

Fitness & Probity: Independent Review Recommends Reforms

August 2024

An independent review of the Central Bank's Fitness and Probity (F&P) approval process has concluded, with the [report \(Report\)](#) identifying a number of recommendations for the future conduct of the process. The recommendations focus on the clarity of supervisory expectations, internal governance and the fairness, efficiency and transparency of the process.

IFSAT Decision

The Report was commissioned following a judgment by the Irish

Financial Services Appeals Tribunal (**IFSAT**), an independent tribunal which determines appeals in respect of certain decisions made by the Central Bank of Ireland (**CBI**),

Our February 2024 [briefing](#) detailed the IFSAT judgment, which identified a number of issues with the CBI's approach in refusing applications for appointment to positions designated as pre-approved control functions (**PCFs**) under the F&P regime. It held that the decision by the CBI was flawed on account of an absence of fair procedures, with concerns raised including;

- an absence of fair notice in respect of the issues to be covered in an assessment interview, which IFSAT held fell below the standard of constitutional fairness;
- reliance on information which emerged from a previously





- flawed interview process; and
- failure by the decision maker to give reasons.

Recommendations

The Report concludes that the F&P assessment process at the CBI is broadly aligned with other peer jurisdictions in many areas, with statistical outcomes not signalling the process to be either particularly stringent or lenient, while timelines are also consistent. However, certain aspects of the process were identified as not always meeting the requisite standards of fairness and transparency.

Recommendations for the CBI include:

Gatekeeping

- Provision of guidance to regulated entities on the processes they should engage in prior to making a PCF approval application, including due diligence and background checks of individuals to determine their suitability for the role and the establishment of on-going monitoring mechanisms.

Standards

- Consolidate F&P standards into one location and establish processes to ensure standards are regularly reviewed and updated.
- Enhancement of the F&P standards by incorporating objective measures and addressing conflicts of interest.
- Clarify the CBI's assessment of suitability and diversity within boards and management teams.

Governance

- Establishment of an F&P gatekeeping unit with responsibility for the entire gatekeeping process.

- 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.

Decision Making

- Use of '*mindful to refuse*' letters comprising a draft decision, a clear outline of the concerns under the relevant law and guidance and addressing all issues raised, with reasonable time provided for a response.
- Establishment of a significant decisions committee within the CBI.

Communication

- Annual information sessions open to both firms and potential candidates to assist with their understanding of the F&P process, as well as ad hoc workshops to obtain feedback from firms.

Interviews and Feedback

- Notification of meetings to include minimum 5-day notice period and identification of CBI attendees, which should be limited in number to 3.
- Limit on duration of interviews, suggested at 90 minutes.
- Sharing of meeting minutes within 1 week, allowing 1 week for comments.
- Provision of feedback on all interviews. The Report recommends no engagement in off-record discussions regarding specific F&P applications in order to maintain the integrity of the process by ensuring all relevant information is documented and available for review.
- A single comprehensive interview should be conducted with no '*meet and greet*' type meetings.

Management

- All F&P gatekeeping applications should be subject to the same overarching timeframe for completion.
- Publication of standardised information on at least an annual basis, with appropriate breakdowns on items such as the number of applications received, interviews conducted and approvals and refusals granted.

Quality and Complaints

- Establishment of quality assurance mechanisms and a complaints process specifically for F&P gatekeeping, led by an externally appointed risk advisor.

Conclusion

The Governor of the CBI has confirmed that the recommendations have been accepted by the bank and that the CBI will look at the creation of a new unit to bring together F&P activities that are currently dispersed across the bank.

Reforms focusing on fairness and transparency should bring welcome clarity to applicants within the F&P process, at a time when regulated financial service providers are contending with the introduction of key elements of the individual accountability framework, including the senior executive accountability regime (**SEAR**) and the conduct standards.

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