

Fit for purpose? The importance of meeting the Central Bank's fitness and probity requirements

The Central Bank has sharpened its focus on fitness and probity in the last year, with a notable increase in the number of fitness and probity interviews being conducted, the issue of a "Dear CEO" letter on the topic and, for the first time, it has exercised its discretion to publish in full the reasons for a prohibition. MUIREANN REEDY looks at some of these developments.

People working in the financial services industry will be familiar with the fitness and probity regime which was introduced by the Central Bank Reform Act 2010 (the "2010 Act"). It applies to people performing senior roles in regulated financial service providers ("RFSPs") and also imposes obligations on RFSPs in respect of these senior personnel. Some recent developments in the area are considered below.

PCF Interviews

Before a person can be appointed to perform a pre-approval controlled function ("PCF") at a RFSP, the RFSP must obtain Central Bank of Ireland ("CBI") approval. When deciding whether to approve the proposed appointment or not, the CBI may decide to interview the person. After an initial interview, if the CBI has concerns about approving a proposed PCF, the applicant will be invited to a second interview, known as a "specific interview", at which members of the CBI's specialist fitness and probity team (within the Enforcement Directorate) will attend. According to the CBI's latest Annual Performance Statement, its Enforcement Directorate attended 71 interviews with applicants in 2018. In 2017 the Enforcement Directorate was involved in 25 fitness and probity assessments.

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increased almost threefold. This suggests that the CBI may be taking a more robust approach to applications than may previously have been the case. The "Dear CEO" letter notes that these interviews are intrusive and that applicants should be prepared for this.

The "Dear CEO" letter

In April of this year the CBI issued a "Dear CEO" letter reminding firms of their obligations under the 2010 Act. The letter noted that firms are required to conduct due diligence on an ongoing basis to ensure that employees performing controlled functions ("CF") comply with the Fitness and Probity Standards. It gave examples of situations where serious issues had arisen which should have prompted a firm to ask if a person in a CF role was still fit and proper (e.g. where individuals were criticised publicly by other regulators and/or by the Courts for past actions) but no action had been taken. It was also critical of firms which had taken action on foot of fitness and probity issues (e.g. dismissing a person for fraud) but which had failed to report those matters to the CBI.

The CBI said that, at a minimum, firms

should require CFs to notify them of any change in circumstance which might be material to their fitness and probity, and should ask CFs to certify at least annually that they are aware of the Fitness and Probity Standards and agree to abide by them.

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As regards proposed PCFs, the CBI also expressed dissatisfaction with the due diligence undertaken by some firms before proposing a person for a PCF role, noting that in a number of instances applicants had failed to disclose material facts on their Individual Questionnaire ("IQ") which would have been known to the proposing firms - or should have been known to them - if they had conducted proper due diligence on the proposed candidate.

Enforcement Actions

In the last nineteen months the CBI has published three settlements relating to enforcement actions taken against firms for failing to put in place, and/or failing to follow, proper systems and controls to ensure compliance with the fitness and probity regime. The fines imposed have ranged from €155,000 - €443,000. These cases highlight how important it is for RFSPs to record and retain the due diligence which they have undertaken on CFs and of having adequate fitness and probity policies and procedures in place.

Prohibition Notices

Another element of the fitness and probity regime is the CBI's ability to investigate an individual who is performing a CF and to prohibit a person from performing a CF if it is not satisfied that the person is of the requisite fitness and probity to perform part or all of a CF.

It is of note that until earlier this year when the CBI published its first full Prohibition Notice (with some minor redactions), the CBI had only published very high level details of the five previous Prohibition Notices.

Five of the six Prohibition Notices have prohibited the relevant individual from performing any CF for an indefinite period.

Future changes?

As part of its proposals for an Individual Accountability Framework, the CBI has said it would like to see some changes made to its fitness and probity regime. Firstly it would like to introduce an annual certification regime which would oblige RFSPs to certify annually that all its CFs are fit

and proper. Secondly it would like the power to publish refusals of appointments to PCF roles and it would also like to have the ability to investigate individuals who performed CFs in the past. The Government has recently given the green light for the CBI's proposals on individual accountability to be included in the Central Bank (Amendment) Bill 2019, although it remains to be seen whether all of the CBI's recommendations in relation to amendments to the fitness and probity regime will be taken on board.

Comment

The requirements in the 2010 Act are no longer new and the CBI expects all firms to be familiar with their obligations under the Act. The CBI's fitness and probity team can conduct on-site inspections and any gaps in processes could leave firms exposed to enforcement action. RFSPs should ensure that they are evidencing all due diligence which has been carried out in respect of persons performing CFs on their behalf and that they receive the recommended annual confirmations from CFs and follow-up on

any concerns which come to light, either through the annual process or from another source, documenting the outcome of their enquiries and taking action if necessary.

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People who wish to perform a PCF in a firm should ensure that their IQ contains all relevant disclosures. Applicants should be prepared for a robust interview if there are any anomalies in their IQ or if they have been involved in a firm previously which has been sanctioned by the CBI or another regulator while they held a position of influence there.

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