



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

# Fitness and Probity Review

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# Contents

<b>Acronyms &amp; abbreviations .....</b>	<b>3</b>
<b>Foreword.....</b>	<b>4</b>
<b>Executive Summary.....</b>	<b>6</b>
<b>Chapter 1: Historical context &amp; the Irish financial system .....</b>	<b>13</b>
<b>The Fitness and Probity Regime: the importance of gatekeeping .....</b>	<b>13</b>
<b>Chapter 2: Key themes emerging .....</b>	<b>18</b>
<b>Chapter 3: Clarity of supervisory expectations.....</b>	<b>23</b>
<b>Chapter 4: Internal governance of the process .....</b>	<b>38</b>
<b>Chapter 5: Fairness, efficiency and transparency of process .....</b>	<b>52</b>
<b>Appendix 1 – Recommendations.....</b>	<b>71</b>
<b>Appendix 2 – Terms of Reference .....</b>	<b>79</b>
<b>Appendix 3 – Methodology and stakeholders’ input.....</b>	<b>81</b>
<b>Appendix 4 – Biography .....</b>	<b>87</b>

# Acronyms & abbreviations

AFM - De Autoriteit Financiële Markten

AMF – Autorité des Marchés Financiers

Central Bank – Central Bank of Ireland

DNB – De Nederlandsche Bank N.V

EBA – European Banking Authority

ECB – European Central Bank

ESAs – European Supervisory Authorities

ESMA – European Securities and Markets Authority

FCA- Financial Conduct Authority

F&P – Fitness and Probity

IAF – Individual accountability framework

IFSAT – Irish Financial Services Appeals Tribunal

NCA – National competent authority

OECD - Organisation for Economic Co-operation and Development

PCF- Pre-Approval Controlled functions

PRA – Prudential Regulatory Authority

SSM – Single Supervisory Mechanism

# Foreword

The Governor of the Central Bank of Ireland, Gabriel Makhlouf, asked me to undertake an independent review of the fitness and probity approval process at the Central Bank of Ireland (Central Bank).

The Central Bank considers a review necessary as the implementation of the fitness and probity framework (F&P framework) is over a decade old and it is timely therefore to review it to ensure it remains effective into the future. As the regulatory landscape evolves, it remains important to assess whether the existing gatekeeping process remains relevant, effective and in line with international supervisory and industry best practices. The F&P framework is a key component of the supervisory toolbox, essential to ensure proper governance, risk management and adherence to high ethical standards at financial firms.

The Central Bank is also cognizant of a recent decision of the Irish Financial Services Appeals Tribunal (IFSAT). This decision raised issues regarding the Central Bank's handling of an application within the gate keeping process, raising concerns about the effectiveness, fairness and transparency of the process. The Central Bank, cognizant of these concerns, aims to utilise the independent review also as an opportunity to identify areas of improvement and address any potential shortcomings in their process.

The effective exercise of this delicate function requires extensive reliance on supervisory judgement: if there are reasonable grounds that the appointment of an individual in a key function might have a detrimental effect on the stability and proper conduct of a firm, the framework needs to provide supervisors with sufficient leeway to act and refuse or impose measures alongside the appointment. At the same time, the impact that decisions could have on firms and individuals demands that the highest standards of fairness and transparency are adhered to.

Conducting this review is a clear indication that the Central Bank intends to demonstrate its commitment to transparency, accountability and continuous improvement. By taking a proactive approach to addressing concerns raised by the IFSAT and re-evaluating the F&P framework as a whole, the Central Bank seeks to strengthen public trust and confidence in the Bank's ability to maintain high standards of professionalism and competence within the financial services industry and perform its delicate tasks in a fair and transparent way.

With this in mind, the objective of the review is set out in the Terms of Reference, (Appendix 2) but in summary, it:

- 1) Evaluates the effectiveness of the performance of the F&P functions by reference to both the quality and quantity of work undertaken and to the current structure and internal governance structures.
- 2) Evaluates whether the standards applied to F&P assessments by the Central Bank are broadly consistent with comparable F&P supervisory practices internationally.
- 3) Evaluates the calibration, efficiency and timeliness of how F&P functions are carried out in the Central Bank having regard to organisational priorities and available resources.
- 4) Considers the fairness and transparency of F&P activities for both the firms involved and individuals who may be impacted and whether any enhancements can be made in this regard.
- 5) Makes recommendations to promote improvements in the performance of the F&P functions.

Since the decision in the recent IFSAT case, the Central Bank has introduced a number of interim enhancements to its F&P processes. Whilst not involved in this process, I am aware of and in broad agreement with many of the enhancements.

In the course of my review, I had extensive engagement with stakeholders, including advice from external legal Senior Counsel, and I am very grateful for their insights and perspectives. It is clear to me that all interested parties, from regulated entities, to policy makers and legislators, to the management and staff of the Central Bank very much acknowledge the importance of the F&P framework as a key element of the regulatory framework. I am particularly grateful to the staff and management of the Central Bank, for the open-minded and candid reflections that accompanied my review. This attitude reassures me that the cultural change needed to embed some of the recommendations of this report will be embraced throughout the organisation. A special thank you to Simon Sloan, Paschal Finn and Conor O'Shea who assisted me in the review, for the many interesting and passionate discussions that made this challenging task a very pleasant and enriching endeavour.

# Executive Summary

The F&P framework is a cornerstone of the regulatory reforms introduced after the extensive damage generated in Ireland by the Great Financial Crisis. Both the Honohan and the Regling and Watson reports identified failures to implement good corporate governance standards by the regulated entities and a lack of proper oversight of governance arrangements by the regulator as key loopholes to be addressed in order to restore trust in the financial sector. The competence and integrity of individuals taking up key responsibilities within financial firms is paramount for ensuring that the provision of financial services in Ireland is developed on strong foundations in terms of accountability, effective risk management and overall culture and behaviour oriented to the benefit of the final users and the respect of the regulatory framework.

An effective gatekeeping function requires three ingredients to be in place:

- 1) a clear framework in which supervisory judgement is exercised according to principles that are well understood by all parties,
- 2) financial firms taking ownership of the process, with rigorous vetting of potential candidates and choice of board members and key function holders that ensure the highest standards of professionalism and ethical behaviour, matching the complexity and sensitivity of the business conducted by the firm,
- 3) fair procedures being strictly observed throughout the F&P process, reflecting the sensitive nature of the assessment, for both firms and individuals, including the constitutional principles in place in Ireland to protect the individual right to earn a living.

In the preparation of this report, a compact but extensive consultation of key stakeholders was conducted, including all relevant industry associations, individual market participants, top and middle management as well as involved staff at the Central Bank, legislative and policymaking bodies and other Irish authorities. In line with the mandate received by Governor Makhoulouf, an extensive analysis of good practices at other supervisory authorities in the EU, the UK and Australia was a key ingredient of this review.

The review concludes that the conduct of the F&P process at the Central Bank is broadly aligned with other peer jurisdictions across a number of dimensions: standards are comparable; statistics on outcomes (approvals, withdrawals of applications, refusals) are in line with other supervisory authorities and do not signal either a particular stringency or leniency of the process; timelines are well aligned with the

target service standards and generally faster than in other countries. The first 13 years of application of the F&P regime introduced after the Great Financial Crisis have been successful in raising the bar for the entry in key positions in the financial industry, in the interest of consumers and the stability of the system. This point is widely acknowledged by industry and nobody participating in the consultation has argued for the need to revise the regulatory framework, water down or remove F&P checks – while as discussed below, some industry bodies, especially representative of small firms, argued for a greater consideration of their nature and complexity in calibrating the Central Bank’s approach.

However, the decision of the IFSAT on the AB case<sup>1</sup> and the confidential feedback received during the consultation highlighted a number of areas in which the operation of the F&P process is not always up to the requisite standards of fairness and transparency. These issues have to be addressed, as the robust supervisory judgement required for the effective functioning of the gatekeeper function fundamentally rests on a fair and efficient organisation and conduct of the process.

The review of the F&P process also highlighted the potential for targeted improvements in the areas of consistency of the process across firms of different size and operating in different financial sectors.

The recommendations contained in this report are not all requesting change, as the practices adopted by the Central Bank are already to a large extent aligned with the recommendations. But as there might have been some divergences from these good practices at times, it is important that these points are reiterated and made clear in official documents and rooted in Central Bank’s culture. In particular, the recommendations focus on three areas:

- 1) Clarity of supervisory expectations,
- 2) Internal governance of the process, and
- 3) Fairness, efficiency and transparency of the process.

### **Clarity of supervisory expectations**

The standards published by the Central Bank are not misaligned with good practices adopted by peer regulators, but are fragmented across different documents and not user-friendly in their presentation. Consolidating the standards in a single location and complementing them with an array of communication tools (speeches by Central Bank’s leaders, Q&As, regular open workshops for firms and potential candidates)

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<sup>1</sup>[IFSAT Tribunal between AB and The Central Bank of Ireland](#)

would make it easier for firms to vet potential candidates and for candidates to prepare for the process.

Also, in some areas more clarity could be achieved by adopting practices in place at other authorities, for instance by applying criteria when assessing a given application that enables it to calibrate the intensity of the scrutiny in line with the complexity and systemic relevance of the firms and the positions of the candidates – a good reference in this area is provided by the practices followed by the UK Financial Conduct Authority (FCA), which could also indicate a need to consider streamlining the number of roles requiring prior approval. This could also provide the opportunity to review the calibration of the process across firms and financial sectors. In particular, some concerns have been expressed by the fund sector and small intermediaries and brokers.

However, in the fund sector a very low number of candidates are actually interviewed, with two main consequences: first, individuals can accumulate a large number of mandates, significant also across different families of funds, without any direct, in person discussion with their supervisor; second, those few who are called for interviews are subject to stigma and risk being shunned for additional roles. This could suggest promoting higher targets for interviews, specifically linked to the systemic footprint, the number of mandates, and as a practice to engage in a (de-stigmatised) conversation with individuals assuming significant roles in an important sector for Irish financial services. As to brokers and smaller intermediaries, it is important to keep the F&P process within compact timelines and clearly distinguish this part of the process from the broader authorisation procedure; but it should also be clearly explained that the gatekeeper function is important in this sector, in light of the more limited supervisory touch points after authorisation.

Moreover, the Central Bank's standards could improve in clarity if more objective measures could be incorporated to guide the selection by firms. More detail could also be provided as to what is expected respectively for executive and independent directors, and by specifying criteria concerning conflicts of interest and collective suitability - the ECB guidance providing a good yardstick in this area.

### **Internal governance of the process**

The F&P process at the Central Bank is now fragmented across different units, with coordination ensured via committee structures. There is some degree of organisational overlapping between the F&P and the enforcements functions, which seems to have generated some confusion amongst firms and candidates as to the key focus of the F&P process being orientated towards a quasi-enforcement investigation of past



behaviour. The IFSAT decision on the AB case also noted the principle of independence of decision making and the internal checks and balances within the process.

This report recommends establishing a single unit in charge of F&P gatekeeping in line with the practices prevailing at all surveyed supervisory authorities, which sometimes integrate in the same unit also the authorisation function. Having a single unit following all processes from start to finish would help ensuring consistency across decisions and discipline in keeping timelines within clear boundaries, also in complex cases. This unit should also be organisationally segregated from the enforcement function, to ensure a clear distinction between the two processes. Also, it is recommended that as the assessment moves towards a possible refusal the management of the process is escalated to higher levels of seniority, to ensure greater awareness of the impact of a negative decision and the importance of ensuring a very robust process.

In order to ensure sufficient seniority efficiency and independence in decision making, it is recommended that a senior panel is established. The composition of the panel would not have been directly involved in the management of the process to that point and would ensure an independence of perspective. This panel should benefit from independent legal advice within the Central Bank, who should not have been involved in the shaping of the proposals submitted for decision. Where legal advice is required prior to the decision making stage this would have been provided by a separate legal adviser in the Central Bank's Legal Division. The panel established at the ECB for F&P to improve the efficiency of the decision making process could provide a useful reference. This senior panel discusses complex cases and frames the proposal to be submitted for decision to the Supervisory Board. Where complex cases occur, and attendant delays arise, a mechanism should exist for such cases to be promptly escalated to senior management within the Central Bank in order to take ownership of the final steps.

### **Fairness, efficiency and transparency of the process**

The F&P process cannot be reduced to a tick-the-box exercise, in which certain pre-defined experience requirements and lack of criminal charges or relevant administrative sanctions are mechanistically checked. An effective process calls for supervisory judgement on the ability of an individual to exercise certain functions in a financial firm in a professional and ethical manner. While a probity assessment tends to be a black or white decision – either an individual gives sufficient guarantees of ethically driven behaviour, or they do not – a fitness assessment is not an absolute judgement: it is time contingent (an individual might not yet have matured sufficient experience to cover a certain position), specific on the position (an individual might not

be fit for a certain position but could be fit for other pre-controlled function positions), specific on the firm (an individual might not have the skills required for a complex, systemically relevant firm, but could be a good match for simpler firms). This implies that a refusal is not and should not be perceived as a “ban” from the financial industry. Candidates that are not successful should receive clear feedback indicating which steps are needed to be successful in future applications.

Still, a negative decision carries important consequences for individuals and firms. The power attributed to the supervisory authority has to be exercised with utmost care and awareness, which implies that fairness and transparency of the process are essential ingredients of a well-functioning, effective F&P process. The observations contained in the IFSAT decision on the AB case, the confidential feedback received during the consultation, and meetings held for the preparation of this report show that there are improvements which the Central Bank can make to ensure the appropriate standards of fairness, efficiency and transparency are consistently achieved. The report recommends to formally adopt and ensure compliance with a number of good practices.

In particular, the recommendations emphasise the need to share with the candidate sufficient advance notice of a draft agenda with a clear indication of the topics on which the interview will focus, pointing out also that the interview should remain within a well-defined time limit (90 minutes, in line with the practice in place at other authorities). Although the interview should maintain a conversational tone and never move into an enforcement-style investigation, the candidate should be informed of the possibility to be accompanied by a note taker or a lawyer, if this would provide greater peace of mind.<sup>2</sup> The write-up of the interview should be shared with the candidate within a week, and the candidate should be granted another week to provide comments.

When the Central Bank’s assessment is heading towards a possible referral to a decision-maker to consider a refusal, clear feedback should be provided in a formal and consistent way to both the applicant firm and the candidate. Withdrawal of applications could be, and *de facto* are in most jurisdictions, a possible and likely way forward when the supervisory authority communicates its concerns with the F&P status of the candidate. This avoids a negative decision that could reflect negatively on the selection process conducted by the firm and could be seen as adversely affecting future opportunities for the candidate. Still, there should always be an efficient management of the timeline, to avoid any impression that the Central Bank is

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<sup>2</sup> While support may be present with the candidate, it would remain for the candidate to provide answers to the questions posed rather than their representative

prolonging the time frame to prod a reconsideration of the application, without taking responsibility for a formal decision (what the industry refers to as a “slow no”). Also, besides providing the candidate with a full disclosure of the reasons why the Central Bank may be minded to refer a decision to a decision-maker to consider refusal, if the candidate disagrees with the firm’s decision to withdraw the application there should still be channels for the candidate to challenge the assessment of the Central Bank.

As a full appeals process would not be available in the absence of a decision, the Central Bank should make available a formal complaints channel, with sufficient safeguards of independent assessment – e.g., the decision making panel or an independent third party appointed for this purpose could be entrusted with the task of reviewing the complaint and providing a formal response to the complainant. The outcome of this process could not of course change the fact of the withdrawal by the firm but would be for the purpose of providing an explanation to the complainant as appropriate or potentially recommending process changes which should be applied to future cases.

There should always be feedback from the interview process, so that in case of refusal the candidate could have a clear indication of the areas on which improvements are needed to ensure success in future applications. If the professional skills or the knowledge of the regulatory framework of the candidate are not satisfactory, but the gaps could be filled with appropriate training programmes, in line with the principle of proportionality the Central Bank should carefully consider other measures to address the gaps - for example approval with recommendations. This could also help in cases in which firms propose candidates with a good background outside the financial industry (e.g., on climate issues, or IT), which could prove useful to buttress diversity within boards and senior management teams.

Longer timelines for complex cases are not unusual at peer supervisory authorities considered in this review. However, fairness requires that efficient decisions are made, given the impact that a delay in making a decision may have for a candidate or firm. Therefore, as an element of internal discipline and accountability, it is also recommended that the Central Bank voluntarily and publicly commit to maintain the overall timeline for completion of F&P assessments within 90 days, in line with the guidelines provided by ESMA and EBA and similarly to the statutory limit in place in the UK.

Interviewers should go through a comprehensive training process, making sure they keep the right posture and avoid confrontational attitudes during interviews. It is essential that a clear dividing line is maintained between enforcement actions and the F&P process: enforcement action aims at ascertaining breaches of rules or improper

conduct in past cases, is by its nature investigative and adversarial, and may conclude with penalties or sanctions; F&P gatekeeping is a forward-looking assessment where events of the past are considered with a view to evaluating what the candidates learned from them and how they would act in the position they are proposed for, once they are approved. As F&P standards have to be respected through time, there could be cases in which new events deserve appropriate investigations, which may lead to a reassessment of the F&P status of some key function holders.

As mentioned above, a negative F&P assessment should not be seen as a sanction, or even less as banning somebody from the industry, but as a firm-specific and position-specific supervisory assessment. Of course, past enforcement decisions or episodes of misconduct could and should be factored into F&P decisions, but also in this case it would be important to have a clear and transparent policy as to the number of years that should elapse before a person could be considered again for a PCF function.

A user-friendly process benefits also from IT tools, which make it easier for firms and candidates to understand what is expected of them. The Central Bank's portal is a positive development, but there were a number of complaints on its concrete functioning, which could suggest holding regular workshops to gather users' feedback.

Finally, regular publication of the outcomes of the process, with granular information about outcomes (approvals, withdrawals, refusals) by sector and complexity of firms, including clear visibility on the quartiles of the distribution of timelines, would provide a helpful orientation to firms and individuals engaged in the process and support proper accountability of the exercise of this delicate function by the Central Bank.

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This package of recommendations, if implemented or clearly reiterated as key elements of internal practices, would go a long way in ensuring that in all cases the Central Bank will exercise the significant powers granted to them by the legislature with professionalism, integrity and respect for fair process. As the Central Bank implements its new Individual Accountability Framework (IAF), enhancements recommended in the report to the operation of the F&P framework will support its overall framework that will improve governance and foster a culture of greater accountability within financial services firms.

# Chapter 1: Historical context & the Irish financial system

## The Fitness and Probity Regime: the importance of gatekeeping

The Great Financial Crisis severely eroded the trust of the public in the ability of financial regulation to mitigate systemic risks and protect consumers of financial services, thus enabling efficient allocation of resources and sustainable growth. The broad ranging debate that led to a comprehensive package of financial reforms also identified significant shortcomings in the governance of financial institutions, primarily characterised by poor risk management practices, excessive risk-taking, and conflicts of interest, as a major driver of the crisis.

In Ireland, the Honohan and the Regling and Watson reports clearly pointed to weaknesses in governance at financial firms and failures of regulatory and supervisory authorities to identify and address these issues effectively, exacerbating the crisis impact. Regling and Watson found in Ireland *“at least some instances of extremely serious breaches of corporate governance, going well beyond poor risk assessment, and eventually having a systemic impact”*.<sup>3</sup> Governor Honohan noted that ... *“the major responsibility lies with the directors and senior management of the banks that got into trouble. They are the first line of defence to protect those who have entrusted them with their funds”*.<sup>4</sup>

In Ireland, an important component of the post-crisis reforms was the introduction of the F&P framework by way of the Central Bank Reform Act 2010. A critical feature of this regime ensures that individuals appointed to key positions within financial institutions possess the necessary skills, knowledge and qualifications to fulfil their roles effectively. It further provides that where individuals are to perform pre-approval controlled functions (“PCF”) that they must be assessed by the Central Bank in advance.

Since 2011 all persons occupying a PCF<sup>5</sup> in a regulated entity (other than credit unions, which was implemented in 2013) have been subject to the F&P standards issued by the Central Bank. The Central Bank has received over 50,000 PCF applications since the

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<sup>3</sup> [Regling & Watson - The sources of Ireland's Banking Crisis](#)

<sup>4</sup> [Honohan Report, 2010](#)

<sup>5</sup> The Central Bank of Ireland has prescribed certain senior roles as PCF roles. There are currently 60 roles prescribed under legislation as PCFs.

inception of the F&P regime. Over the course of the last 4 years, the Central Bank has approved over 11,000 individual PCF roles. (Figure 1)

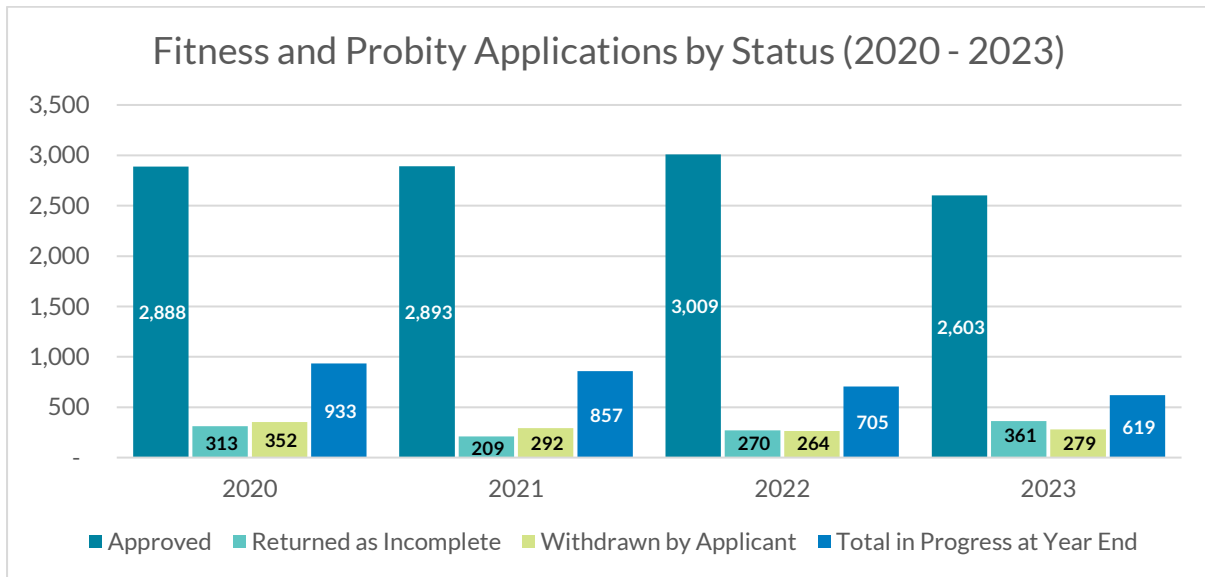


Figure 1: Fitness and Probity Applications by Status 2020 - 2023

The F&P gatekeeping frameworks in the financial services industry are designed to ensure that individuals holding key roles within regulated entities possess the necessary competence, integrity and commitment to effectively perform their duties. These frameworks play an important role in promoting sound governance, effective risk management and public trust in the financial sector.

Understanding the Central Bank’s approach to exercising its F&P gatekeeping powers requires the above examination of the context of the underlying legislation introduced and the manner in which it was implemented. The 2008 financial crisis proved to be a defining event in this regard, revealing very significant shortcomings in industry governance and risk assessment practices, as well as highlighting the Central Bank’s insufficiently challenging supervision and limited F&P powers at the time.

In response to these issues, the Central Bank sought to elevate industry standards by promoting stronger corporate governance practices and implementing a robust use of its F&P powers. This shift in approach included the placement of key responsibilities on F&P gatekeeping within the Enforcement Directorate, also in light of the perceived synergies with the actions to ascertain responsibilities of financial firm (especially bank) managers in episodes of misconduct or excessive risk taking, which led to disruptive failures of their firms.

## Continued evolution of the industry and the regulatory framework

Since 2010, the financial system, globally and in Ireland, has been evolving rapidly, amid continued technological and business model innovation, and the changes triggered by regulatory reforms. Over recent decades Ireland has developed an internationally focused financial centre, which has grown in size, complexity and interconnectedness.

The entities and activities that fall within the remit of the Central Bank have grown in scale and complexity in recent years with some of the greatest rates of growth occurring in the most complex parts of the system. While there has been consolidation in the banking and insurance sectors, there has been significant growth in terms of scale and size of asset management at a global level since the financial crisis, with Ireland benefiting significantly from this global growth. Ireland also hosts a growing number of innovative financial (FinTech) companies, with the largest component of these in the payments sector, as reflected in the growth of the payments institutions and electronic money institutions (PI/EMI) sector.

Total financial sector assets in Ireland has grown from €2 trillion in 2007 to €7.9trn in 2022. The financial sector is diverse, but non-banks dominate the composition and have been the main driver of growth with total assets now of c.€6.3 trillion, increasing from €1.5 trillion in 2008.

PCF applications received by the Central Bank reflect the diverse nature of the financial sector here in Ireland. Figure 2 provides a breakdown of the PCF roles held in each industry sector. There are over 21,000 PCF roles currently active in Ireland, with the non-bank, retail intermediaries and investment firms accounting for c.75 per cent of active PCF roles that have been approved by the Central Bank.

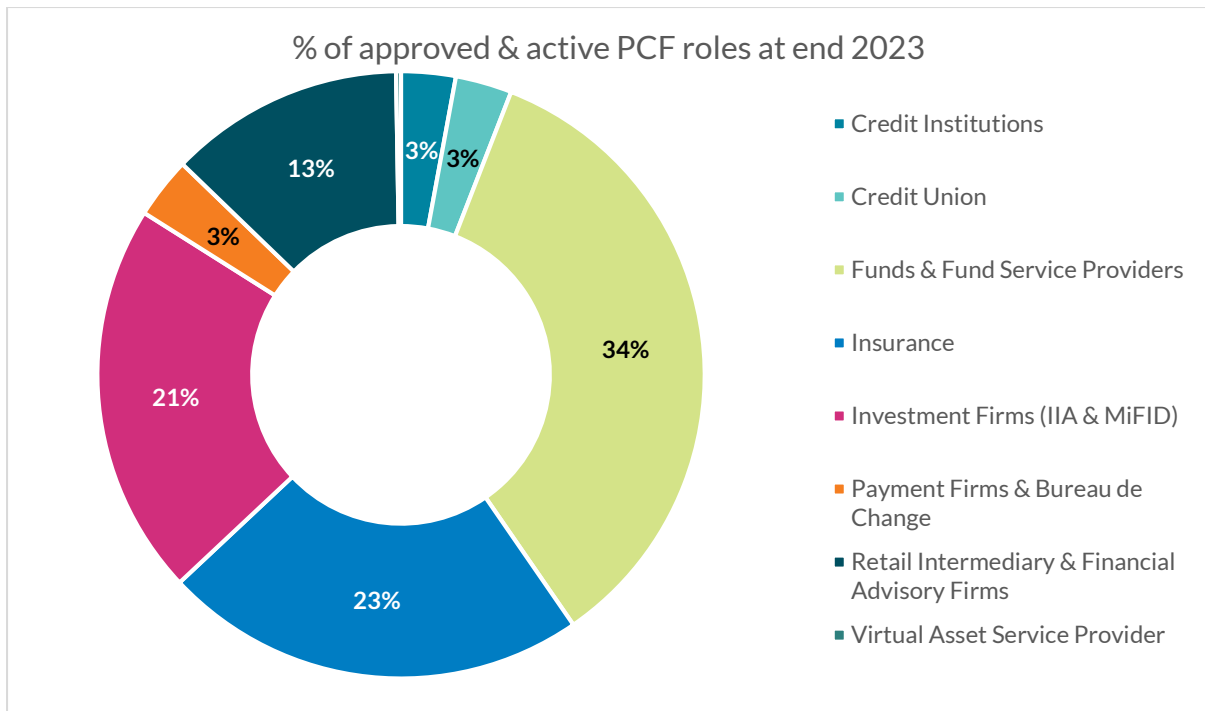


Figure 2: Percentage of PCF roles held by industry in the Irish financial system

During the same period, the institutional framework governing the financial sector has undergone significant changes. The European Supervisory Authorities (ESAs) and the Single Supervisory Mechanism (SSM)<sup>6</sup> have been established respectively in 2011 and 2014 and have significantly changed the policy and supervisory landscape across much of the financial services industry in the EU. In particular, the responsibilities for the supervision of significant credit institutions, including F&P assessments, moved to the ECB, which exercises them via collaborative structures in which the Central Bank’s staff takes active part. In addition, at a national level, the Central Bank has seen its supervisory and enforcement powers further enhanced through the Central Bank (Supervision and Enforcement) Act in 2013 and again, more recently, with the Individual Accountability Framework. The latter will assist with the development of a culture, at an industry level, which places emphasis on responsibility and ethical conduct among senior leaders.

This backdrop of industry and framework evolution speaks to the need for regulatory clarity and enhanced risk focus, so that the scrutiny is commensurate to the risks that

<sup>6</sup> Since the commencement of the SSM in 2014, the ECB has become, in the context of credit institutions, the competent authority for the supervision of significant institutions (SIs) in the euro area, while less significant institutions (“LSI”) continue to be supervised by national competent authorities. Approval of the ECB is required for specified roles in SIs and subsidiaries of SIs. While the Central Bank is still closely involved in the preparation of decision-making for the relevant SI roles, the SSM is the ultimate decision maker. The Central Bank retains direct supervisory responsibility for LSI’s, in close cooperation and with oversight from the ECB. The Central Bank is responsible for the day-to-day supervision of these credit institutions and is responsible for the fitness and probity assessments for all applications made by LSI’s.



firms (and within firms, functions) potentially generate for the system as a whole and for its moving parts. Efficiency also becomes a key area of attention, in light of the increased number of applications and the need to provide timely feedback when the positions under assessment are key to the launch of a product, as it is the case in the fund sector.

## Chapter 2:

# Key themes emerging

An effective and efficient F&P gatekeeping process is built upon several key ingredients that promote trust, integrity and stability within the financial system. These essential components are:

- 1) A clear framework set out by the regulatory authority, which is well communicated and understood by the industry,
- 2) Industry stakeholders taking ownership of their role in the F&P gatekeeping process, ensuring appropriate due diligence of professional and ethically minded candidates,
- 3) A fair process led by the regulatory authority, culminating in a final decision based on a rigorous and transparent process.

In the remainder of this report, I examine the above elements from the perspective of clarity of supervisory expectations, governance and process fairness and transparency.

Throughout the review, the following five themes emerge as fundamental principles across all areas:

### **Supervisory judgement**

Supervisory judgement is an indispensable component of the F&P assessment, as it allows for a comprehensive evaluation of an individual's suitability for a specific role. By considering both objective criteria and subjective assessments, supervisors can make informed decisions that capture the nuances of each candidate's qualifications and character and evaluate such elements against the specific business model and risk profile of the firm applying for the approval. The internal culture of the regulator should support the exercise of judgement: supervisors should feel comfortable to make difficult calls, when they perceive that an appointment could be detrimental to the safe and prudent management of the firm and to the pursuit of conducts in line with regulatory framework and the interest of the customers. If supervisors were to feel safe only to challenge candidates in cases where enforcement actions or criminal proceedings have already disqualified a candidate, the gatekeeping function would become a purely bureaucratic function, adding little value to the pursuit of the objectives entrusted to the regulator.

When an application by a regulated entity is refused by the regulator, it is crucial for it to be understood both by the regulated entity and the proposed individual that such a

refusal should not be construed as a ban or prohibition on the individual's participation in the financial services industry. Instead, such a refusal is a regulated entity, time and role specific supervisory assessment, based on the specific circumstances and context of the proposed appointment.

The exercise of supervisory judgement, though, requires clarity around the standards against which competency and conduct are assessed. It is in the interest of supervisors that regulated firms understand what is expected of them, as they have to conduct thorough due diligence and make informed decisions when appointing individuals to key positions. By emphasising the importance of industry ownership and responsibility in upholding standards of F&P, the regulator fosters a culture of accountability within the sector. This approach encourages regulated entities to adopt a proactive role in assessing and ensuring the F&P of their senior leaders, effectively internalising the regulatory objectives at both operational and cultural levels.

It is crucial to understand, however, that this clarity of F&P standards cannot reduce the F&P process to a mere tick box exercise. To avoid this, regulators should strive to ensure that the standards and framework provides guidance on core values and qualities expected of individuals in key functions, while still leaving appropriate room for the exercise of supervisory judgement.

## **Fairness**

Fairness is a pivotal principle in the F&P gatekeeping process within the financial services industry. In particular, procedural fairness, with its focus on the processes and methods by which decisions are made is of particular importance in the current context. In this respect a tangible explanation of procedural fairness is outlined by the Centre of Justice Innovation in its paper<sup>7</sup> which provides that “[P]rocedural fairness refers to the degree to which people perceive those in authority as legitimate and their decision-making as fair. If people feel fairly and respectfully treated, they will view the process, as well as those making the decisions, as more legitimate.”

Whilst the above paper is focused on court processes, as opposed to those of a type specifically considered in this report, the four cornerstones of fairness which it highlights resonate strongly with the principles that I believe should be observable at all stages of an F&P gatekeeping process:

- a) Understanding – do the individual and the firm understand how decisions are made and what is expected of them?

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<sup>7</sup> [Procedural fairness at court](#)

- b) Respect – do the individual and the firm feel that they are being treated with dignity and respect?
- c) Neutrality – do the individual and the firm perceive that a decision is being made in an unbiased and trustworthy manner?
- d) Voice – have the individual and the firm had an opportunity to be heard?

The structure of the process, the internal checks and balances, the elements of independence in decision making, the independence of legal advice, the effort to contain the process within a reasonable timeframe, the transparency to the parties about the progress in the assessment and the reasoning of the authority throughout the process are all elements that need to be reviewed in order to ensure that the outcome is, and is perceived to be, fair.

### **Efficiency**

Efficiency is a key component of fairness. In order for a process to be fair, it is important that it is efficient and can deliver timely outcomes to firms and individuals. If a process is set up in such a manner that it cannot deliver efficient decisions, this is fundamentally unfair as the failure to deliver timely decisions has a negative impact on firms and individuals. Ensuring an efficient process is therefore an important consideration in reaching a view as to the design and organisation of the process.

### **Proportionality**

Proportionality ensures that regulatory requirements are appropriately aligned with the risks associated with the roles and responsibilities of individuals under assessment.

It applies at all stages of the process with its focus changing depending on perspective and stage. It is important there is clear guidance on the standards against which individuals will be assessed, ensuring that regulated entities have a strong understanding of the competencies required for specific roles. This clarity allows entities to conduct targeted due diligence on proposed key function holders, enhancing the efficiency of the assessment process. Additionally, the depth of consideration applied by regulators during the assessment process should be aligned with the risk-based approach adopted by the regulator. This approach ensure that higher risk roles, institutions or sectors receive greater scrutiny, while others undergo a more streamlined process.

Furthermore, proportionality extends to the due diligence expectations placed on regulated entities. It is crucial for regulators to consider the nature, scale and complexity of each financial institution when determining the appropriate level of due

diligence required. For example, it would not be proportionate to expect a small broker to undertake the same extensive due diligence process as a credit institution, given the inherent difference in their operations and risk profiles.

Finally, proportionality is essential in the decision-making stage of the F&P gatekeeping process. Regulators should ensure that their decisions are proportionate to the issues or concerns identified, taking into account the unique context and circumstances of each case. For example, when assessing propriety, regulators should consider the severity and relevance of any issues that may affect an individual's fitness and probity. In this respect, a minor or isolated issue may not warrant the same level of regulatory concern as a more serious or repeated offences.

Regulators should also take into account the time elapsed since the issue occurred and any rehabilitation or remediation efforts undertaken by the individual. Similarly, when assessing fitness, the decision-maker should always consider whether the loopholes identified in some areas, e.g. in the knowledge of the regulatory framework, are of such relevance to warrant a negative decision, or could be more proportionately addressed by other measures for example a recommendation to attend compulsory training once appointed in the position.

This approach ensures not only fairness in the treatment of individuals but also helps to uphold public trust in the decisions of the regulator.

## **Culture**

The supervisory judgement to be exercised in the F&P gatekeeping function requires a good understanding of the background of the candidate and necessarily focuses on past experience and track record. Past enforcement cases or investigations under way at the moment of the F&P assessment could provide important input in the F&P process and require collaboration amongst functions. Still, an F&P assessment substantially differs from a purely enforcement investigation role in several ways.

First, gatekeeping focuses on proactive prevention, assessing individuals before they assume key roles to ensure they meet the necessary standards. Hence, past experience is assessed only in so far as it says something on the way the candidate would perform in the proposed function. The focus is more on what has been learned from past episodes, especially in situations of stress, and how this would drive the candidate's behaviour in future situations. This approach is distinct from enforcement actions, which typically responds to alleged misconduct or regulatory breaches that may have already occurred.

Second, the gatekeeping function relies on close, mutually supportive, cooperation between regulators and regulated entities with the latter bearing primary responsibility for appointing fit and proper individuals. In contrast, enforcement actions usually involve a more adversarial dynamic, as regulators seek to understand what happened, why and when in relation to a suspected contravention and the culmination of the enforcement process may be the imposition of sanctions or penalties on regulated entities or individuals found to have violated regulations. The enforcement investigation role calls for a certain degree of professional scepticism and rigour in uncovering and addressing regulatory breaches.

Of course, the two perspectives have important connections: an individual that has been involved in serious breaches of rules and major sanctions will face a testing assessment if proposed for a key function at a regulated firm. Still, a clear understanding of the distinction between F&P gatekeeping and enforcement investigation is vital to the effectiveness, and the fairness, of a regulatory authority and its decisions, which in turn is critical to public trust. While both functions serve the overarching goal of maintaining stability, integrity and public trust in the financial system, their operational approaches differ, and a differentiation in culture is crucial to ensure appropriate conduct and engagement by the regulator. These considerations suggest that the F&P function should be organisationally segregated from the enforcement function.

The culture prevailing amongst the staff involved in F&P assessments is important to ensure confidence that fair process is being followed. Eventually, if the process is not perceived as fair by the relevant stakeholders, the risk is that the room for supervisory judgement will be eroded and the guiding principles for the F&P assessment will end up being excessively codified and mechanically applied. A sound culture for F&P assessments is essential to the continued legitimacy of supervisory judgement in this delicate process. When robust judgement is exercised within a sound culture, appeals and court cases might still go in favour of the firm and the candidate and this should be accepted as part of the necessary checks and balances in the exercise of this delicate function.

## Chapter 3:

# Clarity of supervisory expectations

Clarity of supervisory expectations is crucial for several reasons. It ensures that all stakeholders involved in the F&P process have a shared understanding of the roles, responsibilities and standards against which individuals will be assessed. Clear expectations promote fairness, consistency and transparency, which, in turn, foster trust in the assessment process and maintain its integrity.

To further analyse the clarity of supervisory expectations topic, this chapter will focus on two primary areas: the role of the financial services industry at the gatekeeping stage and the clarity of supervisory expectations on the standards of F&P that proposed individuals are assessed against.

### Industry's role in gatekeeping

In the context of public trust, the role of regulated entities in enforcing F&P gatekeeper measures cannot be overstated. By acting as gatekeepers, these entities signal to stakeholders, including customers and regulators, that they are committed to upholding high ethical standards and promoting a culture of accountability and transparency. Such a commitment fosters public confidence in the financial sector, which is critical for its stability and long-term success.

The ownership by regulated entities of the F&P gatekeeper stage is essential for upholding public trust in the financial system. This process entails conducting rigorous assessments of individuals performing key roles to ensure they possess the competence, character and ethical standards required to fulfil their duties effectively. In this context, due diligence and good governance play pivotal roles in fostering a robust framework that promotes transparency, accountability and integrity within the financial sector.<sup>8</sup>

From a due diligence perspective, conducting thorough background checks and verifying individuals' qualifications and experience are crucial in mitigating risk associated with inadequate competencies or questionable integrity. This proactive approach helps regulated entities identify potential areas where an individual may not meet with required F&P standards early on, enabling them to make informed decisions when appointing individuals to senior positions. Failure to exercise due diligence can

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<sup>8</sup> A gatekeeper function is recognised internationally as an important element to supporting a culture of individual accountability, integrity and good governance and to mitigate against misconduct risk. (Financial Stability Board, April 2018, 'Strengthening Governance Frameworks to Mitigate Misconduct Risk: A Toolkit for Firms and Supervisors').

lead to reputational damage, financial losses and a loss of public trust in a regulated entity the event of misconduct or mismanagement.

I am aware that the Central Bank has conducted reviews of the extent of ownership of the process by regulated entities in the F&P due diligence process. The Central Bank issued two “Dear CEO” letters, on 8 April 2019<sup>9</sup> and 17 November 2020,<sup>10</sup> highlighting findings from thematic inspections of regulated entities compliance with their F&P framework obligations. The letters emphasised the importance of entities adhering to their gatekeeping responsibilities and provided guidance on addressing identified deficiencies. The findings from the above engagements raised questions as to the level of ownership and focus that regulated entities are demonstrating in their gatekeeping role. The Central Bank rightly expects firms to maintain robust F&P frameworks, ensuring that individuals in key positions possess the necessary competence, integrity and honesty to perform their duties effectively. The Dear CEO letter from 2020, concluded by urging regulated entities to:

- 1) enhance their F&P policies, procedures and control frameworks,
- 2) strengthen due diligence and assessment processes for appointments and ongoing monitoring, and
- 3) improve governance and oversight of the F&P framework.

### **Recommendation 1 – Fostering industry role in gatekeeping**

The Central Bank should, as part of an overall enhancement on process guidance, provide greater clarity and guidance to industry on the important role of regulated entities in the gatekeeper phase. This guidance should clearly outline the key, proportionate expectations of the Central Bank as regards the process that a regulated entity engages in prior to submitting an application for a PCF approval to the Bank.<sup>11</sup> Such guidance should include the following key steps:

<sup>9</sup> Key findings from the [Dear CEO letter 2019](#) letter included:

- a. Inadequate due diligence processes for appointment and ongoing assessment of staff in key roles.
- b. Weaknesses in governance and oversight of the fitness and probity regime.
- c. Insufficient record-keeping and documentation.

<sup>10</sup> The [2020 Dear CEO Letter](#) focussed on firms’ remediation efforts and observed progress in certain areas, but identified ongoing concerns related to:

- a. Due diligence processes for appointees to key roles.
- b. Assessment of the ongoing fitness and probity of individuals in such roles.
- c. Governance and oversight of the fitness and probity regime.

<sup>11</sup> It is important to reiterate that any such process adopted should be proportionate. This means that regulated entities should tailor their processes according to their size, complexity and the specific roles being assessed. For example, a smaller, less complex entity is not expected to establish a Nomination Committee for the selection of PCF candidates.



- a) Due Diligence/Screening: regulated entities conduct initial assessments of individuals to determine their suitability for a specific role. This will include reviewing CVs, conducting interviews and verifying qualifications.
- b) Background checks: regulated entities perform comprehensive background checks, which may include criminal record checks, credit checks and reference checks. The depth and scope of these checks depend on the seniority of the roles and the nature scale and complexity of the regulated entity.
- c) Documentation and record keeping: regulated entities maintain detailed records of their due diligence processes, including the information collected, assessments conducted and decisions made.
- d) On-going monitoring: regulated entities establish mechanisms for monitoring individuals' ongoing fitness and probity, such as regular performance reviews, mandatory training and self-declaration of any changes in personal circumstances that may impact their suitability for the role.

### **Fitness and Probity Standards**

It is vital that regulators are clear with the regulated community as to their expectations for the requisite standards of fitness and probity within the industry. In this respect all of the peer jurisdictions surveyed have issued guidance identifying F&P criteria to be applied both by the regulated entities themselves and also by the regulatory bodies in those situations where the appointment of key function holders require regulatory approval, or prior regulatory approval.

At present, the Central Bank has issued multiple documents, which inform the standards to be applied at the gatekeeper phase of the F&P process.

The relevant documents within this policy framework are the following:

- 1) Fitness and Probity Standards,<sup>12</sup>
- 2) Guidance on Fitness and Probity Standards,<sup>13</sup>
- 3) Fitness and Probity - Frequently Asked Questions 2018,<sup>14</sup>

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<sup>12</sup> [Fitness and Probity Standards](#)

<sup>13</sup> [Guidance on F&P Standards](#)

<sup>14</sup> [F&P FAQs](#)

- 4) The Minimum Competency Code 2017 (MCC) and the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Minimum Competency Regulations 2017 (S.I. No. 391 of 2017) (MCR),<sup>15</sup>
- 5) Miscellaneous Documents – there exists a range of miscellaneous documents/requirements issued by the Central Bank which seek to inform matters pertinent to the fitness and probity of an individual. These include UCITS Regulations, AIF Rulebooks and Corporate Governance Codes (for insurance undertakings, credit institutions and investment firms).<sup>16</sup>

### **Fitness and Probity Standards – The key criteria**

The primary document is the Central Bank’s F&P Standards which assess individuals based on three elements:

- 1) Competence and capability: an individual’s skills, knowledge and experience relevant to their role.
- 2) Honesty, Integrity and Ethical behaviour: a history of ethical conduct and adherence to professional standards.
- 3) Financial Soundness: Personal financial soundness to minimise the risk of financial impropriety.

Overall, these documents work together to provide a framework for the assessment of fitness and probity in the context of regulated roles. They seek to clarify the expectations of the Central Bank and offer guidance to both regulated entities and individuals on how to meet these expectations. In terms of clarity regarding the expectations of applicants and the F&P standards applied, these documents provide information, examples, and guidance to support understanding of the regime. However, during the course of the stakeholder engagement with industry the message was conveyed to us that the F&P Standards of the Central Bank lacked the necessary clarity and indeed, at times, conveyed an impression of inconsistent application. This point was also raised in my engagements with front line supervisors within the Central Bank.

### **Fitness and Probity Standards – Peer regulators**

While all of the surveyed peer regulators have provided guidance for “fit and proper” criteria, not all jurisdictions require formal regulatory approval in advance of

<sup>15</sup> [Minimum Competency Code](#)

<sup>16</sup> [Insurance Undertaking Corporate Governance Code](#)  
[Credit Institutions Corporate Governance Code](#)  
[Investment firms and market operators Governance](#)

appointment (Australia) of all key role holders and indeed the ECB, while approval of directors is required, this sometimes occurs post-appointment given differences in the national legal frameworks (Germany, France and Italy, amongst others). It is clear that upon review of the F&P standards which have been issued, most are primarily principles based with additional, more detailed guidance provided thereafter.

As regards F&P standards issued, there is a high level of commonality across the surveyed jurisdictions, in particular with respect to “probity”. The level of prescription across all regulators for those factors which relate to propriety is significantly higher than those factors concerning fitness. For the latter, significantly more weight is afforded to the supervisory discretion and judgement of the regulator with such discretion being structured around certain themes for consideration.

When comparing these jurisdictions with Ireland, we see common themes across all F&P standards. All emphasise competence, integrity, and regulatory compliance, while some, like Ireland, also consider factors like time commitment and financial soundness. The ECB and the UK authorities have specific requirements for board level appointments, focussing on their ability to oversee key functions and influence the direction of an institution.

In summary, Ireland is not significantly out of line with the F&P standards issued by peer regulators. Notwithstanding the above, there are a number of areas in which the standards could be enhanced; these include conflicts of interest, the different focus and roles of executive and non-executive directors and the concepts of diversity and collective suitability. In other areas, such as when dealing with concepts like independence and time commitments, a greater emphasis on accessibility and the integration with the F&P process would be beneficial. Indeed enhanced clarity and accessibility in the above areas would provide an advancement to the standards overall.<sup>17</sup>

This is demonstrated below from the number of PCF positions which the Central Bank has currently approved (over 21,000 PCF roles approved at end 2023) and the distribution of the extant approvals across a narrow range of the overall roles designated as PCF (60 PCF roles have been designated by the Central Bank, with the large majority - 78 per cent - falling into 10 PCF roles).

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<sup>17</sup> The proposal for enhancement in certain areas should not be taken to mean that no guidance or requirements currently exists (for example, see Fund Management Companies – Guidance; <https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/funds/ucits/guidance/fund-mancos-guidance.pdf>).

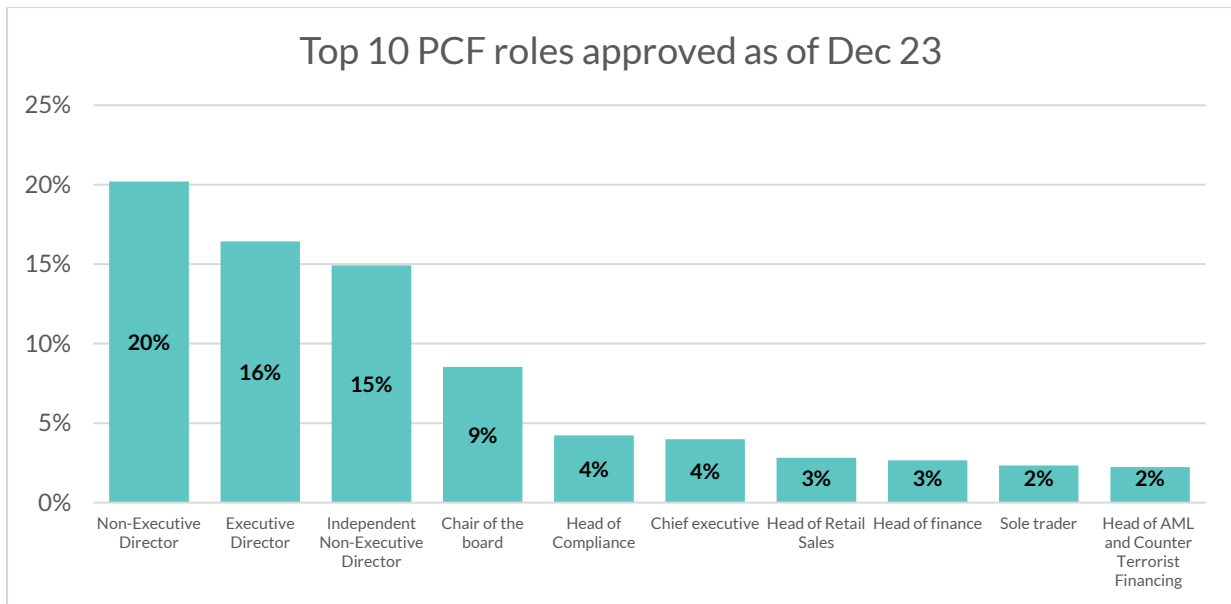


Figure 3: Top 10 PCF roles approved as of Dec 23

### Key principles for F&P Standards – Expectations on the regulator

During discussions with peer regulators, several qualitative principles were identified as crucial components of F&P standards and guidance. These principles act as essential guidelines for regulators when they are designing and executing their F&P frameworks, thereby ensuring continued effectiveness and efficiency. Notably, these principles are important in maintaining procedural fairness, a legal requirement arising from both the Irish Constitution and European Union law.

#### Proportionality

As discussed in Chapter 2, a regulator should consider proportionality as a key principle to ensure that the regulatory requirements and enforcement actions are commensurate with the risks posed by the regulated entities and specific roles. Proportionality helps to maintain a balance between protecting consumers and maintaining the integrity of the market, while not imposing unnecessary burdens on regulated entities.

Box 1 below summarises proportionality guidance provided by De Nederlandsche Bank N.V. (DNB) and the Authority for Financial Markets (AFM).<sup>18</sup>

#### Box 1: Proportionality guidance provided by the DNB

The AFM and the DNB have provided guidance on the principle of proportionality within their policy rule on fitness. This guidance outlines how the principle of

<sup>18</sup> [DNB Policy Rule on Fitness 2012](#)

proportionality operates when assessing the fitness of policymakers and other key function holders in financial institutions.

The principle of proportionality ensures that the assessment of fitness is conducted in a manner that is appropriate to the size, nature and complexity of the financial institution, as well as the role and responsibility of the individual being assessed. This approach allows for a more tailored and effective assessment process, taking into account the specific circumstances of each institution and role. The Policy Rule on Fitness provides a framework for proportionate assessments by allowing for:

- a) Tailored assessment criteria – the AFM and DNB have established general assessment criteria for fitness, which are then applied proportionately based on the specific characteristics of the financial institution and the individual’s role. For example, it categorises applications by reference to the type of institution and the type of role with a clear demarcation of expectations based on the same classification.
- b) Risk based approach: the policy rules encourage a risk based approach to fitness assessments, focusing on areas of greatest risk and importance for each institution.

### **Utilising tools effectively - clarity on relationship between corporate governance and fitness and probity**

Corporate governance and F&P are related concepts, but they have distinct focuses. Corporate governance refers to the system of rules, practices and processes by which a company is directed and controlled. It is focused on the overall management of the company, including its structure, decision making processes and the relationship between stakeholders. In essence corporate governance aims to ensure that the company is run in a responsible, transparent and accountable manner.

F&P, on the other hand, primarily refers to the individual characteristics and qualities of the people who hold key positions within a company. As already mentioned, it is focussed on assessing whether an individual is suitable to perform a certain role effectively, ethically and responsibly. F&P assessments consider factors such as

competence, integrity and time commitment to ensure that individuals are capable of fulfilling their duties.

Corporate governance and F&P are both concerned with promoting good management practices and ensuring that companies are managed responsibly. Whilst they are inherently linked, differences do arise in scope and focus.

The Central Bank has issued corporate governance requirements (for example, in the area of credit institutions, insurance undertakings, funds, investment firms and market operators). Many of these requirements are of relevance to the F&P gatekeeping process. However, these requirements neither constitute F&P standards (in the technical sense that they are not issued utilising the specific legal power of the Bank to create such F&P standards), nor is there a clear articulation from F&P gatekeeping perspective of the relevance of these corporate governance requirements. In addition, the application is limited to the specific areas in which a given corporate governance code is issued. Much of the information contained within these requirements, for example, consideration of independence for independent executive directors will, from an F&P perspective, also be of relevance across industry sectors subject to a proportionate application.

Outlined below (Box 2) is a good practice observed from the Guidance on Fitness and Probity assessments issued by the ECB. In this guidance, they clarify the issue of independence and the manner in which independence is to be assessed and considered to the fore.

#### **Box 2: ECB Guidance on F&P assessments**

The ECB has provided comprehensive guidance on the assessment of F&P for members of the management body in credit institutions, including independent directors. This guidance is part of the Single Supervisory Mechanism framework and applies to all credit institutions under the ECB's supervision. A key aspect of the ECB's guidance is ensuring that independence is a critical component of the F&P evaluation process for independent directors, as it helps to ensure that they can exercise objective judgement and make decisions in the best interest of the credit institution.

The ECB's guidance outlines several factors that credit institutions should consider when assessing a director's independence, including:

- i) **Conflict of interest:** credit institutions should examine whether the director has any financial, personal or business relationships that could create a conflict of interest or impede their ability to make impartial decisions.
- ii) **Previous roles:** credit institutions should consider the director’s professional history, including previous roles or affiliations that could compromise their independence or create a perception of bias.
- iii) **Cumulative positions:** credit institutions should evaluate the director’s time commitment and the number of other positions they hold, both within the financial industry and in other sectors. Holding multiple roles may impact the director’s ability to dedicate sufficient time and attention to their duties and could create conflicts of interest.
- iv) **Tenure:** Credit institutions should consider the length of the director’s tenure on the board, as long tenures may lead to close relationships with management or other stakeholders, potentially impacting their independence.

The Central Bank’s powers to impose corporate governance requirements, F&P standards and the new Individual Accountability Framework (IAF) are interdependent and mutually supportive in their aim to promote stability, resilience and public trust in the financial sector. It is important that the Central Bank utilises and considers these powers in an interconnected manner. Such an approach would offer numerous benefits:

- 1) *Enhanced governance:* by integrating its thinking on corporate governance, F&P standards and the IAF, the Central Bank could foster a comprehensive approach to governance that addresses both institutional and individual aspects. This strengthens the oversight, risk management and decision making processes within financial institutions. For example, where the Central Bank wishes to prescribe expectations as to the skillset mix for the board of regulated entities, the use of tools as regards corporate governance requirements is the appropriate route as opposed to the exclusive use of the F&P gatekeeping process.
- 2) *Improved Risk Management:* the interconnected use of these powers allows for a more robust assessment of risks at both the institutional and individual levels. This holistic view enables regulated entities and the Central Bank to

identify potential vulnerabilities and take appropriate action to mitigate them.

- 3) *Greater accountability*: the interplay between the three components ensures that individuals in key roles are held accountable for their actions and decisions. This promotes responsible behaviour and reduces the potential for misconduct or negligence within financial institutions.

A corollary of the above position is that a fragmented approach to governance requirements, F&P and individual accountability will result in a lack of clarity, gaps or inconsistencies in standards and oversight. This could lead to less than optimal outcomes and a potential erosion of public trust. Two examples are illustrative of this point:

### **Minimum Competency Requirements**

The Minimum Competency Code 2017 (MCC) applies to persons exercising a controlled function on a professional basis, the exercise of which includes providing advice to consumers on retail financial products or dealing with insurance claims, reinsurance mediation, debt management services or direct management of accredited person. The MCC sets out the minimum competency standards that individuals performing those function must meet. This includes specifying the qualifications, experience and continuing professional development requirements that these individuals must fulfil.

The MCC is a legal document and is issued utilising the same legal power as the F&P Standards. Whilst the MCC provides significant detail as to the competencies which a person must have in dealing with retail financial products (and indeed recognition of certain qualifications) it does not do so by reference to the terminology of controlled or pre-approval controlled functions. This significantly minimises the transparency of the MCC for the gatekeeper process.

### **Individual Accountability Framework**

The Central Bank could effectively utilise the powers of F&P gatekeeping in a manner that complements and reinforces the individual accountability framework by focusing on the alignment of key competencies and inherent responsibilities for pre-approval controlled functions that are within scope of the IAF at this stage. This alignment would foster a more robust and cohesive regulatory environment, ensuring that individuals in designated roles possess the necessary skills and expertise to fulfil their responsibilities effectively.



The Central Bank has designated 60 roles as pre-approval controlled functions. However, to date the Central Bank has not outlined its key expectations for the competencies it would expect for these roles.

Additional consideration should be given to further integration of the F&P regime and the IAF by leveraging, in particular, inherent responsibilities in a way that highlights the required competencies. For example, the Central Bank has recently issued a statutory instrument<sup>19</sup> which indicates the inherent responsibilities for in scope pre-approval controlled functions. The below table identifies certain relevant pre-approval controlled functions and the inherent responsibilities of those functions.<sup>20</sup>

*Table 1: Inherent responsibilities of PCF holders to IAF*

No.	PCF	Inherent Responsibilities
1	PCF 1- Executive Director	Directing the business of the firm
2	PCF 2A - Non Executive Director	Overseeing and monitoring the strategy and management of the firm
3	PCF 2B - Independent Non-Executive Director	Overseeing and monitoring the strategy and management of the firm
4	PCF 3 - Chair of the Board	Overseeing meetings of the Board, leading and overseeing its performance

Further consideration could be taken to strengthen the integration between the F&P process and the IAF to ensure that the inherent responsibilities for such executive and non-executive PCF roles identifies the core tasks of the relevant role and the attendant competencies.

<sup>19</sup> [SEAR Regulations](#)

<sup>20</sup> The concept of inherent responsibility within the IAF refers to the core responsibilities that are intrinsically linked to a specific Senior Executive Function role and cannot be separate from the definition of the role. In other words, inherent responsibilities are those that are fundamental to the nature of a SEF position and are mandatory for individuals performing those roles.

## Accessibility of fitness and probity standards

### Legal Framework

The gatekeeping process and the factors that the Central Bank is to take into account in making its decision are set out in Section 23 of the Central Bank Reform Act 2010. Section 23(5) of the 2010 Act provides that:

*“The Bank may refuse to approve the appointment of a person for the purposes of subsection (1) where -*

*(a) the Bank is of the opinion that the person is not of such fitness and probity as is appropriate to perform the function for which he or she is proposed to be appointed, or*

*(b) the Bank is unable to decide, on the basis of the information available to it, whether the person is of such fitness and probity.”<sup>21</sup>*

From the above subsection two points emerge: first, the opinion which the Bank is to form by reference to the *“function for which he or she is proposed to be appointed”* and second, where the Bank is unable to form a positive view as to a person’s F&P this may legitimately be a basis for refusal. The breadth of discretion available to the Bank is further informed by section 23(6) which outlines further circumstances in which the Bank may refuse the appointment of a person, these include:

- 1) insufficient experience, qualifications or skill necessary to perform properly and effectively the function,
- 2) does not satisfy an applicable standard of F&P,
- 3) person has committed or participated in serious misconduct in relation to a regulated entity,
- 4) (whether directly or indirectly) failing to disclose relevant information to the Bank or providing information knowing same to be false, or
- 5) conviction for an offence of money laundering or terrorist financing or an offence involving fraud, dishonesty or breach of trust.

Whilst all of the above are of importance, the centrality of the F&P standards is clear and indeed seeks to further inform all of the above points.<sup>22</sup>

<sup>21</sup> Section 23A of the Central Bank Reform Act 2010 carves out those decisions that the ECB has responsibility for. These decisions are to be made by the ECB in *“accordance with relevant European Union law.”*

<sup>22</sup> It is worthwhile expanding slightly on the concept of fitness and probity standards under the 2010 Act. The legislation provides a specific legal authority for the Bank to issue a legal code or standards

Where the expectations of the Bank for gatekeeping issues are spread across multiple documents and not explicitly linked to F&P standards, it creates a range of challenges from a transparency perspective including the following:

- 1) **Difficult Navigation:** locating and understanding relevant information can be difficult when it is scattered across various documents. Applicants may struggle to find all the necessary guidance, potentially leading to confusion or overlooking important requirements. This can make the assessment process less transparent and more challenging to navigate.
- 2) **Inconsistency and ambiguity:** without a clear and consolidated source of F&P standards, there is a risk of inconsistencies or ambiguities in the guidance. This can lead to confusion and varied interpretations, potentially resulting in inconsistent assessments and outcomes.
- 3) **Lack of clarity on expectations:** dispersed information can make it challenging for individuals and regulated entities to understand the full scope of the F&P expectations. This can hinder their ability to meet the regulatory requirements, potentially impact the quality of assessments and overall governance practices.
- 4) **Impaired public trust:** as with all matters pertaining to transparency, deficiencies can erode public trust in the F&P assessment process. If stakeholders perceive the process as opaque or difficult to understand, they may question its integrity and effectiveness, which can negatively impact the reputation of the regulator and the financial sector overall.

### **Time frame for consideration of past events**

As mentioned above, past events involving an individual are indeed relevant and should be considered. However, it is essential to recognise that the significance of these events may diminish over time as individuals learn from their experiences. To ensure a fair and balanced assessment, the Central Bank should have the ability to question individuals about past issues to better understand how they might navigate future challenges if approved. However, it is important to establish a reasonable time frame after which such past matters are no longer considered in the gatekeeping process, taking into account the severity and nature of the underlying circumstances.

This approach strikes a balance between acknowledging the relevance of past events and recognising the potential for personal growth by the individuals. To ensure

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which the Bank is permitted to take into account in the context of a gatekeeping process. At present the Bank has issued two such standards – (1) the fitness and probity standards and (2) Parts 1 and 2 of the Minimum Competency Code.

transparency and clarity in the assessment process, the Central Bank should publicly disclose in its F&P Standards its approach in this respect.<sup>23</sup> This will assist to contribute to a more consistent assessment process.

## **Recommendation 2 – Clear fitness and probity standards**

On the above basis, and in light of the importance of transparent and clear F&P standards, the following recommendations are made to further enhance the effectiveness of the F&P standards (and wider guidance issued by the Central Bank).

- a) **Accessibility of the F&P standards** – it is recommended that the Central Bank consolidate standards in a single location which would enable regulated entities, individuals and the staff of the Central Bank to access and understand the expectations more easily, promoting consistency in their application. This should seek to identify in a comprehensive way the various pieces of guidance and requirements that the Central Bank has issued from a corporate governance perspective or otherwise. The benefits of such consolidation is as follows:
  - i) **Ease of access and comprehension:** A centralised source of information would simplify the process of finding relevant standards, reducing confusion and improving overall understanding.
  - ii) **Encouraging a more robust and effective assessment process:** collating standards in one place would support the development of a more robust and effective F&P assessment process, promoting public confidence in the financial services industry.
  
- b) **Enhance the F&P Standards:** whilst the F&P standards (and wider guidance) issued by the Central Bank are not significantly out of step with peer regulators there are some weaknesses in the regime that should be rectified. In this respect it is recommended that international good practices in other jurisdictions are considered to enhance the clarity of the standards, in particular to:
  - i) **Incorporate objective measures:** enhance the standards by including more objective measures, such as specific qualifications, certifications or experience requirements to reduce subjectivity in the assessment process. The Central Bank should also outline clear expectations in terms of the number of mandates that an individual can hold. Such expectations should

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<sup>23</sup> The Central Bank already includes time frames when collecting information in the individual questionnaire filled by applicants.

not operate to preclude the possibility of holding a mandate above the Bank's expressed expectations, instead in such instances a more detailed level of information, assessment and consideration will be expected of the proposing regulated entity and the application will receive a heightened level of scrutiny by the Central Bank.<sup>24</sup>

- ii) Develop specific enhanced guidance on the role of an executive, non-executive and on the specific expectations for independent directors.
  - iii) Address conflicts of interest: strengthen the standards by including specific provisions on identifying, managing and mitigating conflicts of interest, which can undermine F&P within the industry.
  - iv) Clarify the way in which collective suitability and diversity within boards and management teams will be assessed.
  - v) Clarify the approach to be adopted in relation to considering past events.
- c) Regularly review and update standards: establish a process for regularly reviewing and updating F&P standards to ensure that they remain relevant and reflective of industry developments and emerging risks and engage stakeholders in all such reviews. This can help ensure that the standards are practical, effective and reflective of industry best practices. All enhancements or clarifications of the F&P standards (or wider guidance) should follow consistent governance within the Central Bank.
- d) Holistic consideration of complementary powers – the issue of corporate governance, F&P and the Individual Accountability Framework are most effective when utilised and considered in an interconnected and mutually supportive way. The Central Bank should review all such materials to ensure that they operate in this integrated manner.

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<sup>24</sup> In this context, two points arise:

- a) One should always have regard to the underlying legal requirements and applicable guidance.
- b) The concept of mandates should not serve as an absolute barrier, but rather as a trigger for the Bank to engage in a more thorough examination of the individual's time commitments. This approach ensures that any potential conflicts or constraints related to an individual's various mandates are adequately assessed.

# Chapter 4:

## Internal governance of the process

The operation of governance within a regulator with responsibility for F&P gatekeeping is essential to ensure that the assessment process is fair, transparent, and effective in promoting the stability and integrity of the financial system. The exercise of supervisory judgement should be guided by a robust governance framework that outlines clear roles and responsibilities and oversight mechanisms.

### Key features of good governance

Governance is not an objective in itself. Instead, the quality of governance should be considered against the outcomes to be achieved. Where the outcomes are understood then governance should operate in a manner to facilitate their achievement to the greatest extent possible. In the context of the F&P gatekeeping process the key desired outcomes are efficiency, consistency, fairness and accountability. Two foundation stones for the attainment of such outcomes are:

- 1) Clear lines of authority and reporting: the regulator (and the teams within) should have well defined roles, responsibilities and reporting lines within its F&P gatekeeping functions. This clarity fosters accountability and facilitates effective decision-making.

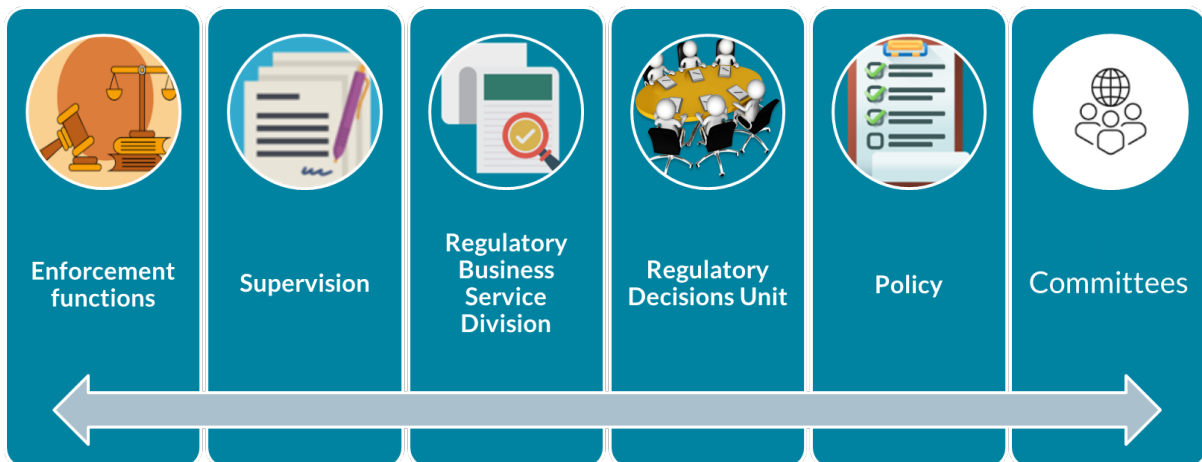


Figure 4: Fitness and Probity Governance Structure

The F&P framework is managed in the Central Bank by a mixture of horizontal teams supporting vertical supervision and authorisation teams, as reflected above in Figure 4. These teams coordinate the F&P process with support via committee structures. While the Regulatory and Business Services Division (RBSD) manages the assessment, coordinates with supervisors and takes final decisions in the simplest cases, the

enforcement function plays a central role in the most complex of cases, which seems to have created some confusion amongst firms and candidates as to the key focus of the F&P process being orientated towards a quasi-enforcement investigation of past behaviour.

Boxes 3 and 4 provides a comparison between the governance approach taken by the Central Bank and their regulatory peers in the Financial Conduct Authority (FCA) and the European Central Bank (ECB) respectively.

### Box 3: Internal governance approaches adopted by the Financial Conduct Authority

The FCA have a centralised approach to the F&P framework they operate, which differs from the horizontal model adopted by the Central Bank. The Authorisations division in the FCA is the decision maker for all SM&CR applications.

The FCA assesses applications for individuals to perform approved person - senior manager roles against their [Fit & Proper Test](#)<sup>25</sup> (honesty, integrity and reputation; competence and capability; and financial soundness) and will only approve an application once they are satisfied that the individual put forward is fit and proper to perform the role in question. Further, firms must also satisfy themselves that the individual concerned is fit and proper to perform the role in question prior to submitting the application for approval. In submitting the application, firms and individuals are also required to fully disclose any information relevant to the assessment of fitness and propriety.

When assessing applications, the FCA applies a risk-based approach. They will take account of the information included in the application (including any disclosures), as well as any information and intelligence that they may already hold, together with information and intelligence from external sources. In addition to the individual's background and regulatory history, the FCA will also give due consideration to the role(s) to be performed, the applicant firm's background and regulatory history, its size (impact/footprint), and the FCA's view of the current risks of harm posed by firms in the sector(s) in which the applicant firm is operating.

<sup>25</sup> [FCA Fit & Proper Test](#)

Together, the above factors will determine the level of scrutiny that the application will be subject to (and consequently, the time it may take to reach the decision). This may involve the need for the FCA's Authorisations Division to engage with other internal stakeholders (including their colleagues in the FCA's Supervision Division). It may also involve a candidate interview. These factors will also determine the level of oversight the application will be subject to. Here the FCA has an Executive Decision Maker process in place, which determines the seniority of the decision-maker for each application, be it a decision to approve or refuse.

#### **Box 4: Internal governance approaches adopted by the European Central Bank**

Centralised F&P teams are located within the Directorate General SSM Governance and Operations, which includes also the Authorisation team and the Enforcement team. There is a clear segregation of functions, but also mechanisms for collaboration within the Directorate. The F&P team follows the whole process from start to finish, engaging with the supervisory team responsible for the firm that has put forward the application and with the legal department as appropriate. The F&P team is also responsible for keeping discipline with the timeline of the process and supports the work of the Senior F&P Panel, chaired by the Vice Chair of the Supervisory Board, that assesses difficult cases and makes proposals for the decision by the Supervisory Board.

- 2) Well-defined risk-based approach – a supervisory risk appetite and a risk-based approach to resource allocation are crucial components of a regulator's structure and governance, especially in the context of F&P gatekeeping. These concepts allow regulators to prioritise their efforts, focusing on areas that pose the greatest potential risk to the financial system and the public. In the context of F&P gatekeeping, this means conducting more in-depth assessments for individuals and entities that pose greater potential risks, while applying a less intense scrutiny to lower-risk cases.



The benefits of adopting a supervisory risk appetite and a risk-based approach to resource allocation in F&P gatekeeping<sup>26</sup> include:

- a) **Enhanced efficiency:** by focusing on high-risk areas, regulators can allocate their limited resources more effectively and efficiently, ensuring that their efforts yield maximum impact.
- b) **Proportionate regulation:** a risk-based approach enables regulators to tailor their assessments to the specific risk profiles of regulated entities and individuals, ensuring that the regulatory burden is commensurate with the level of risk involved. Box 5 provides an example of the proportionate approach the FCA and the PRA use to enable their assessment approach and resource allocation.
- c) **Encouraging good practices:** by signalling their expectations through a supervisory risk appetite, regulators can incentivise regulated entities to implement robust F&P assessment processes, fostering a culture of risk awareness and enhancing good practices within the financial sector.
- d) **Consistency:** clarity on a risk-based approach and a supervisory risk appetite can indeed drive consistency across assessments in various industry areas. When a regulator has articulated its approach to risk-based supervision and has embedded it within the teams assessing F&P gatekeeping applications, it becomes much easier for staff to align practices with same resulting in a more consistent assessment process.

#### **Box 5: UK's risk tolerance approach to undertaking assessments**

In the UK, the Financial Conduct Authority (FCA) and Prudential Regulatory Authority (PRA) adopt a risk tolerance approach when reviewing any Senior Manager applications received.

The FCA is responsible for approving any Senior Manager application from any solo-regulated firm, which are regulated by the FCA only. Dual-regulated firms, regulated by the FCA and PRA need to be approved by the PRA, although FCA consent is required. Both organisations work closely with each other during the Senior Manager & Certificate Regime process.

<sup>26</sup> This approach should take place within a wider organisational risk based supervisory policy which encapsulates the mandate of the Central Bank and its various responsibilities.

The FCA adopts a risk-based approach that aims to be proportionate in the information that it requires from applicant firms and its scrutiny of their applications.

Upon reviewing the governance model two critical points emerge.

First, within the Central Bank it is apparent that the current level of decentralisation has led to a lack of clarity and consistency across various areas. This issue is particularly evident in complex cases that require increased collaboration among supervision, enforcement and RBSD. To address these concerns and improve efficiency and consistency, it is suggested to establish a core team with responsibility for the entire process, irrespective of a case's complexity. This core team would be responsible for managing applications for all F&P gatekeeping decisions (irrespective of whether they arise at the time of authorisation for a regulated entity or otherwise). Whilst focussing primarily on the gatekeeping process, the team will collaborate and communicate with other internal stakeholders, such as supervision, whose role is essential in the assessment.

The F&P team should include members with legal expertise, as awareness of the legal framework is essential throughout the assessment process. However, legal advice on complex cases should be provided by the legal services of the Central Bank, to ensure early on in the process an appropriate assessment of the legal grounds for potential refusals.

Any organisational solution adopted should ensure appropriate segregation between the enforcement and the F&P gatekeeping function, while maintaining appropriate gateways for collaboration in case new events call for a review of the F&P status of key function holders. As perception matters, members of the F&P team should not belong to a Directorate containing the term "enforcement" in its heading.

This core team will also communicate periodic management information to a senior committee, which will focus on applications received, interviews requested, interviews conducted, withdrawals and applications in which cause for concern arises. Such information should be presented by reference to clear service standards which the Bank should put in place. Such information should capture all F&P gatekeeping applications (including where such considerations arise in the context of an entity's authorisation process).

Second, the Central Bank utilises a risk-based approach to considering F&P gatekeeping applications. For example, RBSD has responsibility for approving applications from regulated entities for appointments to low/medium impact firms.

RBSD makes recommendations to supervisory divisions on F&P gatekeeper applications relating to High and Medium High impact firms, with authority for approvals in those instances residing with the Supervision Divisions.

The Central Bank is currently reviewing its risk-based approach to supervision and this will incorporate the F&P gatekeeper process. It is suggested that greater consistency would arise where the risk-based approach is aligned with categories of supervisory or assessment actions to be executed by the Central Bank in order to align with the centrally defined risk appetite. From an F&P gatekeeping perspective this approach should seek to classify applications into categories based on a range of factors, including risk assessment across the mandate of the Central Bank (incorporating an individual regulated entity, industry sector and the given role) and should thereafter assign a structured approach to be applied by the Central Bank for the gatekeeping assessment at each category.

More generally, the Central Bank could also consider whether risk-based considerations might warrant an adjustment of the total number of PCF roles, which is significantly higher than in other jurisdictions. This could also contribute to a better deployment of resources, although the bulk of applications seems to come from a few PCF roles.

#### Box 6: Funds Case Study

As outlined in Chapter 1, Ireland is home to a large, rapidly growing and diverse global funds sector. There is a strong international focus to the Sector, with the vast majority of assets, asset managers and investors located outside of Ireland. The net asset value of Irish domiciled funds is over €4.2 trillion with in excess of eight thousand funds.<sup>27</sup> The Central Bank is responsible for the authorisation and supervision of a range of activities associated with the funds sector. This includes the ‘fund’ (as a product) and fund service providers operating in the sector (such as fund managers, fund administrators and fund depositories). Irish-authorized investment funds and fund service providers are supervised by the Central Bank through a risk based approach to supervision (as outlined in its PRISM framework). The F&P regime applies to both the fund and fund service providers.

In 2023, the Central Bank approved 620 fund authorisations and 10 fund service providers. The fund entities typically require the approval through the F&P process of a Chair of the Board and a number of executive and non-executive directors. The

<sup>27</sup> [Irish Funds data](#)

fund service provider typically requires approval through the F&P process of a wider number of PCF roles including at the board and executive level and a number of controlled function roles.

Since the beginning of the F&P Regime, an average of 45 per cent of PCF applications received by the Central Bank relate to Funds and Funds Service Providers. Over 80 per cent of PCF roles held in the Funds industry relate to the following three mandates:

Table 2: PCF roles held in funds industry

PCF Role	% of PCF roles held
PCF02A - Non Executive Director	33%
PCF02B - Independent Non Executive Director	29%
PCF03 - the office of chair of the Board	16%

A recently published research paper<sup>28</sup> collected the views and experiences of respondents of the role and composition of the boards of both “funds” and “fund managers”.

A clear articulation of the governance structure that applies to the sector is provided:

*“Fund governance involves a unique organisational structure based on “the separation of funds and managers”.<sup>29</sup> Formally, the fund outsources to a fund manager, which appoints an investment manager. In practice, an investment manager establishes a fund with a view to drawing in investors who are attracted to its particular investment strategy and deriving an income from the fees it charges. Funds may not have executive managers or employees and the investment manager is responsible for choosing fund directors and appointing the fund manager. This intertwined relationship structure often leads to the appointment of fund directors who are employees or directors of the investment manager or the fund manager and who may be on the board of a number of funds managed within the same group”.*

<sup>28</sup> Blanaid Clarke (Trinity College Dublin) and Antonio Egli (Dublin City University) published a research paper in December 2023 on the ‘[Governance Challenges for the Boards of Investment Funds and Fund Managers: Evidence from Ireland](#)’.

<sup>29</sup> (Morley, 2014).

In considering the F&P system applicable to this sector, the Central Bank applies its risk-based approach to supervision to the processing of F&P applications. As the majority of applications in the sector are for ‘funds’ and the majority of these entities are ‘low’ impact firms (*in line with the risk based approach to supervision, PRISM*), the majority of the F&P applications are approved via a desk-based approach (see Chapter 4). The sector also has a higher number of individuals who hold multiple mandates, due to the nature and size of the sector. (See Table 3 below)

Table 3: Active PCF Roles held by individuals in funds industry

# Active PCF Roles in funds industry	(1-5)	(6-10)	(11-15)	(16-20)	(21-25)	>25	Total
# persons	2,523	118	35	18	15	23	2,732
%	92.3	4.3	1.3	0.7	0.5	0.8	

A risk-based approach to F&P in the Funds Sector could include a consideration of the number of PCF roles held for both fund and fund service providers. In considering the number of PCF roles for the sector, the responsibilities of the Board in both the fund and the fund service provider could be further clarified.

An analysis of the interview data for the sector reflects a low level of interviews in the sector (only 7 interviews in 2023 – see also the section on interview process in Chapter 5). Unless otherwise flagged by supervisors, an applicant is not called to interview as part of the initial application phase. The interview process is an important element of the F&P regime to ensure a consistent application of the standards applying and the allocation of responsibilities of the role holder. Furthermore, a particularly low number of interviews implies that firms and candidates assume that the Central Bank must have identified major concerns, so that being called for an interview is likely to carry stigma.

In holding more interviews in the sector a greater level of understanding of the regulatory expectations (as outlined in the enhanced standards) would lead to greater transparency and fairness of the process and de-stigmatise the interview process (as has been the case in other sectors)<sup>30</sup>. Further consideration should be

<sup>30</sup> Interviews would be subject to the tighter service standards and improved processes that are recommended.

given to specifying default interview criteria for individuals holding multiple mandates (e.g., when an individual attains ten separate mandates, or a lower number if counting families of funds as a single mandate) and additionally the introduction of a level of ongoing interview assessments (e.g. every one hundredth application).

Additional consideration could be given to a fund/fund service provider based on systemic impact and assets under management. There is good guidance on the time commitment required for individuals holding multiple mandates<sup>31</sup> and a clear application regarding the expectation on industry and the individual to ensure that only those individuals that can dedicate sufficient time to fulfilling their mandate(s) should progress through the due diligence process.

A calibrated and systematic alignment between risk tolerance and application of due diligence (including on the number of interviews), in which the Central Bank would engage earlier with a candidate who holds multiple roles, would also support increased ownership by the sector in the recruitment process to PCF roles in the funds and fund service providers.

### Box 7: Considerations on brokers and smaller intermediaries

During my consultation with industry bodies, concerns were raised by brokers and smaller intermediaries that the F&P process is not sufficiently calibrated to the nature and complexity of such firms. These intermediaries argued that the low scale of prudential concerns, the lack of major episodes of misconduct or failures generating broader impact in the sector and the contained scale of individual businesses would suggest that F&P checks could be lighter and faster. Evidence was provided showing that in other Member States the process is more expedite, although it has to be acknowledged that in this area the legislative framework is to a large extent not harmonised.

These points should be considered when reviewing the risk-based approach to F&P gatekeeping. However, it has to be pointed out that it is difficult to assess timelines

<sup>31</sup> CP86 noted for Fund Management Companies, in consideration of Directors time commitments that “The Central Bank considers that a reasonable number of working hours available for each individual is approximately 2000 per year”

as the gatekeeping process is integrated in the authorisation procedure (not required in several other countries).

Also, there is a strong rationale to leverage the gatekeeping process in this sector, which plays an important role in key financial decisions of a large number of retail investors, as subsequently to the authorisation most are subject to low impact supervision (reactive supervision and thematic assessments). The gatekeeping checks are the only opportunity to safeguard the proper conduct of business at these intermediaries.

### **Recommendation 3 - Governance**

- 1) Establishment of an F&P gatekeeping unit with responsibility for the entire gatekeeping process.
- 2) Enhanced implementation of a risk-based approach for F&P gatekeeping, with a reconsideration of the overall number of PCF roles and a possible adjustment in the approach to different sectors including to the funds sector, which is the largest contributor in terms of applications. Whilst recognising the reduced role of fund directors in risk management decisions, which are generally the responsibility of the asset manager, in light of the increased size and systemic footprint of the sector in Ireland and the widespread practice of multiple directorship it could be appropriate to increase the number of interviews held in the sector with a view to ensuring some form of F&P scrutiny, also on time commitment, on individuals cumulating a larger number of roles and to destigmatise the fact of being called for interviews. The interviews would be subject to the enhanced self-discipline on timelines (see Recommendation 9), which are particularly relevant for a timely launch of funds. In considering the number of PCF roles, the F&P regime can better differentiate the expectations of the roles and responsibilities for different PCF roles, recognising the different relevance from a prudential perspective.

### **Decision making**

A decision making process that is fair, transparent and can efficiently handle a large volume of decisions is crucial for regulatory bodies. Striking the right balance is a challenge that can be addressed by implementing a risk-based approach and clear guidelines for decision making at various levels within the organisation.

Fairness and transparency are fundamental principles of good governance, as emphasised by the Organisation for Economic Co-operation and Development

(OECD).<sup>32</sup> These principles ensure that decisions are made in a manner that upholds the rights and interests of all stakeholders and promotes public trust in regulatory institutions.

A risk-based approach allows regulators to prioritise their resources and focus on higher risk cases, ensuring that potential risks are identified and addressed promptly. In line with a risk-based approach, it is reasonable for regulatory teams to be empowered to issue approvals for applications that do not raise significant concerns. This helps streamline the decision making process and maintain efficiency in handling a large volume of cases. However, appropriate checks and balances should be in place to ensure that decisions are well documented and supported by evidence.

When concerns arise that may lead to a refusal or a recommendation of refusal, it is essential to have more senior oversight and ownership of the decision. This ensures that potentially contentious or high impact decisions have received the appropriate level of senior scrutiny.

During the course of industry stakeholder engagement, limited feedback was provided on the decision making process within the Central Bank. Whilst not expressed, an explanation for this lack of feedback may arise from the fact that very few cases have proceeded to the Regulatory Decisions Unit (RDU) assisted process. Notwithstanding this, the decision making process (in particular the drafting of the actual decision) was subject to comment in the context of the recent IFSAT decision (AB v Central Bank of Ireland). The key theme of this commentary was focussed on the drafting of the decision and engagement by the decision maker on the material before them. Whilst there was little attention given to the process of appointing a decision maker it was clear from the decision the importance attached to the independence of the decision maker in such cases.

### **Current decision making process within the Central Bank**

The Central Bank may refuse the appointment of a PCF applicant where the Bank is of the opinion that the person is not of such fitness and probity as is appropriate to perform the function for which he or she is proposed to be appointed.

Where following the assessment of the F&P gatekeeping application the team (RBSD/ supervisory division) are not satisfied to approve the appointment, they may seek assistance from the Enforcement team within the Central Bank. It is typically at this stage that a specific interview may be held.

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<sup>32</sup> [OECD paper "Mobilising evidence for good governance"](#)



If the concerns still persist following consideration of all relevant information, the Central Bank notifies the regulated entity by way of a detailed letter ('a Minded to Refuse Letter'), and the latter is afforded an opportunity to make submissions, prior to any final decision by the Bank.

At the conclusion of the Minded to Refuse stage, the Regulatory Decisions Unit (a unit within the Legal Division) will be engaged to secure the appointment of a decision maker, they being someone not previously involved with the assessment or case. This decision maker will receive an information pack, which includes the Minded to Refuse Letter and the response from the applicant. Upon consideration of the relevant materials a decision will be made by the decision maker. The decision maker may disagree with the grounds of the Minded to Refuse Letter and in those circumstances reach a different conclusion to the one formed by the supervisory division/ RBSD and Enforcement Advisory.

Since the Central Bank has been provided with the F&P gatekeeping responsibility the following is a breakdown (not in actual order) of the refusal decisions made via this decision making process.

In summary since the relevant legislation was introduced, over ten years ago, only five cases proceeded to the decision maker stage. Only four decisions have been made, as in one case the application was withdrawn before the completion of the process. Cumulatively the decision making process took 687 days with an average time across those four cases being approximately 172 days.

Also, in no case did the decision maker reach a different conclusion from the assessment team. The low number of refusal decisions does not allow us to draw any conclusions from this observation, but it is important that a decision-maker has sufficient seniority and status on such a case and feels supported to challenge a decision and the process that generated it. This is a big responsibility for a single person, who cannot benefit from the same level of internal discussion that has led to the proposal.

These considerations lead to the conclusion that the decision making process would prove more robust if it could entail higher seniority, benefitting from the debate that can take place in a panel including different perspectives and bolster in this way the actual and perceived independence in decision making. The experience at the ECB could provide a useful reference (Box 8).

With reference to independence, the relevance of supervisory judgement in the process and the fact that the legislation attribute this task to the Central Bank in light of its supervisory expertise suggest that decision making is maintained inside the Bank.

In addition, fairness requires that efficient decisions are made and decision-making within the Bank allows for a more efficient process. Also, the FCA has recently returned responsibility for refusal decisions to its Authorisations Division (in place of the operationally independent internal committee that continues to determine Enforcement actions), in a manner that complies with statutory requirements on separation of decision-making. To externalise the decision making process would therefore likely not serve the objective of ensuring decisions are made in a more timely manner. This suggests that an appropriate balance is found, including elements of independent challenge within the structures of the Central Bank.

#### **Box 8: Approach to decision making at the ECB**

To improve the efficiency of the decision making process the ECB has set up a senior panel chaired by the Vice Chair of the Supervisory Board and with a modular composition. In general, participants include senior management of Supervisory Governance and Operations where the F&P team is located, senior management of the Supervisory Department, as well as senior management of the Legal Department. This senior panel also includes Deputy Director Generals. The Panel discusses complex cases and frames the proposal to be submitted for decision to the Supervisory Board.

#### **Recommendation 4 – Decision making**

- a) Where legal advice is required on any PCF Gatekeeper application this advice should be provided by the in-house Legal Division.
- b) Where the F&P process progresses and significant concerns persist, a Minded to Refuse Letter would be issued by the F&P team. This Minded to Refuse Letter would include a draft decision, as well as providing a clear outline of the circumstances, the concerns arising under the relevant underlying law and guidance and would address all relevant issues raised to date, including written responses to any arguments raised by the applicant. The regulated entity would be provided a reasonable time (e.g., 10 working days) to provide submissions.
- c) A significant decisions committee would be established within the Central Bank. The committee would be responsible for decision making in significant decisions (i.e., when the assessment is potentially leading to a refusal decision), but can also appoint a single decision maker to decide a given case. When this is the case, the single decision maker should not be below the grade of Director. The Chair of the committee should be a senior official not routinely involved in the

assessment stage of such cases and be of requisite seniority to provide independent challenge.

- d) The Chair of the committee should have authority to decide upon composition based on the features of the underlying case. However, the Committee should include at least one additional member who brings a wider perspective on independence. This could be third party risk adviser appointed by the Central Bank. The Chair will be accountable to the Central Bank Commission in respect of the decision-making process.
- e) Where legal advice is required at the decision making stage, it will be provided by the General Counsel to the Central Bank.

## Chapter 5: Fairness, efficiency and transparency of process

This chapter looks at fairness, efficiency and transparency throughout the life cycle of the F&P process, from ex-ante communication of expectations, submission of application, transparency during the process and ex-post transparency to applicants and industry. Efficiency, consistency and the importance of fair and practical timelines are also examined in this chapter. These points underscore the critical significance of upholding procedural fairness, as required by both Irish and European Union legal frameworks. Adherence to procedural fairness is essential to ensuring that the legal rights of persons are protected, and seen to be protected, throughout the regulatory process.

### **Clear communication and IT tools to deal with the practicalities of the process**

During engagement with industry stakeholders and the Central Bank, concerns were raised regarding the roles and responsibilities of both industry and the Central Bank in the F&P gatekeeping process (in particular as regards due diligence on proposed individuals). Industry members expressed uncertainty about their roles in the process and the weight attributed to them by the Central Bank, while the Bank raised issues with the quality of applications submitted by regulated entities.

These issues highlight the need for clear communication between the Central Bank and industry stakeholders, before, during and after an application is being assessed. By establishing a shared understanding of roles and expectations, both parties can contribute to a more effective and efficient F&P gatekeeping process. In Chapter 3 the focus has been on the clarity of standards. Having clear documents explaining the standards against which the F&P assessment is conducted is not enough, they need to be complemented with high level messages from the leadership of the Central Bank and ideally accompanied by regular workshops offered to firms and potential candidates (see Box 9), in order to lower the fear of failure that might deter suitable candidates from putting forward their names.

IT tools and platforms could also help make the process more user-friendly. Firms are required to submit an application to the Central Bank via its Online Portal ('Portal'). An enhanced version of the Portal has been in place since April 2023, with improvements aiming to enhance the assessment capabilities of supervisors and to streamline the application process and submission of the Individual Questionnaire (IQ). Also,

applicants are now in a position to view timelines and are notified as to where they are in terms of their application.

Although improvements have been made, concerns were raised during the consultation process about the portal, including limitations in functionality and compatibility issues, as well as difficulties for firms in submitting applications on behalf of individuals within that firm, which are hindering overall process efficiency. Some other issues, both prior to submission and after submission, have contributed to delays in the process.

#### **Box 9: The DNB's approach to using to industry outreach for F&P**

Following the DNB's Ottow Review in 2016/17, the DNB enhanced their communication with industry to improve transparency. The DNB increased the amount of information that was published on their website to assist individuals going forward for application to their F&P framework. Clearer guidance was given to applicants on each stage of the process and as a result, the quality of applications has improved.

The DNB also host information outreach events twice per year (one in-person, one online) for any individual and firms who will be applying, or are considering applying for a role that requires regulatory approval under their F&P framework. At these sessions, attendees receive a walkthrough of the process by DNB staff and there are Q&A sessions to help applicants understand the process better.

#### **Recommendation 5 – Communication and IT platform**

- a) The Central Bank should organise an annual information session open to both firms and potential candidates to assist with their understanding of the practicalities of the F&P process.
- b) Ad hoc workshops should be organised to obtain feedback from firms on the functioning of the Online Portal for applications and other possible improvements of the practical aspects of the application process, including the IQ, with the aim to reducing the administrative burden on firms and improve the efficiency in the process.

#### **Interview process**

The interview process is an important part of the F&P process. It allows regulators to consider an applicant's competency and proficiency to carry out a PCF role. In addition, an interview establishes if an applicant has sufficient knowledge of the regulated

entity as a whole and the specific responsibilities of the role. Evidence of a candidate’s ability to meet the fit and proper requirements can be further considered by a supervisor through an interview process.

For the supervisor, an interview also provides an opportunity to meet the proposed appointee and to outline expectations with regard to the engagement between the appointee, the regulated entity and the supervisory team. The Central Bank currently conducts two distinct types of interview: an assessment interview and a specific interview.

The assessment interview is the most common type of interview held and may be wide ranging. The Central Bank uses an assessment interview to meet an applicant and to ask questions about their professional experience and skill set and how they intend to discharge the key accountabilities of the relevant role. A specific interview, where one occurs, will happen after an assessment interview. It is chaired by a lawyer in the Enforcement Advisory Division and it will have a focus on a matter that arose at the assessment interview or other issues that relate to an individual’s suitability to perform a key role.

Table 4: PCF Interviews Conducted 2021-2023

Year	2021	2022	2023
Total PCF Applications Approved	2,893	3,009	2,603
Assessment Interviews	149	148	133
Specific interviews	19	7	5

An interview is conducted, on an average of c.5 per cent of all PCF applications received by the Central Bank (Table 4). In comparison, both the FCA and DNB interview c.10 per cent of all applicants to their F&P framework.

To provide a further breakdown, Figure 5 & 6 below outline the number of Assessment and Specific interviews by industry that the Central Bank conducted in 2023. In the course of the consultation with various industry bodies there appeared to be a misperception that the Central Bank was excessively relying on interviews in the F&P assessment, which was interpreted as a potential indicator of an excessively stringent process. Greater transparency could help avoid this type of misunderstanding, which may also frighten potentially suitable candidates from considering a key role at a regulated firm. It is important that the Central Bank collates and publishes as much

data as possible to be transparent and open with all participants around the number of assessment and specific interviews conducted by the Bank.

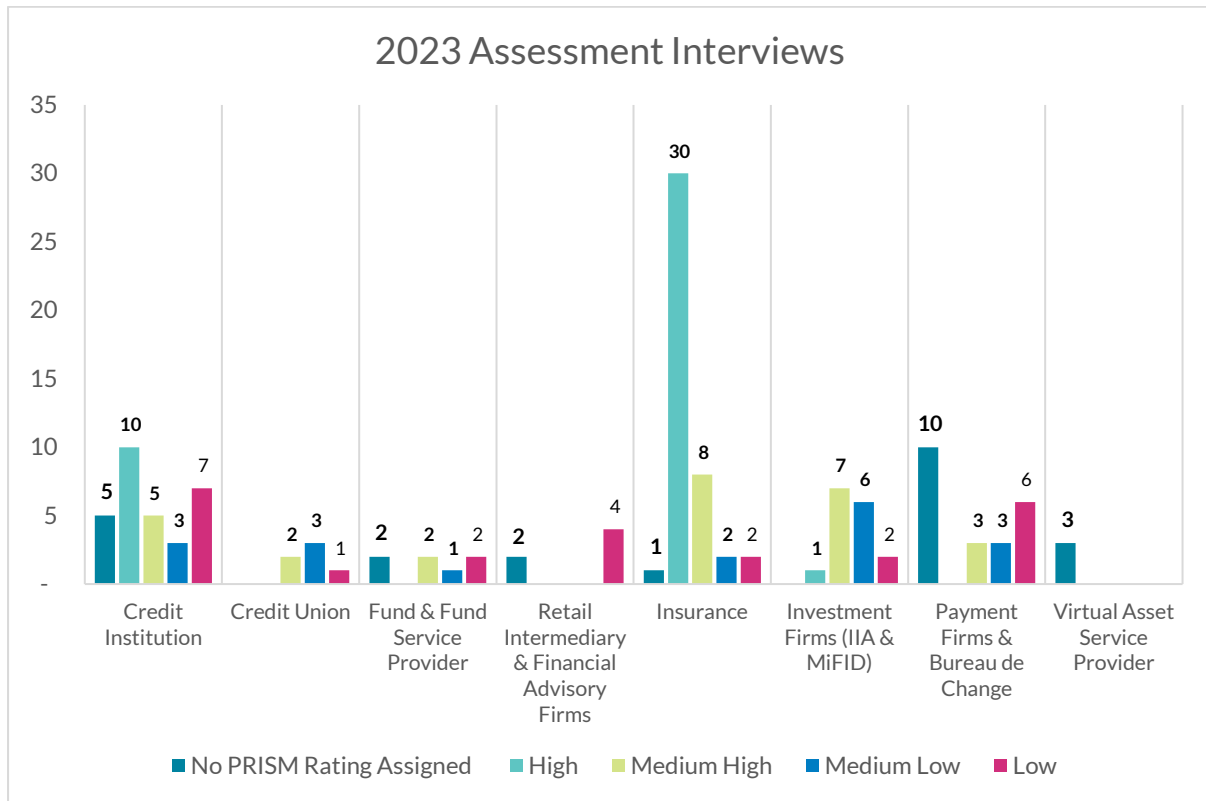


Figure 5: 2023 Assessment Interviews



Figure 6: 2023 Specific Interviews

**Issues arising from the interview process**

A number of issues around the interview process have been highlighted in the IFSAT decision on the AB case and have been a key focus of the contributions provided by industry stakeholders during the consultation. The following areas are highlighted for consideration and action by the Central Bank:

- 1) Lack of clarity on topics to be discussed at interview – Not always providing clear information on what will be covered during an interview can create uncertainty and unease for an individual. It was clear from industry feedback that, from a transparency perspective, it is essential for clear communication on the scope of an interview in advance to ensure that individuals are well prepared and can meaningfully engage in the process. Such an interview notification should clearly outline an agenda for the interview, including detail of the items to be covered. This does not have to be to the level of specific questions that the Central Bank will rigidly ask, instead it is sufficient to outline the topic and the focus of the Bank’s concerns, if any. Where the Central Bank will be relying on information during the course of the interview, this material should be provided to the individual at the same time as the Interview Notification.
- 2) Lack of timely notice – the provision of adequate notice for the interview demonstrates respect for the individual’s time and allows them to adequately prepare. In the context of transparency, timely notification contributes to a fair and respectful process, ensuring that all parties involved can participate effectively.
- 3) Duration of Interview – an overly long interview process can be exhausting and may impact the candidate’s ability to perform well. To maintain effectiveness, interviews should be conducted within a reasonable timeframe, ensuring that individuals are not unduly burdened by the process.
- 4) Lack of seniority of interviewer – the F&P process is a significant process which the Central Bank conducts, the outcomes of which could impact on an individual’s livelihood. To reflect the importance of the process, it is essential that the interviewer is of requisite seniority and possess relevant experience and have received appropriate training.
- 5) Confrontational tone or posture<sup>33</sup> – adopting a confrontational tone or posture during an interview can create an adversarial atmosphere that may hinder open and honest communication. Whilst interviewers should adopt professional and

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<sup>33</sup> Relevant for both in-person and virtual.



robust questioning, also on past events, the primary mindset should be forward looking with a focus on proactive prevention, assessing individuals before they assume key roles to ensure they meet the necessary standards. If possible interviews should be attended in person, as body language also plays an important role.

- 6) Asymmetry of information – when the Central Bank possess information that an individual may be unaware of, it can create an imbalance of power and undermine the transparency of the process. To ensure fairness, the Central Bank should disclose all relevant information to the candidate in a timely manner in advance of the interview.
- 7) Inconsistent provision of feedback – failure to provide feedback, or the provision of incomplete feedback after an interview can hinder the ability of an individual to improve and develop and may instil a sense of disillusionment with the F&P process and trust in the regulatory framework overall. The point was raised on more than one occasion that individuals went through the process and did not receive feedback at all.

It is important to consider the above by reference to the approach adopted by international peer regulators.

#### **Box 10: Peer regulators approach to interviews – DNB approach**

Within two weeks after completion of the desk based assessment (which of itself can only take two weeks), the DNB aims to indicate whether an interview is required. Once a decision has been taken to conduct an interview with an applicant, the applicant receives an invitation to attend. A minimum of 2 weeks' notice is given to the applicant. The invitation sets out a clear agenda, proposed duration of the interview (usually no longer than 90 minutes) the 2 or 3 topics that will be discussed with the applicant. The applicant is provided with a link to the website to assist them in preparing for the interview.

Applicants are informed as to why they have been selected for an interview and what has led the supervisors to this step. Applicants will also be informed which representatives from the supervisory authority will be interviewing them. The maximum number of interviewers at the DNB is three.

There has been an inclusion of an independent confidant/advisor in the process for the applicant to confer with during the various stages of the process. If a negative decision is to be communicated, it must be done so by letter, with the offering of a meeting to receive more information in a personal meeting.

#### **Box 11: Peer regulators approach to interviews – UK regulatory approach**

The Financial Conduct Authority (FCA) have a supervisory assessment matrix in place and adopt a risk-based approach to the interview stage. The FCA receives, on average, 7000 applications per annum, with the Bank of England's Prudential Regulatory Authority (PRA) receiving close to 1,200 per annum. The FCA interviews c.10 per cent of all applications received, and this is lower again for applicants who go for a Round 2 interview. The PRA routinely interviews applicants for the most senior roles at the largest firms as part of their process, with the decision on whether to interview for other roles taken on a case-by-case basis. The duration of an interview will generally be no longer than 90 minutes. The panel at interview will be made up of 2 or 3 individuals. At the FCA, similar to all steps in the SM&CR process, the interview is led by the Authorisations function.

If an applicant is asked to a 2nd round interview, a different panel with the appropriate escalation of seniority is established by the FCA. Nobody from the previous interview panel will be on the 2nd round panel, but it is again led by the Authorisations function. At the PRA, candidates are advised as to why they are being asked to attend the 2nd round interview. Internal senior advisors attend from the PRA's side, which brings a level of challenge internally which is welcomed by supervisors.

The decision is communicated with the firm following the conclusion of the interview.

If it is an approval, the firm is notified. If Authorisations concludes following the interview that the standard for approval is not met, it will make a recommendation to the Executive Decision Maker who will then decide whether to commence the statutory process for refusing the application.

### **Recommendation 6 – Interview stage**

On the basis of the above considerations, the following recommendations are made:

- a) Interview Notifications: the Central Bank should provide a minimum of 5 working days’ notice of an interview to the relevant individual. The Interview Notification should identify the staff members attending from the Central Bank and the roles of such staff. The number of Central Bank staff should be limited to three.
- b) Duration of the Interview – the Central bank should commit to keep interviews within a certain time limit (e.g., 90 minutes, as it is good practice at other authorities).
- c) Setting of interviews and comments on minutes – The setting for the interviews should remain conversational, rather than adversarial, and the minutes of the interview should be shared with the individual within one week, allowing one week for providing comments. The individual may decide to bring a note keeper or a lawyer as observers.
- d) The Central Bank should adopt as a principle that it will provide feedback in all cases where an interview has been conducted (whether an assessment interview or a specific interview) and that such feedback should be provided to both the individual and the regulated entity.

### **Improving efficiency throughout the interview process**

An efficient gatekeeping process allows for timely decision making, reducing delays and minimising unnecessary costs and is a key part of ensuring a fair process. In a regulatory context, efficiency in the gatekeeping process helps maintain trust in the regulatory system. Delays in process can have detrimental effects on regulated entities, investors and consumers, potentially leading to a deterioration of public trust in the regulatory framework. The efficiency of the F&P gatekeeping process is crucial

to ensure fairness, particularly when considering the significant number of applications received each year.

The primary purpose of an F&P gatekeeping interview is to assess an individual's fitness and probity. As such the interview should be focussed and structured to evaluate these factors effectively. I have observed instances in which interviews by the Central Bank contain a significant "meet and greet" element or incorporate wider regulatory messages more suitable for post appointment of the individual – these ancillary issues dilute the focus of the interview, its main objective and potentially prolong the process. Given the importance of timeframes, process discipline and efficiency in the F&P gatekeeping process, it is suggested that "meet and greet" interactions be organised after the F&P process has been completed or otherwise outside of the F&P gatekeeping process.

There could also be cases in which some concerns on a candidate are known in advance, so that getting through a first, generic assessment interview, rather than moving directly to a discussion of contentious issues, could just lead to an unnecessarily lengthened timeline.

## **Recommendation 7 – Efficiency of interview process**

### Interviews

Two recommendations arise under this heading.

- a) The primary purpose of an F&P gatekeeping interview is to assess an individual's fitness and probity. In this respect it is recommended that "meet and greet" type interviews should not form part of the F&P gatekeeping process.
- b) The Central Bank should aim to conduct a single comprehensive interview. This approach reduces the potential for unnecessary duplication, such as conducting an initial assessment interview followed by a specific interview, particularly when a specific issue is known in advance.

### **Withdrawals**

It is rather frequent that during the F&P process the firm decides to withdraw the application. Such a decision could be taken for many reasons, including a change of approach by a regulated entity or the individual proposed for the role, but also as a reaction to concerns raised by the Central Bank and the perception that the assessment is heading towards a refusal. An average of 9 per cent of applications have

been withdrawn per annum in the period from 2020-2023. (Figure 7) These withdrawal numbers are broadly in line with regulatory peers.

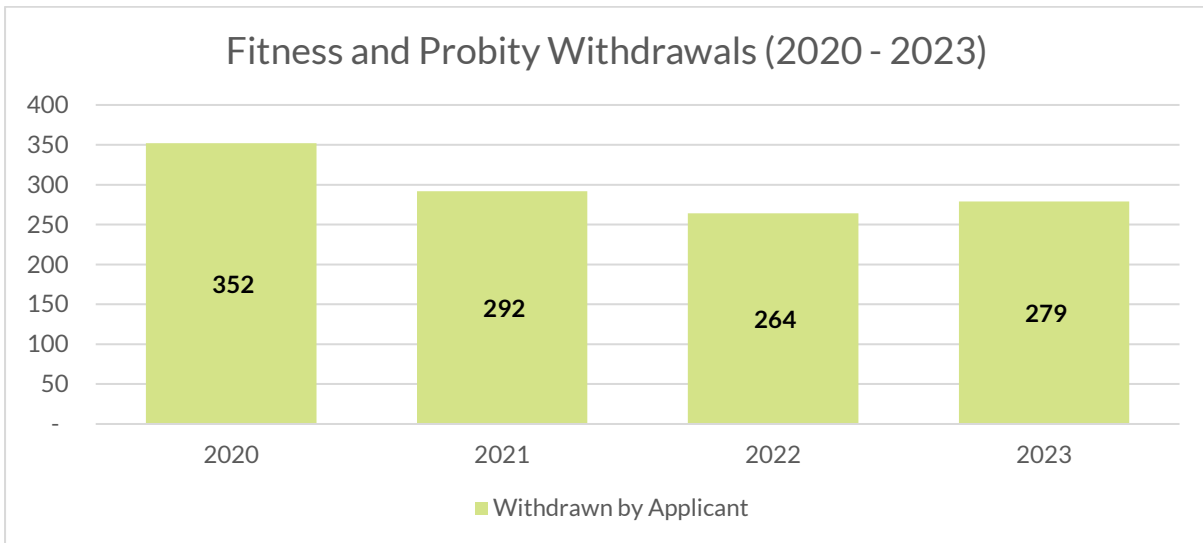


Figure 7: Fitness and Probity Withdrawals 2020-2023

During the engagements with stakeholders, their feedback related to circumstances in which either the Central Bank may have informally engaged with the regulated entity raising issues with the F&P application and/or where the Central Bank has raised issues during the course of the interview stage of the process. Where a regulated entity withdraws in the above circumstances, it could potentially leave the individual in the position of having no legal decision to challenge (vis-à-vis the Central Bank) and maybe uncertain about the Central Bank’s perspective on their fitness and probity.

Notwithstanding the above, it should be noted that in most cases the withdrawal of an F&P application can be advantageous to all parties in certain circumstances and it is not the intention of this review to unnecessarily curtail the operation of this mechanism.<sup>34</sup> However, it is important that the Central Bank provides clear and consistent feedback to both the firm and the individual, so that the process and the respective responsibilities of all the actors are well understood by the parties. As the individual might be disappointed by the decision of the firm to withdraw the application and might consider the Central Bank responsible for this negative outcome, it is also important that an appropriate complaint process is in place, a point which is considered further below.

<sup>34</sup> Withdrawals are seen as a normal part of the fitness and probity gatekeeping process, and on average 7% of such applications are withdrawn in a given year. In total 835 applications were withdrawn over the three year period from 2021-2023, or 8.2% of total completed applications over that time period.

## Recommendation 8 – Withdrawals/feedback

- a) As noted above, under Interviews, the Central Bank should adopt as a principle that it will always provide feedback to both the regulated entity and the individual after an interview. It is further recommended that such feedback be provided also in cases where a withdrawal occurs.
- b) The Central Bank will not engage in off-record discussion with regulated entities regarding specific F&P applications that the Bank has received. This practice aims at maintaining the integrity and impartiality of the process, ensuring that all relevant information is documented and available for review.

## Enhancing management information

In the context of an F&P gatekeeping process, setting an overall time limit for assessment can greatly enhance the efficiency, transparency and accountability of the regulatory framework.

The Central Bank is not subject to a statutory or prescribed timeframe by which F&P gatekeeping assessments are required to be concluded. However, making the gatekeeping process more time-bound may be beneficial in that it fosters a focused and efficient engagement by the Central Bank. This will instil a mindset of streamlining process and ensuring a focussed assessment.

### Box 12: Case Study – Interaction of F&P gatekeeping and ongoing supervisory reviews

The Central Bank regularly conducts reviews of practices within sectors. While a recent such review was ongoing, the Central Bank concurrently received F&P gatekeeping applications relevant to individuals in the sector under review. The unresolved review caused an issue as the Central Bank was not in a position to determine the level of involvement or otherwise by these individuals in the subject matter of the review.

In engagements with industry the above issue was described as leading to a sense of paralysis in processing F&P gatekeeping applications. Whilst I did not observe evidence pointing in this direction, the uncertainty which the above presents has the potential to create a conflation between the F&P gatekeeping process and enforcement investigations.

The above circumstances will arise from time to time. It is important that the Central Bank provides clear guidance to staff on how to approach these situations. I suggest the following:

- a) Time bound process: F&P assessments should be conducted within defined timeframes.
- b) Information based assessments: supervisory judgement should be informed by the information available at a point in time (within the time bound process).

Post decision actions: should new information emerge after the gatekeeping decision, the Central Bank should use available tools to conduct enforcement investigations that may result in removal from a role.

The below F&P gatekeeping service standards (Table 5) are not comprehensive to the full number of applications received by the Central Bank, as some fall outside service standards when certain external information is required - such as Garda vetting, external Regulator references, employer references or when an applicant is invited for an interview. In addition, many of the F&P gatekeeping applications are received at the application for an authorisation to permit a person or entity to conduct a regulated financial service, such applications also fall outside the service standards.

*Table 5: Fitness and Probity Service Standards*

Standard	Target
Provide a response to submitting entity where an IQ is incomplete	85% of cases within 5 business days
Assess IQ application for Qualifying Investor Alternative Investment Funds (QIAIF)	85% of applications within 5 business days
Assess IQ application for individual previously approved by Central Bank or European Economic Area (EEA) Financial Services Regulator	85% of applications within 12 business days
Assess “standard” IQ Application – i.e. non QIAIF and/or individual not previously approved	85% of applications within 15 business days

Information on the Central Bank's compliance with the service standards is published semi-annually and in 2023, 62.5 per cent of applications were subject to F&P service standards, 23 per cent were subject to Authorisation service standards and 14.5 per cent of applications fell outside service standards. 98 per cent of applications that are subject to service standards were completed within the relevant service standard in 2023.

In addition, where F&P applications were subject to service standards they were subject to additional structured governance by way of communication to the Supervisory Risk Committee within the Central Bank. Where applications were outside of service standards they were not subject to the same process and an opacity in governance arises as to structured reporting or communication of those applications.

During the course of the review significant concern amongst different industry bodies was around process efficiency and the length of time it takes the Central Bank to review and process applications. Industry cited variations from 12 days to nearly 200 days for F&P gatekeeping approval.

At each stage of the process, as outlined above, industry indicated a lack of clearly communicated timelines, creating uncertainty for entities. Although the Central Bank publishes its twice yearly assessment of service standards, industry has consistently sought further information on timelines and expected duration for an application. It is considered that the service standards do not provide clarity on the overall timeline for an application. Industry bodies also referenced the "slow-no" approach that firms and applicants believed that the Central Bank sometimes engages in, by delaying a decision to put pressure to the firm to withdraw the application.

The Central Bank has recently introduced new metrics in relation to the processing of certain F&P gatekeeping applications, which address the average processing time in calendar days and the percentage of PCF applications approved within 90 days. The purpose of these metrics is to increase the transparency of timelines for industry and to manage application timelines. Publication of these metrics will be included in the Central Bank's authorisation reports.<sup>35</sup>

Both metrics encompass all gatekeeping applications, except those related to a firm authorisation or where the decision maker is the ECB. These metrics do not operate on a "stop the clock" basis. The average processing time for gatekeeping applications in H2 2023 was 24 calendar days and 98 per cent of applications were processed within

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<sup>35</sup> [Central Bank of Ireland Authorisations and Gatekeeping Report 2024](#)



90 days. Although fully comparable international statistics are not available, the distribution of timelines does not look out of gear, and if anything it seems more efficient, than at peer supervisory authorities. Table 6 provides a summary for timelines to approve PCF applications received in H2 2023.

*Table 6: Timelines to approve PCF applications in H2 2023*

Calendar Days for PCF approval	1 to 30	31 to 60	61 to 90	91 to 120	121 to 150	Over 150
Total	694	153	36	13	2	0

Boxes 13 and 14 below highlights some examples of approaches taken by regulatory peers in relation to timelines and publishing information in relation to service standards and timelines.

**Box 13: Case Study – FCA & PRA approach to timelines and publication**

The FCA and PRA have a statutory time limit of 90 days to complete the assessments. There is no limit to how often they can ‘stop the clock’ to ask for more information. Both of the regulators publish their service standards in their quarterly Authorisations Reports and each publish an indicative quartile timeline to give applicant’s and firms the opportunity to assess the number of days it should take to assess an application.

**Box 14: DNB approach to timelines and publication**

The DNB have a statutory 13 weeks to complete applications from start to finish. Supervisors can only stop the clock within the first 2 weeks of receiving the application if information is outstanding or any additional questions need to be issued to the firm.

ESMA and EBA’s Guidelines recommend that the whole process is contained within 4 months

The publication of periodic statistical reporting on the F&P gatekeeping process can yield significant benefits both for the industry and for the Central Bank, including:

- 1) **Improved understanding:** reporting statistics and service standards enables industry to gain a clearer understanding of the process, including the extent of interviews, refusals and other relevant data. This can both provide clarity but also serve to dispel misconceptions and assist in driving a more balanced view on the F&P gatekeeping process performed by the Central Bank.
- 2) **Benchmarking and comparison:** publishing such information facilitates comparisons with peer regulators.
- 3) **Enhanced accountability:** regular reporting will hold the Central Bank to account for its performance, fostering trust and confidence amongst industry stakeholders. Such transparency is essential for maintaining the integrity of the regulatory framework and ensuring public trust. It will also assist in the identification of areas for improvement which the Central Bank can address to enhance the process on a structured basis.

### **Recommendation 9 – Management information**

- a) *Clear and Comprehensive Service Standards:* to promote transparency and avoid confusion, service standards should be clear, comprehensive and cover all relevant aspects of the process. All F&P gatekeeping applications should be captured and subject to the same overarching timeframe for completion, there should be no exclusions from the service standards, for example, the service standards should cover instances in which interviews are held and cases where an F&P gatekeeping application accompanies an application for authorisation.
- b) *Time limits:* although voluntary, the Central Bank should commit to a set timeframe within which it will have processed to conclusion all F&P applications. Based on a comparison of other peer regulators it is recommended that the timeframe be 90 days, with limited opportunities to stop the clock. Aggregated management information on all F&P gatekeeping applications should be provided to a senior management committee on a regular basis.
- c) *Reporting:* The Central Bank should enhance transparency by publishing standardised information, with appropriate breakdowns, on at least an annual basis. This would allow stakeholders to assess the efficiency and consistency of the regulatory process over time and encourage the maintenance of high standards of performance. It also facilitates benchmarking with peer regulators.

- d) *Reporting - Data Points*: The report referred to in point (c) above, should contain at a minimum the following key information:
- i) Applications received: This figure will help all parties gauge the volume of regulatory activity and understand trends in demand for regulatory services.
  - ii) Interviews conducted: this data point provides insight into the level of scrutiny and diligence applied in the decision making process.
  - iii) Approval and refusals granted: these numbers enable parties to assess the regulator's approach to balancing public protection with the needs of industry.
  - iv) Withdrawals from the F&P process prior to a decision by the Central Bank.
  - v) Incomplete applications received: this will assist to potentially indicate issues within the application process, such as unclear requirements, complex forms or a lack of support for applicant.
  - vi) Timeframe – the date from the application being received by the Central Bank to the date that the application is closed either by way of decision or withdrawal.
  - vii) Approvals with recommendations – to include the number of approvals that have been accompanied by recommendations to address knowledge gaps or other issues that emerged in the assessment.
- e) *Reporting - Qualitative points*: In providing the above information the Central Bank should have regard to the following qualitative points.
- i) The proposed report should cover all applications for F&P assessment which the Central Bank receives. There should be no exclusion (for example, it should capture F&P applications attached to an authorisation).
  - ii) The report should provide all of the above information by reference to all regulated entity types, by individual regulated type, by sector and provide average times for applications received during that year.

## Quality assurance

Consistency is a vital aspect of an F&P process, as it ensures that all applicants are assessed fairly. A consistent process also contributes to the overall integrity and effectiveness of the regulatory framework. To achieve consistency, it is essential to

have standardised procedures and criteria for assessing individuals' competence, integrity and suitability. This includes using the same evaluation methods for all candidates, such as interviews, reference checks and background reviews and interviews. Furthermore, consistent documentation and record keeping practices help maintain transparency and accountability throughout the process.

An effective quality assurance process plays an important role in fostering consistency and driving continuous improvement in an F&P gatekeeping process.

Through routine monitoring and evaluation, the quality assurance process identifies areas for improvement and maintains high standards in the gatekeeping process.

#### **Box 15: FCA & PRA approach to Quality Assurance**

The FCA perform QA on SM&CR applications that have been approved. The refusal decisions have been the subject of independent consideration by the Executive Decision Maker (with the opportunity for challenge by the applicant before the decision is finalised) and are not included in their review. The FCA take a sample of the approval decisions taken and review them to ensure consistency of approach.

The PRA's Authorisation Team perform the quality assurance checks on a sample of applications. There is a framework in place for the process and the team will also discuss some of the sampled cases with experienced case officers to ensure that there is consistency in approach throughout.

#### **Box 16: DNB approach to Quality Assurance**

Members of the F&P team at DNB periodically discuss F&P cases internally (and with the AFM) to ensure that applications are dealt with in a fair and consistent manner. Moreover, internal peer-reviews take place, during which F&P assessors provide each other with feedback. Furthermore, DNB uses a risk-based assessment tool (with a comply or explain system) that enhances consistent F&P procedures. Depending on the impact scores of the respective institution, the approval process of F&P decisions at DNB accounts for middle and senior management involvement.

#### **Recommendation 10 – Quality assurance**

A robust quality assurance mechanisms should be set in place. The output from this process should be conveyed on at least an annual basis to a senior committee. This

work should be conducted by staff of the Central Bank with the oversight of an externally appointed risk advisor to the Central Bank.

### Complaints procedure

In the context of the F&P gatekeeping process, an effective and efficient process exists for appeals against decisions of the Central Bank. However, this procedure is only applicable in circumstances in which a statutory decision has been taken. In instances where a withdrawal has occurred, or where a person has received an approval decision, but a concern exists about the conduct of the process, a separate grievance procedure should be established to allow for individuals to raise issues for consideration.

Given the sensitivity of the underlying issues, this complaints procedure should involve an external, risk adviser to ensure independence, impartiality and maintain confidentiality as appropriate. Key benefits of implementing such a procedures include:

- 1) **Enhancing transparency:** an external grievance procedure fosters trust between the regulator, applicants, and stakeholders by demonstrating a commitment to addressing concerns fairly and objectively.
- 2) **Improved accountability:** the procedure holds the Central Bank to high standards of conduct and facilitates ongoing process adaptations, leading to a more effective and efficient review process.
- 3) **Strengthening stakeholder confidence:** providing a confidential and independent avenue for raising concerns helps build confidence in the Central Bank's commitment to continuous improvement and addressing complaints in a fair and impartial manner.

#### **Box 17: Case study: DNB approach of including a confidential advisor to assist applicant during the process**

As part of the DNB's approach to assessing F&P applications, a confidential advisor is in place for the applicant to refer with during the process. A confidential adviser (appointed within the supervisory authority, but with an independent role) has been introduced who would be available during the entire assessment in case of procedural conflict or a complaint about the treatment of an applicant.

The confidential advisor can fulfil a de-escalating role in the event of complaints about a candidate’s treatment or with regard to other confidential issues during the assessment process, and/or intervene in the process.

### **Recommendation 11 – Complaints procedure**

A complaints process should be established specifically for the F&P gatekeeping process. This procedure should be led by an externally appointed risk advisor.

### **Training**

To ensure fairness, efficiency and consistency within the F&P gatekeeping process, it is essential for staff to receive comprehensive and ongoing training. This training should cover various aspects of the gatekeeping role, including the nature of the role, the processes to be followed and effective techniques for interviews and feedback. Additionally, decision makers must be well versed in relevant decision making elements, fairness of process and proportionality and the duty to give reasons for decisions. A record of all training activities should be maintained to ensure that only trained personnel perform these tasks, and all relevant staff should undergo training at least annually. A process should be adopted to regularly assess and update training materials to reflect any changes in best practice or lessons learned from previous assessments.

### **Recommendation 12 - Training**

Develop a comprehensive training programme for the F&P gatekeeping process, including the nature of the gatekeeping role and its significance, the process to be adopted including any risk framework overlay, conduct of interviews and provision of feedback.

\* \* \*

The package of measures included in this chapter, and particularly the transparency and feedback process they would generate, would create a cycle of continuous improvement that fosters consistency and incremental enhancement of the F&P gatekeeping process. By ensuring transparency, accountability and stakeholder engagement, the Central Bank can build trust in the process and contribute to maintaining high standards across the industry.

## Appendix 1 – Recommendations

### Recommendation 1 – Fostering industry role in gatekeeping

The Central Bank should, as part of an overall enhancement on process guidance, provide greater clarity and guidance to industry on the important role of regulated entities in the gatekeeper phase. This guidance should clearly outline the key, proportionate expectations of the Central Bank as regards the process that a regulated entity engages in prior to submitting an application for a PCF approval to the Bank.<sup>36</sup> Such guidance should include the following key steps:

- a) Due Diligence/Screening: regulated entities conduct initial assessments of individuals to determine their suitability for a specific role. This will include reviewing CVs, conducting interviews and verifying qualifications.
- b) Background checks: regulated entities perform comprehensive background checks, which may include criminal record checks, credit checks and reference checks. The depth and scope of these checks depend on the seniority of the roles and the nature scale and complexity of the regulated entity.
- c) Documentation and record keeping: regulated entities maintain detailed records of their due diligence processes, including the information collected, assessments conducted and decisions made.
- d) On-going monitoring: regulated entities establish mechanisms for monitoring individuals' ongoing fitness and probity, such as regular performance reviews, mandatory training and self-declaration of any changes in personal circumstances that may impact their suitability for the role.

### Recommendation 2 – Clear fitness and probity standards

On the above basis, and in light of the importance of transparent and clear F&P standards, the following recommendations are made to further enhance the effectiveness of the fitness and probity standards (and wider guidance issued by the Central Bank).

- a) Accessibility of the F&P standards – it is recommended that the Central Bank consolidate standards in a single location which would enable regulated entities, individuals and the staff of the Central Bank to access and understand the expectations more easily, promoting consistency in their application. This

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<sup>36</sup> It is important to reiterate that any such process adopted should be proportionate. This means that regulated entities should tailor their processes according to their size, complexity and the specific roles being assessed. For example, a smaller, less complex entity is not expected to establish a Nomination Committee for the selection of PCF candidates.

should seek to identify in a comprehensive way the various pieces of guidance and requirements that the Central Bank has issued from a corporate governance perspective or otherwise. The benefits of such consolidation is as follows:

- i) **Ease of access and comprehension:** A centralised source of information would simplify the process of finding relevant standards, reducing confusion and improving overall understanding.
  - ii) **Encouraging a more robust and effective assessment process:** collating standards in one place would support the development of a more robust and effective F&P assessment process, promoting public confidence in the financial services industry.
- b) **Enhance the F&P Standards:** whilst the F&P standards (and wider guidance) issued by the Central Bank are not significantly out of step with peer regulators there are some weaknesses in the regime that should be rectified. In this respect it is recommended that international good practices in other jurisdictions are considered to enhance the clarity of the standards, in particular to:
- i) **Incorporate objective measures:** enhance the standards by including more objective measures, such as specific qualifications, certifications or experience requirements to reduce subjectivity in the assessment process. The Central Bank should also outline clear expectations in terms of the number of mandates that an individual can hold. Such expectations should not operate to preclude the possibility of holding a mandate above the Bank's expressed expectations, instead in such instances a more detailed level of information, assessment and consideration will be expected of the proposing regulated entity and the application will receive a heightened level of scrutiny by the Central Bank.<sup>37</sup>
  - ii) **Develop specific enhanced guidance on the role of an executive, non-executive and on the specific expectations for independent directors.**
  - iii) **Address conflicts of interest:** strengthen the standards by including specific provisions on identifying, managing and mitigating conflicts of interest, which can undermine fitness and probity within the industry.

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<sup>37</sup> In this context, the concept of mandates should not serve as an absolute barrier, but rather as a trigger for the Bank to engage in a more thorough examination of the individual's time commitments. This approach ensures that any potential conflicts or constraints related to an individual's various mandates are adequately assessed.



- iv) Clarify the way in which collective suitability and diversity within boards and management teams will be assessed.
- v) Clarify the approach to be adopted in relation to considering past events.
- c) Regularly review and update standards: establish a process for regularly reviewing and updating F&P standards to ensure that they remain relevant and reflective of industry developments and emerging risks and engage stakeholders in all such reviews. This can help ensure that the standards are practical, effective and reflective of industry best practices. All enhancements or clarifications of the F&P standards (or wider guidance) should follow consistent governance within the Central Bank.
- d) Holistic consideration of complementary powers – the issue of corporate governance, fitness and probity and the Individual Accountability Framework are most effective when utilised and considered in an interconnected and mutually supportive way. The Central Bank should review all such materials to ensure that they operate in this integrated manner.

### Recommendation 3 - Governance

- a) Establishment of an F&P gatekeeping unit with responsibility for the entire gatekeeping process.
- b) Enhanced implementation of a risk-based approach for F&P gatekeeping, with a reconsideration of the overall number of PCF roles and a possible adjustment in the approach to different sectors including to the funds sector, which is the largest contributor in terms of applications. Whilst recognising the reduced role of fund directors in risk management decisions, which are generally the responsibility of the asset manager, in light of the increased size and systemic footprint of the sector in Ireland and the widespread practice of multiple directorship it could be appropriate to increase the number of interviews held in the sector with a view to ensuring some form of F&P scrutiny, also on time commitment, on individuals cumulating a larger number of roles and to de-stigmatise the fact of being called for interviews. The interviews would be subject to the enhanced self-discipline on timelines (see Recommendation 9), which are particularly relevant for a timely launch of funds. In considering the number of PCF roles, the F&P regime can better differentiate the expectations of the roles and responsibilities for different PCF roles, recognising the different relevance from a prudential perspective.

### Recommendation 4 - Decision making

- a) Where legal advice is required on any PCF Gatekeeper application this advice should be provided by the in-house Legal Division.
- b) Where the F&P process progresses and significant concerns persist, a Minded to Refuse Letter would be issued by the F&P team. This Minded to Refuse Letter would include a draft decision, as well as providing a clear outline of the circumstances, the concerns arising under the relevant underlying law and guidance and would address all relevant issues raised to date, including written responses to any arguments raised by the applicant. The regulated entity would be provided a reasonable time (e.g., 10 working days) to provide submissions.
- c) A significant decisions committee would be established within the Central Bank. The committee would be responsible for decision making in significant decisions (i.e., when the assessment is potentially leading to a refusal decision), but can also appoint a single decision maker to decide a given case. When this is the case, the single decision maker should not be below the grade of Director. The Chair of the committee should be a senior official not routinely involved in the

assessment stage of such cases and be of requisite seniority to provide independent challenge.

- d) The Chair of the committee should have authority to decide upon composition based on the features of the underlying case. However, the Committee should include at least one additional member who brings a wider perspective on independence. This could be third party risk adviser appointed by the Central Bank. The Chair will be accountable to the Central Bank Commission in respect of the decision-making process.
- e) Where legal advice is required at the decision making stage, it will be provided by the General Counsel to the Central Bank.

### **Recommendation 5 – Communication and IT platform**

- a) The Central Bank should organise an annual information session open to both firms and potential candidates to assist with their understanding of the practicalities of the F&P process.
- b) Ad hoc workshops should be organised to obtain feedback from firms on the functioning of the Online Portal for applications and other possible improvements of the practical aspects of the application process, including the IQ, with the aim to reducing the administrative burden on firms and improve the efficiency in the process.

### **Recommendation 6 – Interview stage**

On the basis of the above considerations, the following recommendations are made:

- a) Interview Notifications: the Central Bank should provide a minimum of 5 working days' notice of an interview to the relevant individual. The Interview Notification should identify the staff members attending from the Central Bank and the roles of such staff. The number of Central Bank staff should be limited to three.
- b) Duration of the Interview – the Central bank should commit to keep interviews within a certain time limit (e.g., 90 minutes, as it is good practice at other authorities).
- c) Setting of interviews and comments on minutes – The setting for the interviews should remain conversational, rather than adversarial, and the minutes of the interview should be shared with the individual within one week, allowing one week for providing comments. The individual may decide to bring a note keeper or a lawyer as observers.

- d) The Central Bank should adopt as a principle that it will provide feedback in all cases where an interview has been conducted (whether an assessment interview or a specific interview) and that such feedback should be provided to both the individual and the regulated entity.

## **Recommendation 7 – Efficiency of interview process**

### Interviews

Two recommendations arise under this heading.

- a) The primary purpose of an F&P gatekeeping interview is to assess an individual’s fitness and probity. In this respect it is recommended that “meet and greet” type interviews should not form part of the F&P gatekeeping process.
- b) The Central Bank should aim to conduct a single comprehensive interview. This approach reduces the potential for unnecessary duplication, such as conducting an initial assessment interview followed by a specific interview, particularly when a specific issue is known in advance.

## **Recommendation 8 – Withdrawals/feedback**

- a) As noted above, under Interviews, the Central Bank should adopt as a principle that it will always provide feedback to both the regulated entity and the individual after an interview. It is further recommended that such feedback be provided also in cases where a withdrawal occurs.
- b) The Central Bank will not engage in off-record discussion with regulated entities regarding specific F&P applications that the Bank has received. This practice aims at maintaining the integrity and impartiality of the process, ensuring that all relevant information is documented and available for review.

## **Recommendation 9 – Management information**

- a) *Clear and Comprehensive Service Standards*: to promote transparency and avoid confusion, service standards should be clear, comprehensive and cover all relevant aspects of the process. All F&P gatekeeping applications should be captured and subject to the same overarching timeframe for completion, there should be no exclusions from the service standards, for example, the service standards should cover instances in which interviews are held and cases where an F&P gatekeeping application accompanies an application for authorisation.

- b) *Time limits*: although voluntary, the Central Bank should commit to a set timeframe within which it will have processed to conclusion all F&P applications. Based on a comparison of other peer regulators it is recommended that the timeframe be 90 days, with limited opportunities to stop the clock. Aggregated management information on all F&P gatekeeping applications should be provided to a senior management committee on a regular basis.
- c) *Reporting*: The Central Bank should enhance transparency by publishing standardised information, with appropriate breakdowns, on at least an annual basis. This would allow stakeholders to assess the efficiency and consistency of the regulatory process over time and encourage the maintenance of high standards of performance. It also facilitates benchmarking with peer regulators.
- d) *Reporting - Data Points*: The report referred to in point (c) above, should contain at a minimum the following key information:
  - i) *Applications received*: This figure will help all parties gauge the volume of regulatory activity and understand trends in demand for regulatory services.
  - ii) *Interviews conducted*: this data point provides insight into the level of scrutiny and diligence applied in the decision making process.
  - iii) *Approval and refusals granted*: these numbers enable parties to assess the regulator's approach to balancing public protection with the needs of industry.
  - iv) *Withdrawals from the F&P process prior to a decision by the Central Bank*.
  - v) *Incomplete applications received*: this will assist to potentially indicate issues within the application process, such as unclear requirements, complex forms or a lack of support for applicant.
  - vi) *Timeframe* – the date from the application being received by the Central Bank to the date that the application is closed either by way of decision or withdrawal.
  - vii) *Approvals with recommendations* – to include the number of approvals that have been accompanied by recommendations to address knowledge gaps or other issues that emerged in the assessment.
- e) *Reporting - Qualitative points*: In providing the above information the Central Bank should have regard to the following qualitative points.

- i) The proposed report should cover all applications for F&P assessment which the Central Bank receives. There should be no exclusion (for example, it should capture F&P applications attached to an authorisation).
- ii) The report should provide all of the above information by reference to all regulated entity types, by individual regulated type, by sector and provide average times for applications received during that year.

### **Recommendation 10 – Quality assurance**

A robust quality assurance mechanisms should be set in place. The output from this process should be conveyed on at least an annual basis to a senior committee. This work should be conducted by staff of the Central Bank with the oversight of an externally appointed risk advisor to the Central Bank.

### **Recommendation 11 – Complaints procedure**

A complaints process should be established specifically for the F&P gatekeeping process. This procedure should be led by an externally appointed risk advisor.

### **Recommendation 12 - Training**

Develop a comprehensive training programme for the F&P gatekeeping process, including the nature of the gatekeeping role and its significance, the process to be adopted including any risk framework overlay, conduct of interviews and provision of feedback.

## Appendix 2 – Terms of Reference<sup>38</sup>

On 1 October 2010, Part 3 of the Central Bank Reform Act 2010 created in Irish law a harmonised statutory system for the regulation by the Central Bank of Ireland of persons performing controlled functions or pre-approval controlled functions in regulated financial service providers (Fitness and Probity Regime). In line with our desire to evolve and enhance the regime, the Central Bank now wishes to commission an independent review.

The objective of the review is to undertake an independent assessment on the manner in which the Central Bank of Ireland exercises its statutory functions in relation to fitness and probity as provided for in Part 3 of the Central Bank Reform Act 2010. The review will consider the transparency, efficiency and effectiveness of the Central Bank's operation of the fitness and probity regime, considering the purpose and objectives of this regime to support the safety and soundness of firms, threats to consumer and investor protection and the stability of the system overall.

The focus of the review should be on the processes, systems and structures used by the Central Bank to exercise its functions under section 23 of the Central Bank Reform Act 2010 (Pre-Approval Control functions) but the reviewer is welcome to make any other observations to improve the overall operation of the regime. The review is to be on the implementation of the framework, rather than the legislative framework itself.

### Independent review

The objective is to be determined by reference to the following considerations:

- To evaluate the effectiveness of the performance of the fitness and probity functions by reference to both the quality and quantity of work undertaken and to the current structure, and internal governance structures.
- To evaluate whether the standards applied to fitness and probity assessments by the Central Bank are broadly consistent with comparable F&P supervisory practices internationally.
- To evaluate the calibration, efficiency and timeliness of how fitness and probity functions are carried out in the Central Bank having regard to organisational priorities and available resources.
- To make suggestions that the reviewer considers would likely improve effectiveness of the performance of the fitness and probity functions, including as to reporting or organisational structures, HR issues including for example

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<sup>38</sup> As published.

training and other measures which would enhance the effectiveness of the fitness and probity work in the Central Bank.

- To consider the transparency of fitness and probity activities both for the public and the firms involved and individuals who may be impacted and whether any enhancements can be made in this regard.
- On conclusion of the review, the reviewer will provide a report including recommendations to the Governor.

### **Modalities**

The Central Bank will support the reviewer in any way s/he considers necessary.

- It is intended that the reviewer will have a dedicated team. The reviewer can seek further (including external) legal advice if required. –
- The reviewer will be provided with a background document setting out the processes, responsibilities and recent changes made to the F&P regime.
- The reviewer will conduct interviews (and undertake assessments) with senior management across the Central Bank and other staff involved in F&P processes and decisions.
- The timescale for the review will be discussed with the reviewer



## Appendix 3 – Methodology and stakeholders’ input

### Approach

In preparing this Report, an in-depth review was undertaken of the F&P framework in Ireland. This review assessed the manner in which the Central Bank exercises its statutory functions in relation to F&P as provided for in Part 3 of the Central Bank Reform Act 2010. The review examined the transparency, efficiency and effectiveness of the Central Bank’s operation of the F&P framework, considering the purpose and objectives of this regime to support the safety and soundness of firms, threats to consumer and investor protection and the stability of the system overall.

To understand the different viewpoints and operational approaches taken within the Central Bank, both qualitative and quantitative methods were used, including a desk-based reviews of documents, analysis of Central Bank data and interviews. This Review sought to engage with a large number of stakeholders, both internal and external, to gather views and assist with the understanding of the Regime here in Ireland.

The following is an overview of the approach taken in assessing the relevant pieces of information.

### Desk-based review

A large volume of internal and external documentation to assist in my understanding of the F&P process within the Central Bank. Some examples of these documents include the publicly available F&P Guidance and Standards documents on the Central Bank’s website, internal information on the structure of the F&P assessment process at the Central Bank and information on the assessments that fall under the ECB’s responsibility.

An analysis of publicly available information from regulatory peers around Europe and beyond was carried out in relation to their F&P frameworks, and used these sources to establish an understanding of the various approaches regulatory peers took to the F&P process.

Samples of actual case files were reviewed and assessed to gain a comprehensive understanding of the implementation of the assessment and decision making process within the Central Bank.

### International Peer Engagements

Documents from a number of regulatory peers across the Euro Area (ECB, ESMA, Banque de France, Luxembourg, De Nederlandsche Bank (DNB)) United Kingdom (FCA and PRA) and Australia (ASIC) were assessed and I engaged with same. These

engagements were important to establish comparisons between the F&P framework here in Ireland and those operated in other regulatory jurisdictions.

Good practices and comprehensive overviews of the various F&P frameworks regimes in place were shared in my engagements with peer regulators. Throughout the Report, there are examples of “International Comparisons” to enable me to assess whether the Central Bank’s F&P process is broadly aligned with international best practice.

### **Engagements with internal and external participants**

I engaged with internal supervisory teams/experts, Deputy Governors and Directors within the Central Bank who have responsibility for implementing the F&P framework. I engaged with members of Enforcement Division in the Central Bank who have involvement in the Regime as well. In addition, I met with members of the Commission of the Central Bank during this process.

Following the desk-based review, it was very important that I heard from supervisory teams on the ground who deal with applicants as part of the F&P framework. Through these engagements I established a clear understanding of the culture, practices and process within the Central Bank in relation to F&P. The engagement with the supervisors was critical in understanding the importance of F&P as part of the Supervisory toolkit and the diligence supervisors took in coming to decisions.

The Directors provided considered insights from their experiences of the Regime and the Deputy Governors were open and transparent in their engagements with me.

I also obtained expert views and additional background information through an extensive series of engagements with various industry bodies. I received some additional consultation documents from industry groups that were engaged with.

I engaged with industry bodies from the banking, insurance, funds and broker industries. I would like to acknowledge that participants were open and candid in the engagements and provided very interesting and beneficial insights. The discussions were conducted on the basis that comments would not be attributable to participants.

The following is a summary of points covered in the engagements and responses received from the relevant industry bodies and organised as follows:

- 1) Positive perspectives on the F&P framework in Ireland
  - Clarity that the F&P process has been a fundamental part of the Irish Financial System since it was established in 2010. The regime has been instrumental in instilling rigorous standards of competence, integrity, and honesty for

individuals in senior roles within regulated firms, ensuring that only suitable candidates assume pivotal positions.

- The Central Bank's 'gatekeeper' role is critically important to protecting the interests of consumers and investors who interact with regulated firms and the market as a whole.
- The F&P regime is a balancing act, balancing between the fundamental rights of an individual including the right to a good name and the right to earn a livelihood, weighed up with the statutory obligations and duties of the Central Bank to protect consumers and financial services.
- The emphasis on board responsibility, particularly through nomination committees, in PCF appointments, succession planning and contingency planning has markedly enhanced governance within firms, ensuring meticulous consideration of F&P in key appointments.
- The F&P regime has spurred firms to bolster their policies, procedures, and frameworks, including robust record-keeping procedures and hiring policies.
- The F&P regime has supported a deeper understanding by industry of the need for strong governance and oversight at all levels in the organisation.

## 2. The role of the F&P framework with the financial system in Ireland since its inception in 2010

- There is a need for change within the Central Bank to improve process, transparency, fairness and consistency. Supervisors and external industry bodies both expressed a view that the current F&P framework, and recent IFSAT decision, have demonstrated that there is a need for some change in the process and an expectation for it to become fairer, more consistent and transparent in the future.
- F&P Timelines, Application process and interview process were discussed with both supervisors and industry bodies. Some concerns were raised from both of the perceived lack of transparency in the process. This was leading to some potential issues arising in industry where prospective applicants are dissuaded from engaging in recruitment processes within regulated firms due to the perceived opacity and potential biases inherent in the process.
- The F&P regime process, which is separate and distinct from the CBI enforcement process, should not be considered as an indirect enforcement

mechanism where the CBI has not otherwise considered it necessary to take enforcement action against an individual.

- Firms and individuals are not always aware of the expectations when applying for the role.
- The interview process does not take into account learnings that applicants have from experiences and looks back at previous issues only.
- There are some issues around the communication approach taken by the Central Bank during the process.
- Improvements needed in the collation of standards and guidance.
- Board diversity needs to be examined in greater detail and the importance of it for a firm.
- F&P regime, the introduction of the new IAF strengthens personal responsibility of PCF holders, but uncertainty surrounds the rules, especially regarding compliance with EIOPA statement expectations.
- New F&P portal has led to improvements and efficiencies in the process. However, further enhancements can be made to improve functionality and compatibility.

### 3. Observations and perspective on the Central Bank's process

- Timelines need to improve to provide greater efficiency. Communication of timelines to firms/individuals needs to occur with greater regularity.
- The Central Bank should ensure it is consistently applying the expectation that it is the responsibility of the firm to ensure compliance with the F&P assessment. If the Central Bank has concerns over the due diligence undertaken by an applicant firm it should be resolved with the firm and not prejudice a PCF Applicant's application.
- The Central Bank needs to be mindful of conflicts of interest within the process.
- There is a need to standardise the interview process in so far as possible. Clear agendas, due notice and consistent application of fair process are seen as ways to enhance and standardise the interview.
- There are growing apprehensions regarding the conduct of interviews themselves, with instances reported of interviews resembling adversarial

enforcement investigations rather than competency assessments. Applicants have experienced CBI's conduct of questioning which has the characteristics of an enforcement investigation, as opposed to a competence assessment and have concerns about the use of the F&P Regime for a purpose which appears to be more aligned with the CBI's functions as investigator/ enforcer as opposed to supervisor and gatekeeper.

- Interviews not appearing to have much relevance to the actual PCF role but on CBI's attempt to conduct investigations through the F&P process. There is a short turnaround time at the Specific Interview stage to review materials
  - Withdrawals – there is insufficient clarity on the rationale behind preliminary opinions that has led to withdrawals, despite candidates meeting the published F&P criteria. There is a view that the “slow no” is being used at times, when direct engagement would lead to better outcomes.
4. Transparency - perspectives on the clarity of the expectations by industry and the specific standards against which individuals are assessed
- Transparency within the process also warrants attention, as ambiguities in the CBI questionnaire and inconsistencies in the interpretation of disclosure requirements create confusion for applicants and a lack of certainty as to the CBI's expectations for disclosure.
  - The Central Bank should provide more clarity on its expectations, particularly in areas such as work experience and competencies which can be tested through the executive selection process.
  - Expectations for disclosure in the CBI questionnaire for PCF applicants and the CBI's guidance have given rise to a lack of clarity and transparency regarding the matters which the CBI expects to be disclosed.
  - Firms have commented that individual applicants have been criticised for failure to disclose matters that arose in a prior employer during periods when the individual was in a junior role (non-PCF/ CF/ non-management roles), or where the investigation or sanction arose after the applicant had left the relevant firm and the individual may not have been made aware.

- There are no set timelines for each stage of the process, including requests for further information or the timeframe within which a decision will be made, thus creating uncertainty. Timeframes should be clearer.
- There appears to be duplication in the process with the SSM with both the ECB and the CBI considering an application separately. A joint team/ a collaborative approach would lead to quicker outcomes.

There is an overall desire, internally at the Central Bank and externally that the structure of the F&P framework delivers certainty, fairness, consistency and timeliness for all parties involved.

### **Other External Stakeholder Engagements**

I met and discussed the F&P framework with the Oireachtas Finance Committee, Senior Officials in the Department of Finance, academic experts in Governance and Financial Regulation and some of the legal advisory firms based here in Dublin.

I also engaged with members of the judiciary and candidates who had experience of the F&P framework.

## Appendix 4 – Biography

Mr. Andrea Enria was the second Chair of the Supervisory Board of the Single Supervisory Mechanism from 2019-2023. Before that he was the first Chairman of the EBA since March 2011. He previously served as Head of the Regulation and Supervisory Policy Department at the Bank of Italy, and as Secretary General of the Committee of European Banking Supervisors. He also held the position of Head of Financial Supervision Division at the ECB. Before joining the ECB he worked for several years in the Research Department and in the Supervisory Department of the Bank of Italy. Mr Enria has a BA in Economics from Bocconi University and a M. Phil. in Economics from Cambridge University.

Mr Enria is currently a Senior Advisor in the Bank of England and is a visiting scholar at the Financial Market Group of the London School of Economics.





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