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Report on Findings of Thematic Fitness and Probity Inspections in Credit Unions



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1. Overview

1.1 Introduction

The Fitness & Probity (F&P) regime for credit unions was introduced in 2013 (further information on the regime is set out in section 1.3 below). In developing and implementing the F&P regime for credit unions, the Central Bank of Ireland's (the Central Bank) objective is to protect members' savings through improved governance standards at board and management level by ensuring that individuals who exercise significant influence and control in a credit union are capable, competent and financially sound individuals with the appropriate skills, experience, knowledge and integrity to manage and govern the credit union. Members of credit unions should have confidence that those individuals holding board and management positions in credit unions can demonstrate that they are competent and capable, will act honestly, ethically and with integrity and are financially sound.

At the Central Bank, we believe that the combination of the detailed governance requirements for credit unions introduced from 2013, and the tailored Fitness & Probity regime for credit unions have contributed to an improvement in standards of governance in the sector. However, while some credit unions have embraced these requirements and standards, we are concerned to see that changes in governance culture are taking so long to embed in other credit unions. Overall, at the sector level, governance weaknesses remain a concern. Further progress is required if the sector is to reach the standard required to appropriately protect the financial stability of the sector and the funds of members.

In order to assess the implementation of the F&P regime for credit unions, the Central Bank conducted a series of thematic inspections of compliance with certain requirements of the F&P regime in a sample of credit unions. While the Central Bank gets some insight into the application of the F&P regime in relation to Pre-approved Control Function (PCF) process through Individual Questionnaires (IQ) and assessment interviews, the Central Bank wanted to get a deeper insight into the application of the regime in relation to Controlled Functions (CF) with a particular focus on the level and quality of due diligence being undertaken by credit unions. These thematic inspections (the Thematic F&P Inspections) were carried out over the period June - October 2016 and focused on 3 specific areas of F&P (the *inspection topics*), namely:

- Due Diligence

- Role of the Nomination Committee
- Maintenance of Records

This Report sets out the findings, key observations and expectations of the Central Bank in relation to compliance by credit unions in each of these three areas. While all of the issues outlined did not arise in each credit union inspected, they are representative of the findings across the sample of credit unions. The review of compliance with Due Diligence requirements was the main element of the on-site inspection and many of the individual elements inspected fall under this heading. This Report includes examples of good practice observed and also of non-compliance/poor practice observed during the course of the Thematic F&P Inspections which are highlighted in coloured text boxes throughout the Report.

The purpose of this Report is to share the Central Bank's findings and observations from the Thematic F&P Inspections with all credit unions¹. The Central Bank expects credit unions to carefully consider the issues raised in the Report. We expect credit unions to review the examples of good practice provided in the report and consider how these examples can inform the further development and updating of their F&P frameworks. Boards of directors and senior management must take steps to ensure that there is an embedded and effective F&P compliance programme and culture operating in their credit union.

We will have further engagements with credit unions in relation to compliance with F&P requirements and at such a time would expect to find a deeper understanding of the F&P regime for credit unions and evidence of well embedded processes supporting a strong governance culture within credit unions.

1.2 Overview of Issues Identified

The F&P regime for credit unions commenced in 2013, and the Central Bank's expectation is that at this stage the regime should be well embedded by credit unions. While we found some examples of well embedded processes, the inspections highlighted a number of issues of concern particularly in the area of due diligence which included examples of credit unions having failed to undertake due diligence on CF role holders and incomplete or poor quality

¹ The Report is not legal advice and should not be treated as such. A credit union must at all times refer directly to the relevant legislation to ascertain its statutory obligations.

due diligence. Most frequently this resulted from credit unions failing to fully and properly engage with the F&P regime for credit unions and taking a 'tick box' approach to compliance with F&P requirements, without detailed assessment and understanding of the requirements. Examples of this approach included superficial due diligence being undertaken without adequate consideration being given to the matching of candidates' skills to role profiles. Failure by credit unions to engage effectively with the framework can result in credit unions allocating time and resources to appearing to meet the requirements but actually failing to get the real benefits of a full and rigorous F&P compliance programme. Full engagement includes using the information gathered in meeting F&P requirements to inform succession planning and better decision making within the credit union. The Central Bank is of the view that the F&P regime for credit unions provides a formal framework within which credit unions can assess the fitness and probity of those individuals taking up key roles within credit unions, thereby ensuring that there is sufficient focus on ensuring that only financially sound, honest and ethical individuals who act with integrity, that have appropriate competencies and capabilities, take up such roles.

Compliance/Size of Credit Union

It was noted during the inspections that the level of compliance with F&P requirements varied across the sample of credit unions inspected. However, in general, medium and larger asset sized credit unions demonstrated better compliance levels than smaller credit unions.

Details on specific issues identified during the Thematic F&P Inspections are set out in detail in the following sections:

- Sections 2- Due Diligence,
- Section 3- Role of Nomination Committee,
- Section 4- Maintenance of Records.

A high level summary of the key findings in relation to each of these is provided below.

Due Diligence

Due diligence is a core requirement of the F&P regime for credit unions - without full and proper due diligence a credit union can neither determine nor evidence the fitness and probity of those persons performing CF or PCF roles.

It was found during the inspections that a number of credit unions had failed to establish processes for compliance with the requirements of the F&P regime for credit unions. Some credit unions inspected did not have specific policies and procedures in place for F&P, in line with the expectations set out in Section 10.4 of the Guidance on Fitness and Probity for Credit Unions (F&P Guidance) and in a number of cases, they had not conducted due diligence on CF role holders.

In other cases, while there was some evidence that the credit union had conducted due diligence on CF role holders, we had concerns about the quality and/or completeness of the review undertaken with examples of over reliance on personal knowledge of CF role holders and lack of evidence of key checks (e.g. judgment searches) being documented.

Role of Nomination Committee

The Nomination Committee is responsible for assisting the credit union in performing any obligations of the credit union under section 23 of the Central Bank Reform Act, 2010 (the 2010 Act) in relation to any candidates proposed to perform CFs or PCFs and for assisting the credit union in carrying out any checks which the credit union is undertaking to enable it to comply with its obligations under section 21 of the 2010 Act. In this regard it is expected that the Nomination Committee will act as a key driver of compliance with the F&P regime across the credit union. Whilst other officers and staff of a credit union may have responsibility for operational elements of the F&P compliance programme, the Nomination Committee should actively steer F&P compliance and seek to pro-actively focus on effective succession planning.

During the inspections it was found that there was a lack of understanding/appreciation of the role of the Nomination Committee in relation to oversight of F&P compliance by the credit union. A review of the Nomination Committee minutes showed that some Nomination Committees met infrequently and that records of discussions did not demonstrate detailed consideration of F&P requirements and the credit union's ongoing compliance with these.

Maintenance of Records

In relation to PCFs, CUCF-1 and CUCF-2² and without prejudice to any other requirement imposed by law, the Central Bank expects credit unions to maintain the information collected in compliance with section 21 of the 2010 Act for a minimum of six years after that person has ceased to perform the CF or PCF on behalf of the credit union.

In relation to CUCF-3 to CUCF-11³ and without prejudice to any other requirement imposed by law, the Central Bank expects credit unions that are also authorised as retail intermediaries to maintain the information collected in compliance with section 21 of the 2010 Act for a minimum of two years after that person has ceased to perform the CUCF-3 – CUCF-11 on behalf of the credit union.

During the inspections it was found that there were instances where there was a lack of due diligence records on file which resulted in a lack of evidence to support compliance with the F&P regime for credit unions. Where credit unions held due diligence documentation on file there were instances where the credit union did not record evidence of a proper assessment of the due diligence conducted. Credit unions should formally record all relevant information in an appropriate way, in the particular CF or PCF due diligence file. In the absence of such records credit unions may not be able to demonstrate F&P compliance. Failure to document the due diligence assessment that was undertaken or to document the consideration of that due diligence was more common where local or personal knowledge was used in assessing a CF or PCF role holder.

With regard to F&P compliance policies and procedures, we found instances where these were not documented. In some credit unions where good practices were observed, it was noted that the processes which were documented on file did not reflect these practices. In the absence of such documentation such good practices might not be consistently applied by the credit union.

Application of Guidance

The level of non-compliance at some credit unions, in contrast with compliance at other credit unions, suggests that those credit unions demonstrating poor compliance may not

² More information on CUCF-1 and CUCF-2 can be found in Section 1.3 of this report

³ More information on CUCF-3 - CUCF-11 can be found in Section 1.3 of this report

have fully utilised the published resources made available to them by the Central Bank (details on available guidance materials are set out in section 1.3).

1.3 Overview of Fitness & Probity Regime for credit unions

Implementation

The F&P regime for credit unions came into effect on 1 August 2013 and has been fully applied for all credit unions since 1 August 2016. The regime was introduced on a phased basis as follows:

- Credit unions with **total assets of greater than €10 million** have been subject to fitness and probity requirements since **1 August 2013**;
- Credit unions with **total assets of less than or equal to €10 million** have been subject to fitness and probity requirements since **1 August 2015**;
- Since 1 August 2015 all credit unions are subject to **additional fitness and probity** requirements for the part of the business that the credit union undertakes **as a retail intermediary**.

Legislation and Regulations

Regulations pursuant to the 2010 Act were issued for credit unions in 2013 ([the 2013 Regulations](#)) which identify CF and PCF for all credit unions.

There are 2 CFs prescribed in the 2013 Regulations:

- A function in relation to the provision of a financial service which is likely to enable the person responsible for its performance to **exercise a significant influence** on the **conduct of the affairs of a credit union** (CUCF-1); and
- A function in relation to the provision of a financial service which is related to ensuring **controlling or monitoring compliance** by a credit union with its relevant obligations (CUCF-2).

There are also 2 PCFs prescribed in the 2013 Regulations:

- (i) the office of **chair of the board** of the credit union (CUPCF-1), and
- (ii) the office of **manager** of the credit union (CUPCF-2).

For credit unions that are also authorised as retail intermediaries there are additional regulations ([the 2015 Regulations](#)) in relation to those functions that come within the scope

of the F&P regime for the part of the business that the credit union undertakes as a retail intermediary. The 2015 Regulations contain the same CFs and PCFs as the 2013 Regulations along with an additional 9 CFs, 7 of which are member facing functions and 2 of which are CFs which deal in property functions under the credit union's authorisation as a retail intermediary.

The Fitness and Probity Standards for Credit Unions ([the Standards](#)) are a statutory code issued under section 50 of the 2010 Act and apply to all individuals performing CFs (which includes PCFs). The Standards specify the standards of fitness and probity which all persons performing CFs should, at a minimum, comply with and provide that an individual performing a CF is required to be:

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

A credit union must not permit a person to perform a CF or PCF 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 staff performing CFs or PCFs meet the Standards, both on appointment to such functions and on an on-going basis.

Guidance

The Central Bank has published non-statutory guidance '[Guidance on Fitness and Probity for Credit Unions](#)' (F&P Guidance) to supplement the Standards and a [Frequently Asked Questions document](#) to assist credit unions with their obligations under the F&P regime.

The Central Bank expects all credit unions to carefully consider the issues raised in this Report, and to use the Report to inform the remediation, development and updating of F&P frameworks.

1.4 Methodology

The Thematic F&P Inspections were carried out as a part of the scheduled supervisory engagements in Q3 and Q4 of 2016. The Report is based on the findings arising from on-site inspections and off-site review of a sample of 16 credit unions which were selected to

provide a mix of asset size (range less than €10 million to greater than €100 million), urban and rural locations and a mix of industrial and community based credit unions.

The Thematic F&P Inspections focused on the following three areas:

- Due Diligence
- Role of Nomination Committee
- Maintenance of Records

Off-Site/Pre-Inspection

In advance of the on-site inspections all of the credit unions were requested to submit certain material in relation to the 3 inspection topics to the Central Bank. A list of the items requested is contained in Appendix 2.

On-site Inspection

The assessment of the 3 inspection topics took account of the obligations on credit unions pursuant to F&P Legislation, the Standards and the contents of the F&P Guidance.

The on-site inspections were conducted through a combination of:

- Review of policies and procedures;
- Sample testing of due diligence files;
- Interviews with representatives of the credit union's Nomination Committee; and
- Discussions with key credit union management, i.e. Manager and Compliance Officer.

2. Due Diligence

Due diligence is a core requirement of the F&P regime for credit unions - without full and proper due diligence a credit union can neither determine nor evidence the fitness and probity of those persons performing CF or PCF roles.

Section 21 of the 2010 Act provides that a regulated financial service provider, shall not permit a person to perform a CF unless:

- (i) the regulated financial service provider is satisfied on reasonable grounds that the person complies with any standard of fitness and probity issued pursuant to section 50 of the 2010 Act (i.e. the Standards); and
- (ii) the person has agreed to abide by any such standard.

Failure to comply with section 21 of the 2010 Act is a prescribed contravention for the purposes of Part IIIC of the Central Bank Act, 1942 and is subject to enforcement action by the Central Bank.

Section 2 of the Standards provides that in order to comply with section 21 of the 2010 Act, a person holding a CF role is required to be:

- a) competent and capable;
- b) honest, ethical and to act with integrity; and
- c) financially sound.

Credit unions must conduct due diligence to ensure that they satisfy their obligations under section 21 of the 2010 Act. The F&P Guidance assists credit unions in complying with the obligations under section 21 of the 2010 Act. Section 7 of the F&P Guidance explains that as part of the assessment of persons holding or proposed to hold a CF role, the credit union should perform due diligence on such persons. This due diligence should consider each of the 3 areas in the Standards. Section 7 of the F&P Guidance clearly sets out the Central Bank's expectations as to the due diligence to be undertaken by credit unions for each Standard.

The 2010 Act places a continuing obligation on credit unions in relation to fitness and probity due diligence. It is not a one-off obligation discharged once due diligence has been

undertaken upon commencement of the F&P regime or in relation to an initial appointment to a PCF or CF.

2.1 Fitness – Competent and Capable

Section 7.3 of the F&P Guidance provides guidance to credit unions on the due diligence to be undertaken by a credit union to assess a person's fitness to perform a CF. The Central Bank expects credit unions to undertake the following due diligence when assessing a person's competence and capability:

- record of previous experience;
- record of interview/application;
- evidence of professional qualification(s);
- references;
- evidence of CPD (where relevant);
- evidence of compliance with the MCC (where relevant);
- record of experience gained outside the State; and
- concurrent responsibilities.

2.1.1 Record of previous experience/experience gained outside the State /References / Candidate interview and application

During the inspections it was observed that a significant number of credit unions inspected did not formally document or maintain records of the CF role holder in relation to:

- Previous experience;
- References from previous employers, or
- Interviews or applications for role in credit union.

The Central Bank expects credit unions to record all of the steps it has taken in assessing the competence and capability of the CF role holder and/or, where relevant, the reasons why the credit union determined that such information was not necessary or appropriate in the particular circumstances. For instance, when some credit unions were asked to explain a lack of recorded due diligence under this heading, we were advised in some cases that it was due to the CF role holder being a long-serving member of staff whose experience was gained in that credit union. Where this is the case, the credit union should consider this experience, assess it and record details of the assessment.

Section 4.3.3 of the F&P Guidance states that 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.

In complying with section 21 of the 2010 Act, the Central Bank expects credit unions to consider the responsibilities of the specific function and to determine the specific competencies and level of probity that should be expected of a person performing that specific CF in the credit union.

The credit union, using its unique knowledge of the CF, and taking into account all relevant matters, can make the assessment as to what makes a person fit and proper to perform the specific CF. The credit union should consider the activities constituting the function in order to assess the type of CF, and the specific competencies and level of probity that should apply to that CF.

Where a person performs more than one CF, it should be evidenced that the individual displays the competencies required for each role.

| Observed Examples of Good Practice | Observed Examples of Non-Compliance/Poor Practice |
|--|--|
| <ul style="list-style-type: none"> • A Profile for each credit union board member prepared and kept on file, briefly providing a description of the CF holder’s relevant qualifications and experience and an overview of the person’s attributes. • A separate Due Diligence File maintained for each CF holder containing records of relevant previous experience and qualifications, noting whether certain qualifications were a requirement of the role. • Evidence of the assessment conducted by the credit union included in each due diligence file. | <ul style="list-style-type: none"> • No evidence of due diligence or assessments of the previous experience of CF role holders maintained by the credit union. • No evidence that an assessment of the experience required for a CF role had been undertaken. • Over-reliance on personal knowledge of CF role holders without an assessment of such person being evidenced and documented. |

2.1.2 Evidence of professional qualification/ Evidence of CPD/ Evidence of compliance with the MCC (where relevant)

Where a specific qualification is necessary to carry out the responsibilities of a particular CF role, the credit union should obtain evidence that the CF role holder has the required qualifications, and the Central Bank expects a copy of that evidence to be kept on file by the credit union. Furthermore, and on an ongoing basis, where maintenance of a qualification is dependent on completing continuing professional development (CPD) the credit union should require the person to self-certify that s/he is compliant with the ongoing CPD requirements.

Where the credit union is a retail intermediary and a particular role is designated as a CF for the purposes of the 2015 Regulations, the credit union must ensure that the CF role holder is in compliance with the Minimum Competency Code (MCC).

The Central Bank expects credit unions, in complying with section 21 of the 2010 Act, to consider the responsibilities of the specific function and to determine the specific competencies and level of probity that should be expected of a person performing that specific CF in the credit union. Evidence of how they meet these requirements should be obtained and recorded for each CF holder on an objective basis, without an over-reliance being placed on ‘personal knowledge’ of the CF role holder which has not been evidenced as an assessment or documented.

| Observed Examples of Good Practice | Observed Examples of Non-Compliance/Poor Practice |
|---|--|
| <ul style="list-style-type: none"> • Copies of relevant qualifications and training for each person kept on their individual due diligence file. • Evidence of CPD hours for current and previous years for each person held on file. • Evidence held on file showing correspondence with previous employer regarding compliance with the MCC. | <ul style="list-style-type: none"> • Lack of evidence of qualifications and training – no copies of certificates/transcripts/records kept on file and/or no evidence of licence/certificate renewal where relevant. • Over-reliance on personal knowledge or ‘local knowledge’ of CF role holders without an assessment of such person being evidenced and documented. • Inconsistency: some due diligence for certain personal files contained adequate proof of relevant qualifications and training, while other files held at the same credit union were lacking such documentation |

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| | <p>without an explanation for this on file. There was a contrast between the standard of board member due diligence files versus staff files.</p> <ul style="list-style-type: none"> • Lack of documentation relating to compliance with the MCC, where relevant. |
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2.1.3 Concurrent responsibilities/ conflicts

Credit unions should ensure that holders of CF roles do not have other employment or time commitments which may interfere with or create conflicts in relation to the exercise of the CF. In relation to Directors this requirement has a legislative basis in section 53(5) of the Credit Union Act, 1997 (the 1997 Act) *‘Each director of a credit union shall ensure that he or she has sufficient time to devote to the role of director and the responsibilities associated with that role as indicated by the nomination committee under section 56B(4)(g)’*. Credit unions should require each CF role holder to self-certify that s/he is capable of conducting the relevant function, including that the person has adequate time to perform those functions.

During the inspections it was found that credit unions had combined the requirement to ensure that persons holding CF or PCF roles have sufficient time to dedicate to the relevant role with requirements in relation to ensuring that such persons do not have conflicts of interest. Whilst there may be some overlap between these two requirements, credit unions must ensure the staff and volunteers can and do devote sufficient time to their CF or PCF role.

The Central Bank considers it would be good practice for the credit union to have a process to determine the time commitment required on the part of the relevant CF role holder which would inform the decision as to whether a potential CF role holder is capable of conducting the relevant function, including that the person has adequate time to perform those functions having regard to those other potential concurrent responsibilities.

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| <p>Observed Examples of Good Practice</p> <ul style="list-style-type: none"> • Volunteer policy in place clearly documenting time commitments expected for each role. • Conflicts of Interest form completed annually | <p>Observed Examples of Non-Compliance/Poor Practice</p> <ul style="list-style-type: none"> • No specific mention of concurrent responsibilities, time commitments or conflicts on self-assessment forms. |
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| <p>by each person in the credit union, including a section to describe potential conflicts and proposals on how to manage these.</p> <ul style="list-style-type: none">• Conflicts of Interest forms signed by member of senior management team. | |
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2.2 Probity – Honest, Ethical and acts with Integrity

As stated in Section 7.5.1 of the F&P Guidance, persons proposed for CFs or PCFs must be honest, diligent and independent-minded and must act ethically and with integrity. Probity is a matter of character illuminated by a person's past behaviour. In general, where a person is found not to be a person of probity due to a lack of honesty, integrity or ethical judgement, that person may not be suitable for any CF or PCF. Probity may also include persons ensuring that they act without conflicts of interest.

Section 7.6.1 of the F&P Guidance refers to the fact that in carrying out due diligence, much of an assessment of a person's character, in terms of their probity, can only be undertaken in the case of exceptions, i.e. it is only when evidence is available to suggest that a person might not comply with the standard of probity required of him/her that a credit union must investigate thoroughly. The outcome of any such investigation should be documented and recorded. Prior to there being any indication of a failure to meet the Standards, there is a limit to the "due diligence" that an employer, or a prospective employer, can reasonably carry out.

Where a credit union becomes aware that there may be concerns regarding the fitness and probity of a person performing a CF or PCF, the Central Bank expects the credit union to investigate such concerns and take action as appropriate without delay. The credit union should ensure that a record is kept of any evidence, investigation, consideration of facts and information and/or action taken in this regard.

The Central Bank recommends in Section 10.2.2 of the F&P Guidance that credit unions carry out an audit on an annual basis of persons performing a CF or PCF. Credit unions should inform internal persons performing CFs that they are obliged to notify the credit union of any material changes in respect of the initial due diligence carried out and that they should inform the credit union without delay if for any reason they no longer comply with the Standards. Credit unions should bring the Standards and the Guidance to the attention of every person performing a CF on its behalf.

Sections 7.5 through 7.8 of the F&P Guidance provide assistance to credit unions on the due diligence to be undertaken by a credit union to assess a person’s probity, and applies to each of the Probity Standards of:

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

Section 7.6 of the Guidance states that “The Central Bank expects credit unions to undertake the following due diligence when assessing a person’s probity:

(i) The credit union should seek and obtain signed written confirmation from the person performing or proposing to perform a CF as to whether or not any of the circumstances set out in Section 4.1 (a) – (l) and Section 5.2 (a) – (e) inclusive of the Standards, apply to that person. Questions 5.1 – 5.23 set out in the Individual Questionnaire for proposed appointments to PCF(s) require information in relation to these issues and credit unions may wish to use these questions as a template.”

During the inspections it was noted that some credit unions did not conduct checks of publicly available information, such as a search on the Central Bank website or with the Companies Registration Office. Such checks should be conducted as a matter of course with the results documented and recorded and are required even where a CF or PCF role holder is already known to the credit union. The Central Bank considers it best practice that credit unions update such checks to ensure ongoing compliance with the Standards for CF and PCF role holders.

| Observed Examples of Good Practice | Observed Examples of Non-Compliance/Poor Practice |
|--|--|
| <ul style="list-style-type: none"> • Annual self-certification forms held on file, signed and dated by each CF holder, confirming whether or not any of the circumstances set out in Section 4.1 (a) – (l) and section 5.2 (a) – (e) inclusive of the Standards apply to that person. • Evidence in a credit union that extra questions were tailored to obtain more meaningful confirmations from the CF holder, relating to their specific line of work. | <ul style="list-style-type: none"> • No evidence of checks made against publicly available sources, in relation to disciplinary action, disqualifications, etc. • No evidence of self-certification obtained in relation to Garda Check/Convictions • No evidence of checks made on the Central Bank website, and those of other regulatory authorities where available, to confirm that each CF holder has not been the subject of sanction, or other regulatory action. |

- Evidence of checks made on each CF holder against publicly available sources such as: Companies Registration Office (cro.ie), SoloCheck (solocheck.ie), The Courts Service of Ireland (courts.ie), Vision Net (vision-net.ie), Stubbs Gazette (stubbsgazette.ie).
- Evidence of enquiries made which resulted from a disclosure on a self-assessment form, proving that the credit union had taken the necessary steps to satisfy themselves as to the person's level of probity.

2.3 Probity – Financial Soundness

In relation to the Financial Soundness Standard, persons holding CF roles are required to manage their financial 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 (e.g. a bankruptcy petition or judgment debt). In relation to Section 5.2(b) of the Standards which deals with financial soundness, the credit union, while undertaking due diligence for PCFs, CUCF-1 and CUCF-2, should check against publicly available sources whether a judgment debt has been registered against the person.

The Guidance, (see Section 7.6 of the Guidance also referred to above), recommends that credit unions use Questions 5.1 to 5.23 of the Individual Questionnaire for proposed appointments to PCFs as a template for the written confirmation to be obtained from persons holding CF roles. Where a person confirms that one or more of the circumstances set out in Section 4.1 (a) – (l) or Section 5.2 (a) – (e) apply, the person must be in a position to demonstrate that his or her ability to perform the CF(s) is not adversely affected to a material degree by that matter(s). The credit union should investigate the full circumstances of the matter to satisfy itself that the person complied with the Standards and the outcome of such investigations should be documented and recorded.

Where a credit union becomes aware that there may be concerns regarding the fitness and probity of a person performing a CF or PCF the Central Bank expects the credit union to investigate such concerns and take action as appropriate without delay. The credit union

should ensure that a record is kept of any evidence, investigation, consideration of facts and information and/or action taken in this regard.

The Central Bank recommends in Section 10.2.2 of the F&P Guidance that credit unions carry out an audit on an annual basis of persons performing CF or PCF. Credit unions should inform persons performing CFs that they are obliged to notify the credit union of any material changes in respect of the initial due diligence carried out and that they should inform the credit union without delay if for any reason they no longer comply with the Standards. Credit unions should bring the Standards and the Guidance to the attention of every person performing a CF on its behalf.

During the inspections it was found that some credit unions did not conduct the checks required to ensure CF and PCF role holders are in compliance with the Financial Soundness Standard. A judgement check should be conducted by the credit union on all PCF role holders and for those persons holding CUCF-1 and CUCF-2 roles. In addition the credit union should require all persons holding CUCF-3 to CUCF-11 roles to self-certify that there are no judgements registered against them which would materially impact upon their ability to perform the relevant role. Appendix 1 of the Guidance contains a useful table with “Examples of due diligence to be undertaken by credit unions for assessing a person’s compliance with the Standards” and which provides examples of how credit unions can conduct due diligence checks in relation to the three Standards.

| Observed Examples of Good Practice | Observed Examples of Non-Compliance/Poor Practice |
|---|---|
| <ul style="list-style-type: none"> • Checks made on online reference agencies • Standards are circulated annually for CF holders to sign confirming their ongoing compliance • Annual self-certification forms held on file, signed and dated by each CF holder, querying whether or not any of the circumstances set out in Section 4.1 (a) – (l) and section 5.2 (a) – (e) inclusive of the Standards apply to that person | <ul style="list-style-type: none"> • No evidence of judgement searches being made • Standards were signed as a once off when the CF role holder was first appointed to their role • A negative confirmation to the effect that a judgement mortgage had been registered against a CF role holder was on file with no mention of an investigation into such confirmation or explanation as to how the credit union was satisfied that such person complied with the Standards and/or that such person’s ability to perform the role was not materially impacted |

3. Role of Nomination Committee

Under section 56B of the 1997 Act, the Nomination Committee is responsible for assisting the credit union in performing any obligations of the credit union under section 23 of the 2010 Act in relation to any candidates proposed to perform CFs or PCFs.

It is also the Nomination Committee's duty to assist the credit union in carrying out any checks which the credit union is undertaking to enable it to comply with its obligations under section 21 of the 2010 Act. The Central Bank expects the Nomination Committee to ensure that the F&P regime for credit unions plays a strategic role in succession planning of the credit union and in ensuring that the correct skills mix is available to the credit union board and staff.

In complying with its obligations the Central Bank would expect that, in practice, the role of the Nomination Committee includes, but is not limited to the following:

- The Nomination Committee should have a documented succession plan that ensures a mix of skills, knowledge and experience will be present on the board
- The Nomination Committee have an ongoing responsibility to ensure the credit union is in compliance with the Standards
- The Nomination Committee have a responsibility to oversee all due diligence being carried out in the credit union
- The Nomination Committee should be aware of the records on file for all staff and board members and how they are maintained on an ongoing basis
- The Nomination Committee should assist the credit union in improving governance standards at board and management level within the credit union by ensuring that individuals who exercise significant influence and control in a credit union are capable and competent.

During the inspections it was noted that while, in some cases, the Nomination Committee fulfilled important and valuable roles in relation to recruitment of volunteers, board membership, assessing skills gaps and strategic planning, in other cases the Nomination Committee did not fully appreciate the extent of its role in relation to F&P. This was evidenced by a number of Nomination Committees stating during interview that they had no involvement in F&P compliance for credit union staff and/or referring to themselves as the

‘Succession Committee’. F&P should inform the Nomination Committee in all of its activities on a continuous and ongoing basis. Section 8.1 of the F&P Guidance details the responsibilities of the Nomination Committee.

| Observed Examples of Good Practice | Observed Examples of Non-Compliance/Poor Practice |
|--|---|
| <ul style="list-style-type: none"> • The Nomination Committee circulates a letter on an annual basis to enquire of the intentions of current board members and their plans to go forward at AGM time in order to inform their succession planning • Board Succession plan included a log of the number of years served by persons in a CF role versus the legislated number of years allowed. • A list maintained of each CF role with core competencies required for it. | <ul style="list-style-type: none"> • No documented board succession plan • The Nomination Committee referred to itself as the “Succession Committee” and showed little appreciation for its role in relation to the credit union’s compliance with the F&P regime for credit unions • The Nomination Committee had no part in F&P compliance for credit union staff, and indicated their belief that this was a matter for the credit union manager and compliance officer and not the Nomination Committee. |

4. Maintenance of Records

Credit unions are required to document and record all due diligence undertaken in relation to persons performing CFs, together with any documentation provided by the person including any responses given and signed by the person in relation to the Standards. The Central Bank may require to see any such records or due diligence either in the context of an investigation of a credit union’s compliance with section 21 of the 2010 Act, or an investigation in relation to a person’s fitness and probity to perform a CF. Credit unions should have regard to their obligations under Data Protection law in holding the information referred to in this Section including ensuring that the information is held securely and in an appropriate manner. Credit unions should also ensure that access to such information is restricted and only provided to the relevant credit union officers given the personal nature of the information.

During the inspections there was a noted variance in the level of understanding by the Nomination Committees of the obligations surrounding the maintenance of records. Due to the sensitive nature of the information held in due diligence files, and the obligations of the Nomination Committee as set out in section 56B of the 1997 Act, the Central Bank expects that the Nomination Committee ensures that their knowledge of records management obligations is kept up to date, and that regular training is undertaken to facilitate this.

Arising from the Thematic F&P Inspections, the Central Bank would consider as good practice a system of storing files in a secure location with limited access. For credit unions with multiple branches a centralised file with restricted access should be considered in order to facilitate the need to access these files in numerous locations. This can be a paper or digital file.

| Observed Examples of Good Practice | Observed Examples of Non-Compliance/Poor Practice |
|--|--|
| <ul style="list-style-type: none"> • Files kept in secure location with defined restricted access | <ul style="list-style-type: none"> • Files were accessible by all staff • Instances of due diligence files kept by a member of the Nomination Committee and stored by them off site • Over reliance on staff to keep and maintain files without appropriate oversight |

Appendix 1: Glossary

| | |
|-----------------|---|
| Act | The Central Bank Reform Act, 2010 |
| board | The board of Directors |
| Central Bank | The Central Bank of Ireland. |
| CF | Controlled Function |
| CP62 | Consultation Paper 62: Fitness and Probity Regime for Credit Unions |
| F&P | Fitness and Probity |
| F&P Guidance | Guidance of Fitness and Probity for Credit Unions |
| F&P Legislation | Central Bank (Reform) Act 2010 Credit Union Act 1997 |
| MCC | Minimum Competency Code |
| PCF | Pre-Approval Controlled Function |
| Standards | The Fitness and Probity Standards for Credit Unions |
| The 1997 Act | The Credit Union Act, 1997 |

Appendix 2: Information Request

Due Diligence

- Due diligence process undertaken for each CF, including any checklists;
- Record of names of persons holding a CF role in the credit union;
- Confirmation that each CF complies and agrees to comply by the Standards;
- Role descriptions of the CFs in the credit union; and
- Details of competencies required for a person in each CF.

Nomination Committee

- Minutes of the Nomination Committee where fitness and probity was discussed since 06/2015, (to include discussion leading up to the 2015/2016 AGM);
- Process for identification of persons for nomination for election to the board of directors; and
- Criteria, including any skill gap analysis, for nomination for election to the board of directors.

Prepare for viewing onsite the due diligence carried out on:

- a. Manager;
- b. members of the board of directors ;
- c. chair of the board oversight committee;
- d. risk management officer;
- e. compliance officer; and
- f. internal audit function.



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