Act, 1997 for the full list of persons ineligible to become a director or member of the board oversight committee.

Please refer to Section 8.2.3 of the Guidance for further information on the categories of persons not eligible to become a director of a credit union or a member of the board oversight committee of a credit union.

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<sup>8</sup> Siblings are also included in the persons not eligible to become a director in section 53(10)(m).

In addition, under section 72 of the Credit Union Act, 1997 any person who has been declared bankrupt and where the bankruptcy still subsists, or who has been convicted of an offence in relation to a credit union or an offence involving fraud or dishonesty, either within the State or any other jurisdiction, may not hold a CF within a credit union. Please refer to section 7.9 of the Guidance for further information.

**11. What categories of person are not eligible to become a chair of the board of a credit union?**

Under section 55A(4) of the Credit Union Act, 1997, any person that has served as an employee or acted in a management capacity in the credit union in the previous five years is not eligible for election to the position of chair. For the avoidance of doubt, acting in a management capacity does not include being a member of the board of directors or the board oversight committee.

Under section 55A(6) of the Credit Union Act, 1997, any person that has served four consecutive terms as chair is not eligible to be chair.

These exclusions apply from 11 October 2013. The time referred to in sections 55A(4) and 55A(6) includes time served before 11 October 2013. Credit unions should ensure that an applicant is not ineligible to be chair under these requirements, or any other legal requirements, prior to submitting an Individual Questionnaire to the Central Bank.

Please refer to Section 8.3.3 of the Guidance for further information.

**Due Diligence**

**12. What is the appropriate level of due diligence a credit union should carry out on a CF?**

Section 7 of the Guidance sets out due diligence that the Central Bank expects would be undertaken by credit unions in particular cases when assessing compliance with the Standards.

The level of due diligence which is required from a credit union in fulfilling its obligations under section 21 of the Act may differ depending on the categorisation of the CF. PCFs, CUCF-1 and CUCF-2 will attract higher levels of due diligence than CUCF-3 to CUCF-11<sup>9</sup>. Section 7.7 of the Guidance sets out the additional due diligence required for CUCF-1 and CUCF-2.

In all cases, it is for the credit union itself to assess the information and exercise judgement to determine whether a person is fit and proper to carry out a particular CF.

**13. Is the credit union expected to seek evidence of all educational qualifications, including transcripts?**

No. A credit union is not expected to seek evidence of all educational qualifications, only those that are relevant to the exercise of the role.

See Section 7 of the Guidance for further information on Due Diligence.

**14. What due diligence is expected for in situ PCFs / CFs?**

In relation to credit unions with total assets of €10 million or less and credit unions that are also authorised as retail intermediaries, for persons in situ at 1 August 2015, the requirement to obtain a reference(s) will not apply where the person has performed the same CF or PCF in that credit union for at least 1 year as at 1 August 2015. While it may not be possible to ascertain all the same forms of due diligence for in situ PCFs / CFs, the credit union must, however, satisfy itself on reasonable grounds that the individual meets the Standards and agrees to comply with them.

See Section 7 of the Guidance for further information on Due Diligence.

**Approval Process for PCFs**

**15. What is the approval process for PCFs?**

The approval process for PCFs requires the submission of an Individual Questionnaire to the Central Bank. In the case of elected PCF roles, credit unions

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<sup>9</sup> CUCF 3 – 11 apply to credit unions that are authorised as retail intermediaries only.



and PCF applicants should be mindful of the fact that approval should be sought and received from the Central Bank in advance of the Annual General Meeting (“AGM”)<sup>10</sup> being held.

The submission is made through the Central Bank’s Online Reporting System. A template of the Individual Questionnaire is available on the Central Bank’s website. The Fitness and Probity Service Standards outline target turnaround times for processing Individual Questionnaires in respect of persons proposed to hold PCF roles within credit unions.

Further information on the approval process is contained in Section 6 of the Guidance. Further information on completing and submitting an Individual Questionnaire and the Online Reporting System is contained in the Fitness and Probity Individual Questionnaire Application Guidance for Credit Unions.

#### **16. Who should complete and submit the Individual Questionnaire?**

The completion and submission of an Individual Questionnaire is a two stage process. The PCF applicant needs to complete Sections 1 to 11 of the Individual Questionnaire, as applicable, and submit the application to the proposing credit union. The proposing credit union then completes Section 12 of the Individual Questionnaire and submits the Individual Questionnaire to the Central Bank for assessment.

The following people within a credit union can submit an Individual Questionnaire application to the Central Bank on behalf of a credit union:

- Chair of the Board of Directors (CUPCF-1);
- Manager (CUPCF-2); and
- Chair of the Nomination Committee.

Further information on completing and submitting an Individual Questionnaire and the Online Reporting System is contained in the Fitness and Probity Individual Questionnaire Application Guidance for Credit Unions.

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<sup>10</sup> Or Special General Meeting (SGM).

**17. How far in advance of an AGM should an Individual Questionnaire be submitted for the role of chair?**

Credit unions should not submit an Individual Questionnaire to the Central Bank where an AGM has not been scheduled. If the Individual Questionnaire is submitted to the Central Bank before an AGM has been scheduled by the credit union or more than two months before an AGM is scheduled to take place, the Individual Questionnaire will be returned to the credit union to ensure the assessment of Fitness and Probity is based on the most current information. The return of the Individual Questionnaire will have no impact or bearing on any subsequent Individual Questionnaires received from the credit union and the return of the Individual Questionnaire is no reflection of the Central Bank's views on the particular application.

Once an AGM has been scheduled, credit unions should submit the Individual Questionnaire in sufficient time to allow the Central Bank to process the application prior to the AGM. Please refer to the "[Fitness and Probity Service Standards](#)" for an indication of how long it may take to process an Individual Questionnaire. It is advisable that the credit union allow additional time for any interview and/or request for further information from the Central Bank to the individual proposed/credit union as may be necessary.

Please refer to Section 6 of the Guidance for further information.

**In Situ PCFs**

**18. Are in situ PCFs required to go through the pre-approval process if they are subject to re-election/re-appointment?**

In relation to credit unions with total assets of €10 million or less and credit unions that are also authorised as retail intermediaries, persons in situ in PCFs on 1 August 2015 may continue in those roles and do not require the approval of the Central Bank to continue to perform that PCF for the remainder of the term of their appointment.

Where an in situ PCF at the time of the introduction of the Fitness and Probity regime for credit unions is subject to re-election / re-appointment, then that

person will be required to receive approval from the Central Bank through the submission of an Individual Questionnaire. This is because re-election / re-appointment of a person constitutes a “break in service”. This is in accordance with section 23 of the Act.

Once a person has been approved to a role that is subject to re-election / re-appointment provisions, 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. The credit union however will be required to confirm to the Central Bank upon re-election / re-appointment that his / her circumstances have not changed since pre-approval was granted.

For example, persons who were in situ in a PCF role such as chair, who are subject to re-election, will be subject to the process set out above.

### **Transfer of Engagements / Amalgamations**

#### **19. Do PCFs require pre-approval if a credit union has undergone a transfer of engagements?**

When a credit union undergoes a transfer of engagements, no further pre-approval is required to remain in a PCF role. See Section 5.4 of the Guidance of further information.

#### **20. Do PCFs require pre-approval if a credit union has undergone an amalgamation?**

When a credit union undergoes an amalgamation, pre-approval is required to remain in a PCF role. See Section 5.5 of the Guidance of further information.

### **Credit unions that are also authorised as retail intermediaries**

#### **21. Where a credit union is also authorised as a retail intermediary, are any of the additional CUCF roles (CUCF 3 – 11) subject to the Minimum Competency Code (MCC)?**

Roles within a credit union that is also authorised as a retail intermediary that fall within CUCF-3 to CUCF-9 are also subject to the MCC.

However, as CUCF-3 to CUCF-9 apply to member facing roles rather than consumer facing roles they are not limited to the scope of the MCC. If an individual is captured by the MCC, s/he will be captured by CUCF-3 to CUCF-9. However, not all individuals captured by CUCF-3 to CUCF-9 will be subject to the MCC. The scope of CUCF-3 to CUCF-9 is thus broader than the MCC.

Please refer to Section 12.3 of the Guidance for further information.

**22. Where a credit union is also authorised as a retail intermediary, will the chair be subject to the MCC?**

If a credit union also has an authorisation as a retail intermediary, the MCC may be relevant to the applicant. In most cases, it is anticipated that the chair of the credit union would not be subject to the MCC as they are not likely to perform functions that fall within the scope of the MCC. See Section 1.2 and Appendix 2 of the MCC for details of persons that are subject to the MCC. Please also see Section 12.4 of the Guidance for further information on the MCC.

**23. Do credit unions that are also authorised as retail intermediaries have to submit the In Situ PCF Return?**

Where a credit union that is also authorised as a retail intermediary has previously submitted the In Situ PCF Return, that credit union does not have to submit another In Situ PCF Return.

## **Outsourcing**

**24. How does Fitness and Probity apply if a CF is outsourced?**

Section 21 of the Act requires that a credit union must satisfy itself on “reasonable grounds” that individuals performing CFs comply with the Standards and those persons have agreed to abide by the Standards.

Section 1.6 of the Standards excludes individuals performing outsourced CFs in certain regulated entities<sup>11</sup> from the scope of the Standards. As of March 2015,

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<sup>11</sup> Persons performing controlled functions with respect to a credit union under the following conditions:

this has been amended to clarify that the exclusion only applies where the other financial service provider is regulated for a similar business to that conducted by the credit union.

Where a credit union has entered into an outsourcing arrangement with an unregulated entity<sup>12</sup> for the performance of a CF the credit union remains responsible for compliance with its obligations under section 21 of the Act.

The outsourced service provider should provide written confirmation to the credit union that those individuals performing CFs are compliant with the Standards and have agreed to abide by them. In addition to this written confirmation, the outsourced service provider should furnish the credit union with sample documentation as to how compliance with the Standards is adhered to.

See Section 1.6 of the Standards and Section 11 of the Guidance for further information on outsourcing.

## **On-going Compliance**

### **25. How can a credit union notify the Central Bank of the election / appointment of a PCF?**

Following approval by the Central Bank of an applicant(s) for a PCF role(s), the proposing credit union should notify the Central Bank via the Online Reporting System (“ONR”) of the date that the PCF holder(s) has/have taken up their role - the effective start date (in the case of a manager) or the election date (in the case of a chair).

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- a) there is in place a written agreement between the credit union and a separate financial service provider for the carrying on of that function by that other person on behalf of the credit union; and
  - b) that other financial service provider (other than a certified person within the meaning of section 55 of the Investment Intermediaries Act, 1995) is regulated for similar business to that conducted by the credit union either:
    - i. by the Central Bank; or
    - ii. by an authority that performs functions in an European Economic Area (EEA) country that are comparable to the functions performed by the Central Bank; or
    - iii. by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Central Bank.

<sup>12</sup> “Unregulated entity” means an entity (including a certified person within the meaning of section 55 of the Investment Intermediaries Act, 1995) that is not regulated either:

- i. by the Central Bank; or
- ii. by an authority that performs functions in an EEA country that are comparable to the functions performed by the Central Bank; or
- iii. by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Central Bank.



Further information on how this information can be updated is provided in the Section 10.7 of the Guidance and in the [PCF Information Guidance / Instructions](#).

**26. How can a credit union notify the Central Bank where a PCF approved applicant is not taking up the role?**

The credit union should notify the Central Bank via the ONR to confirm where an applicant will not take up the role once this becomes clear to the credit union (i.e. where a person approved for the role of chair by the Central Bank is subsequently not elected at the AGM).

Further information on how this information can be updated is provided in the Section 10.7 of the Guidance and in the [PCF Information Guidance / Instructions](#).

**27. How can a credit union notify the Central Bank of the resignation of a PCF?**

The credit union must notify the Central Bank without delay via the ONR of the resignation of an individual who has been approved as a PCF.

Further information on how this information can be updated is provided in the Section 10.7 of the Guidance and in the [PCF Information Guidance / Instructions](#)

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