



FINANCIAL REGULATOR
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Fit and Proper Requirements

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Instructions Paper

Foreword

Directors and Managers of financial services entities are responsible for the proper running of such entities. To ensure the proper discharge of this responsibility, it is important that Directors and Managers (Approved Persons) have the skills to run the entity. Moreover, it is important that they have the personal qualities, such as honesty, integrity, diligence, independent-mindedness and fairness to ensure that the entity is run ethically, in compliance with relevant legislation and in a manner that treats its customers fairly. Accordingly, the first step in regulating financial services entities is ensuring that Directors and Managers have the necessary skills and qualities.

A sound and effective fit and proper test is therefore a critical component of the regulatory regime. It is equally important for the industry, as much for commercial as for ethical reasons. A reputable and well-run industry will attract customers and maximise benefits for shareholders.

This paper sets out the fit and proper requirements of the Irish Financial Services Regulatory Authority (the Financial Regulator), including the framework within which the common fit and proper test will be operated.

This paper describes the framework in a comprehensive manner. However, the nature of the issues that may arise from time to time in testing the fitness and probity of individuals is such that additional areas of enquiry, not set out here, may be pursued by the Financial Regulator in respect of proposed Approved Persons and that issues, not explicitly dealt with in this paper, may be taken into account when making a decision.

Fit and Proper Requirements

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1. Introduction

EU and Irish law require that the Directors and Managers of financial services entities regulated by the Financial Regulator meet standards of competence and probity. These standards are usually referred to as “fit and proper” standards. “Fitness” requires that a person appointed as a Director or Manager has the necessary qualifications, skills and experience to perform the duties of that position. “Probity” requires that a person is honest, fair and ethical. Before being appointed, a new Director or Manager needs to demonstrate to the satisfaction of the Financial Regulator that he or she meets the fit and proper standards. This is the “fit and proper test” and involves the completion of an Individual Questionnaire (IQ) by the applicant.

The Financial Regulator has operated fit and proper tests in the various financial service sectors subject to its oversight, in conformity with the relevant legislation. This common framework applies common standards across all industry sectors in so far as possible. The process by which the test is applied varies somewhat to take account of the diversity of entities in terms of size and complexity.


The common framework has been developed in light of a consultative process that involved two public consultations.

2. Purpose of the Test – The Gatekeeper Role

The fitness and probity regime primarily fulfils a gatekeeper role in ensuring that entrants to the key approved positions at board and senior management level are taken up by people of competence and integrity. Once persons have been approved by the Financial Regulator, they, along with the entities they represent, are subject on a continuing basis to the laws, codes and general rules of the regulatory regime. Thus, there will be no requirement for regular formal updates of the information provided in the IQ. However, if there is any material change at any time to the information provided at the time of entry, such change should be notified to the Financial Regulator immediately.

The purpose of completing the questionnaire is to provide information to the proposing entity and to the Financial Regulator to assist each in forming a view as to the fitness and probity of the person.

If, having considered the information provided in the IQ and any other information, the Financial Regulator is proposing to refuse an application, there will be a full due process. This will include providing details to the applicant of the cause of concern (subject to the Financial Regulator's powers to do so). The applicant will have a right of reply at this stage. If, having considered the applicant's reply, the Financial Regulator still considers that there are grounds to refuse the application, it will convey that decision to the person, including the reasons for it. All representations that the person may wish to make will be taken into consideration before a final decision is taken. If the final decision is to refuse the application, the applicant has rights of recourse to other



appeals mechanisms, including, where appropriate, the Irish Financial Services Appeals Tribunal,¹ (the Appeals Tribunal) and the Courts.

¹An individual may appeal through this mechanism a decision made on foot of a provision of the legislation that has been designated as appealable. The availability of recourse to the Appeals Tribunal in fit and proper cases depends on the legal basis of any decision to refuse a proposed Approved Person.


3. Role of Administrative Sanctions

The Financial Regulator considers that its gatekeeper role is primarily fulfilled through the fit and proper test, and that is the primary function of the test. Where circumstances arise that cast doubt on the fitness or probity of a person who is already approved, the fit and proper test is not the only framework in which to enquire into and, where appropriate, sanction a person who has been found to fall short of the requisite standards of fitness or probity.

Accordingly, where there is evidence that an Approved Person has breached a sanctionable provision made under the Central Bank Act 1942, or the designated enactments and statutory instruments referred to therein, the Financial Regulator may decide to pursue the matter through the Administrative Sanctions regime rather than the fit and proper regime.

Where an Approved Person acts in an improper manner that may not be covered by explicit administrative sanction provisions of the Central Bank Act 1942, that matter will be investigated under the fit and proper test.

Where the Financial Regulator has the power to deal with the impropriety through the fit and proper test and decides to do so, this will involve re-activating the fit and proper test to determine whether the person still meets the conditions of the test. If the Financial Regulator is minded to consider that the person no longer meets the conditions of the test, the person will generally have the same rights as outlined in 2 above, namely, a right of reply and rights of appeal. If, having gone through due process the Financial Regulator determines that the person is no longer fit and proper, the entity will be directed to remove the person from the position he or she occupies.



Where the Financial Regulator decides to deal with the impropriety through the Administrative Sanctions regime, the procedures of that regime will apply. Briefly, the person will be informed of the Financial Regulator's concerns and the grounds for its concerns, will have a right of reply, backed up with rights of appeal, including, ultimately to the Courts. In such cases, a range of sanctions would be applicable, including fines, reprimand or exclusion from the industry for a specified period.

This does not prejudice the right of the entity to deal with suspected impropriety. The issues arising from such circumstances are dealt with in Section 7 below.

4. Who is Covered?

Directors and Managers

The Financial Regulator intends that the common test will be applied to all Directors, including alternate and shadow Directors, and Chief Executives of those financial services entities that are subject to fit and proper oversight by the Financial Regulator. It is also intended that, in the case of certain entities, such as credit institutions, insurance/reinsurance undertakings, investment firms and fund service providers (as appropriate), relevant² Managers at Executive Board level (viz., relevant Managers that report directly to the Board or to the Chief Executive) should be covered. In the case of incorporated intermediaries, the test will apply to all Directors, to the Chief Executive and to relevant Managers, if any, who report directly to the Board.

In the case of unincorporated intermediaries, the test applies to the Principal(s) of the entity and to the Manager of the entity. If the Principal and Manager is one and the same person, a minimum of one other officer of the entity will be required to undergo the test, to ensure that each such entity has a minimum of two approved persons.

In the case of partnerships, the test is applied to each Partner.

Where the entity is a sole trader, with no officers other than the Principal/Manager, the test will apply only to the Principal/Manager. The fit and proper test will not apply to the person nominated to take over such entities in the event of the short-term incapacity of the principal.

² If in doubt regarding the necessity to submit an IQ in respect of a Manager contact the relevant Department in the Financial Regulator.

These requirements apply in respect of each authorised entity of financial services groups.

Where a Director or Manager of a financial services entity becomes aware that a person who is not a formally appointed Director of the entity is nevertheless exercising influence on the direction or management of the entity, they should bring this to the attention of the Board of the financial services entity. The Board should investigate the matter and inform the Financial Regulator of its conclusions. If the Board considers it appropriate to formally appoint the person in question to the Board, they should proceed with the normal recruitment and selection procedure and the fit and proper application process, taking care to inform the Financial Regulator that the person previously acted as a shadow director.

Other Managers and Post holders

Clearly, it is important that, in the case of institutions such as credit institutions, insurance/reinsurance undertakings, investment firms and fund service providers, relevant Managers below Executive level as well as particular post holders (for example, Compliance Officers, Money Laundering Reporting Officers (MLRO), Risk Managers and Heads of Internal Audit) should also be fit and proper. The Financial Regulator considers that entities appointing such Managers or post holders should vet the fitness and probity of proposed appointees to ensure that they meet the standards set out in this paper. Otherwise, it is not generally envisaged that the Financial Regulator would have a role in the tests applied to persons at these levels.

Credit Unions

Not all financial services providers regulated by the Financial Regulator are subject to the fit and proper test set out in this paper. The Directors of Credit Unions are not subject to a test - the issue of fitness and probity of Credit Union Directors remains to be addressed in a future review of credit union legislation.

Mortgage Intermediaries

Mortgage intermediaries are currently subject to fit and proper tests in connection with their applications for authorisation or renewed authorisation (at 5 or 10 years). While the fit and proper test for mortgage intermediaries is set out in the application form for their authorisation (mortgage intermediaries do not complete an IQ), the same principles as set out herein are applied and mortgage intermediaries are expected to be fit and proper as described in these requirements. If the Financial Regulator has grounds for doubting either the fitness or probity of a mortgage intermediary, it will take appropriate action, whether under the relevant legislation, the administrative sanctions regime or the fit and proper regime.

Moneylenders

Moneylenders are required to apply to have their licences renewed annually and from specific questions in the application form the Financial Regulator determines whether the applicant is fit and proper to carry on the business of moneylending. While they will not be asked to complete the IQ associated with this test as part of that renewal, they are expected to be fit and proper, as described in these requirements. If the Financial Regulator has grounds for doubting either the fitness or probity of a

moneylender, it will take appropriate action, whether under the administrative sanctions regime or the fit and proper regime.

Existing Directors and Managers

Existing Approved Persons are not required to take any action in relation to these requirements unless they are proposed for a new position³. If they do apply for a new position they should follow the process set out under the section headed “Are approvals transferable?”.

In the case of applicant/authorised collective investment schemes, proposed directors, who are already Approved Persons for existing collective investment schemes, are not required to complete the new IQ. Such individuals may complete a standard Declaration which reconfirms the accuracy and completeness of the information provided in a previous IQ and such information is verified by the proposing collective investment scheme in each case. It should be noted that the Declaration must contain original signatures.

Persons Approved in Another Jurisdiction

Existing approvals from financial regulatory authorities in other EU/EEA member states will be regarded by the Financial Regulator as information relevant to the probity element of this test. Accordingly, proposed Approved Persons who are already approved in an EU or EEA member state will not be required to complete sections 3 and 6 of the IQ. They should instead indicate in the IQ the name of the financial services regulator by which they are approved. The Financial Regulator will seek information from the relevant financial services regulator and will review the application for approval in light of the information provided in the IQ

³ A “new position” is a position as Director/Manager with a different firm (whether of the same authorisation status or not) or a different position within the same firm.

and in light of information from the relevant financial services regulator as to the person's status in that jurisdiction.

Where a person is approved in a third country, the proposing entity should seek guidance from the Financial Regulator as to whether approval by the authorities in that third country will be regarded in a manner similar to that applying in the case of EU/EEA countries. If it is, the process will be the same as for EU/EEA countries. If not, the person will have to complete sections 3 and 6 of the IQ.

Are Approvals Transferable?

The Financial Regulator applies the same standards of probity, no matter what position the applicant is proposed for. Accordingly, it is reasonable that once a person has been approved, they can be regarded as meeting the standards of probity, without either the proposing entity or the Financial Regulator having to enquire again into their probity, providing their circumstances have not changed since they were previously approved.

Where there have been any changes to the information regarding the person's probity, such changes should already have been brought to the attention of the Financial Regulator (and the proposing entity) and the matter assessed, with the person's approved status either confirmed or withdrawn. If there is very recent new information, the proposed person should amend the existing completed Section 3 to reflect the new information and he or she should bring to the attention of the proposing entity any new information. The entity should carry out a full enquiry into the probity of the person and make its own assessment as to whether it wishes to proceed with the appointment. If it decides to proceed, the reasons for its decision, together with the new information should be brought to the attention of the Financial Regulator by the entity. The Financial Regulator will, in these circumstances, carry out a full probity test to enable it to determine the probity of the person.

Notwithstanding the position on probity, the fitness requirements will vary from one position to another, and so the proposed person will complete and provide to the entity the remaining relevant sections of the IQ.

For good order, when an Approved Person is proposed for a new position in another entity, that person should also provide a copy of Section 3 and 6 of the IQ, which they will have completed for the previous position, to the proposing entity. This will allow the proposing entity to review in the context of the proposed position any additional factors, that could be seen as related to probity, such as number of Directorships held, where applicable, and possible conflicts of interest. The proposing entity, in forming its view as to the probity of the person, should take into account the fact that the person is already approved by the Financial Regulator and, in the absence of any material change, need not carry out any checks as to the probity of the person.

The Financial Regulator will examine the completed IQ and sign-off by the entity as to fitness and probity and form its view. It will normally regard the person as meeting the required probity standards on the basis of their existing approved status. However, the Financial Regulator reserves the right in all cases to pursue any enquiries that it considers warranted.

Managers of Branches established in Another Jurisdiction

In circumstances where:

- an entity, authorised in Ireland, proposes to appoint a Manager to a branch of such entity, established in another EU/EEA jurisdiction, or
- an entity, authorised in a third country, not a member of the EU/EEA, proposes to appoint a Manager to a branch based in Ireland,

such appointment is subject to the Financial Regulator's fit and proper test.

In circumstances where an entity, authorised in an EU/EEA jurisdiction, proposes to appoint a Manager to a branch in Ireland, such appointment is subject to the fitness and probity tests of the supervisory authority of that EU/EEA jurisdiction.

The fitness and probity test(s) applicable when an entity, authorised in Ireland, proposes to appoint a Manager to a third country branch of such entity, will vary depending on the nature of financial services provided by the entity. Where such an appointment is proposed, further clarification should be sought from the Financial Regulator as to the applicable test(s).

Departure of an Approved Person

Entities should advise the Financial Regulator promptly of all departures of Approved Persons and the reason for departure from their role. Each entity should ensure that, where a Director resigns other than by rotation, he or she should be made aware of the possibility of reporting to the Financial Regulator concerning the reasons for his or her departure. Information received from such Directors will be subject to the confidentiality requirements set out in Section 33AK of the Central Bank Act 1942. Where the information received warrants it, the Financial Regulator will pursue enquiries with the entity and with the resigning Director concerned. The entity will have a right of reply, as will the Director.

5. Fit and Proper Standards

The criteria for assessing the fitness and probity of an individual will fall under three categories.

- Competence, and capability;
- Honesty, integrity, fairness, ethical behaviour, and
- Financial soundness.

Competence and Capability

The proposing entity is best placed to judge whether an individual has the competence, experience and ability to understand the technical requirements of the business, the inherent risks and the management processes required to conduct the operations of the entity effectively. Whereas common standards of probity should apply, no matter the size or activity of the entity, the requirements for competence will vary to reflect the nature of the post and the size and activity of the entity.

Where the Financial Regulator's minimum competency requirements (as outlined in the paper Minimum Competency Requirements of June 2006) apply, the entity shall ensure that the proposed appointee fulfils those requirements.

In considering the competence and capability of a person the entity should take into account all relevant considerations including:

- The activities and size of the entity;
- The responsibilities of the position;
- Whether the person has shown the capacity successfully to undertake the responsibilities of the position, taking into account the nature of those responsibilities, including the establishment of an effective control regime;
- Whether the person has a sound knowledge of the business and responsibilities he or she will be called upon to shoulder, and

- The existing responsibilities of the individual, including but not limited to, the number of existing directorships held by such individual (see below).

In scrutinising the evidence offered by the entity as to the fitness of the person proposed, the Financial Regulator will have regard to these factors and to any other information given by the entity.

It is common for non-executive Directors to hold a number of directorships. This reflects the fact that a non-executive directorship is not normally a full time position. It has the advantage that skills and experience may be transferred from a long established entity to a new entity within and across industry sectors. However, with increased emphasis on corporate governance both in Ireland and internationally, the responsibilities of Directors, especially of financial services entities, have grown significantly. Appointment as a Director represents perhaps a greater time commitment than in the past. The proposing entity should satisfy itself that a proposed Director would be in a position to fulfill his or her duties to the entity, having regard to their other commitments.

The entity should also ensure that the person's other commitments do not give rise to any conflicts of interest. Possible conflicts to be considered include commercial conflicts or those that might arise where a person is connected to an entity having an oversight role in respect of the financial services entity – for example, as external auditor or actuary.

Honesty, Integrity, Fairness, Ethical Behaviour

Directors and Managers that are honest, diligent and independent-minded, who act ethically and with integrity and fairness are essential to the good repute and trustworthiness of the financial services industry in general and of individual entities in particular. This is why the proposing entities

and the Financial Regulator seek to ensure that those appointed as Approved Persons comply with these general standards.

These attributes are used to describe probity. Probity is thus a matter of character illuminated by a person's past behaviour. While we rely on a clear record as an indicator of good character, we recognize that it is not an infallible indicator. Furthermore, it is not easy to explicitly define probity in a way that ensures that the fit and proper test captures all possible aspects of the concept. Probity is broader than any attempted definition or list of qualities.

Entities subject to these standards differ widely in size and in the nature of their activities. Nevertheless, the same standards of probity will apply, no matter the size and activity of the entity.

Financial Soundness

There are two sets of issues addressed in the IQ under this heading – personal bankruptcy or similar and association with the bankruptcy or similar of a company. Where a person has failed to manage his or her debts or financial affairs satisfactorily, especially where that caused loss to others, the person's competence, honesty and integrity may be in doubt. The Financial Regulator would enquire further if such an issue were to arise in responses to the questionnaire. It may not necessarily follow that one incident in a person's past (for instance, where a person did experience difficulty, but subsequently honoured all debts) would rule them out. However, it is important for the Financial Regulator to be aware of such instances in the past so that it can have confidence in the fit and proper test in face of information coming from members of the public or from other sources.

Where a person has been associated with an entity that became insolvent, went into administration, was in the control of a Court appointed liquidator or otherwise failed to meet its financial obligations to creditors or

beneficiaries, that person's competence, honesty and integrity may be brought into question. As above, it may not necessarily follow that an instance in a person's past (for instance, where their association was at a very junior level) would rule them out. The Financial Regulator would enquire further into the matter to establish whether or not the circumstances did reflect on the person's probity or competence. As explained in the paragraph above, it is important for the Financial Regulator to be aware of any such instances, even where they are not likely to cause an adverse decision.


Convictions

Where a proposed Approved Person has been convicted, on indictment, of dishonesty, fraud, money laundering, theft or financial crime within the last 10 years that will be regarded by the Financial Regulator as an indication that a person is not proper and will, in principle, bar a person from holding a position as an Approved Person. Where a person has a conviction dating beyond ten years, such information should be notified to the Financial Regulator. Older convictions on indictment will be reviewed by the Financial Regulator in order to adjudicate on the application.

Summary convictions of fraud, money laundering, theft or financial crime should be notified to the Financial Regulator. The Financial Regulator will take this information into consideration in its decision. Older summary convictions of a serious nature will be reviewed by the Financial Regulator in order to adjudicate on the application.

Tax Compliance

Conviction on indictment within the last 10 years of a tax offence will be regarded by the Financial Regulator as an indication that a person is not proper and will bar a person from holding a position as an Approved Person. Older convictions on indictment and all summary convictions of a



serious nature will be reviewed by the Financial Regulator in order to adjudicate on the application.

The misuse of the systems and processes of financial institutions to facilitate the evasion of tax, whether by customers of the institution or any of its employees, officers or Directors, is a serious lapse that may necessitate a review of the fitness and probity of Directors, Managers or staff of a financial entity. The Financial Regulator expects that any such activity would be in breach of the entity's Code of Ethics and would therefore be a matter for disciplinary action by the entity.

6. Operation of the Test

First step – Recruitment/Selection

The test begins in the entity proposing the appointment of a Director, relevant Manager or post holder. A culture within entities that places a high value on appointing fit and proper people, whether as Directors, Managers or staff will foster values and processes that lead to the recruitment and appointment of fit and proper people. In considering potential candidates, compliant entities are expected to give priority to the need to choose people that are fit and proper. In this way, the interests of the entity and of its customers are best served.

The Financial Regulator expects that most, if not all, entities already do cater for fit and proper issues in their recruitment or selection procedures, at least implicitly. Entities seek to ensure, for example, that a person is suitably qualified to do the job for which they are being recruited and that they are honest and trustworthy.

The Financial Regulator recognizes that the realities of recruitment vary from one entity to another. In small family entities, for instance, family members may be appointed as Directors or Managers. On the other hand, large credit institutions, investment firms, fund service providers or insurance undertakings will have formal recruitment procedures, either in-house, through a related group entity or through the use of recruitment specialists. In all cases, however, the principals of entities will, whether implicitly or explicitly, seek to appoint people who will serve the interests of the entity, who are trustworthy and who have the necessary skills and experience. Accordingly, however formal or informal it may be, the Financial Regulator expects that the recruitment process of each entity would normally cover the following:

- Consideration of the duties and responsibilities of the post to be filled;
- A selection/appointment process that matches the selected person to the requirements of the post;
- Verification of qualifications, experience, references and membership of professional bodies;
- Some probity checks, including relevant websites (Companies Registration Office, Revenue Commissioners, ODCE), and
- In relation to Directors of larger institutions, how the institution determined that the individual would be a strategic and effective fit with the other members of the Board and that they had suitable relevant experience.

The Financial Regulator may, in the course of the authorisation process and on-site reviews, seek evidence that the entity's recruitment process does take account of fit and proper issues. In these circumstances, entities may wish to consider documenting their recruitment processes. This should be carried out in a manner that complies with the entity's obligations under Data Protection, employment and other legislation.

While the Financial Regulator does not propose to give detailed guidance concerning the principle that entities should take fit and proper considerations into account at the first stage of recruitment, in the spirit of this review, entities other than sole trader entities may consider it advisable to review their own selection procedures to ensure that fitness and probity are now an explicit part of the selection process.

Second step – Completion of IQ by Proposed Person

Once a person has been selected by the entity, that person should complete the IQ. The IQ consists of a number of sections. All proposed individuals should complete sections 1 (personal details), 2 (qualifications and experience – including a complete CV which discloses start and end

dates of employment and accounts for any gaps in employment history), 4 (other business interests) and 5 (shareholdings in proposing entity). All applicants other than those already approved by the Financial Regulator or another EU/EEA financial services regulator must complete sections 3 (good reputation and character) and 6 (references).

All applicants must sign the first declaration in Appendix 1 of the IQ. Proposed directors must also sign the second declaration in Appendix 1. It should be noted that the IQ must contain original signatures.

Where applicants have been approved by financial services regulators in third countries, the proposing entity should contact the relevant Department in the Financial Regulator to ascertain whether these approvals will have the same status as EU/EEA approvals.

Third step - Verification of Information by the Proposing Entity

The entity should peruse the information contained in the completed IQ to ensure its completeness and that there are no issues arising from the material that would cause the entity to reconsider its proposal to appoint the person. The entity should then carry out checks on the information to ensure its accuracy. If all is in order, the entity should forward the completed IQ to the Financial Regulator. By signing the declaration in Appendix 2 the entity confirms that it is prepared to proceed with the appointment, that it has verified to the best of its ability the information in the completed IQ and is seeking agreement to the proposed appointment.

The entity itself will wish to be assured that the person being recruited or appointed is as he or she appears to be. Accordingly, it would be expected that an entity would seek some verification. In many cases, the person is well known to the entity, for example as an employee or former employee. In such cases, the entity is already confident about all of the information provided by the appointee and is in a position to verify the

completed IQ to the Financial Regulator, without needing to carry out checks. Where checks are needed, areas such as references from former employers, validity of professional qualifications or membership of professional associations would seem to be the most appropriate checks.

The IQ elicits information from candidates about any instances in their past where the candidate's integrity or honesty was ever in question, whether on the part of a previous employer, a professional body, a civil or criminal court or the tax authorities. Where there are any such instances, the entity will have to consider this information before making a final decision to appoint the person. In considering the information available to it, the entity should take into account the gravity of any incident in the person's past. A minor incident does not necessarily imply that the person was guilty of dishonesty or lack of probity. If the entity is satisfied to proceed with the appointment notwithstanding any previous incident(s) in the person's past, it should explain its decision to the Financial Regulator.

Fourth step - Determination by Financial Regulator

The Financial Regulator will examine the proposal. It may carry out checks to verify the information provided. Where an applicant is advised that Garda clearance is required for a role, the Financial Regulator will require the applicant to complete a Garda vetting application form which it will provide to the applicant. Once the Financial Regulator has completed its enquiries and is prepared to agree to the appointment it will inform the entity and the entity can then proceed with the appointment.

The Financial Regulator will consider the information provided in the IQ, in the entity's sign-off and any information resulting from enquiries carried out by the Financial Regulator. The Financial Regulator will consider any issues that arise in replies provided by the candidate in light of their bearing on the probity of the individual. A seemingly minor issue may

cast doubt on the honesty of the person. In these cases, it will be necessary to consider the issue further. The Financial Regulator will take account of the gravity of the incident, the length of time that has elapsed since it occurred and any evidence that the person provides that demonstrates that the person would not now make the same error. Thus, it will not necessarily follow that an incident in a person's past will rule them out of consideration.

The Financial Regulator will also consider any evidence that the person has ever been obstructive, misleading, or untruthful in dealing with a court, tribunal, regulatory agency (including, but not limited to, the Revenue Commissioners and the ODCE) or professional or industry body.

Timing of Test

In principle, no appointments should be made until the Financial Regulator has been satisfied that the proposed person is suitable and has indicated as much to the entity. The fit and proper process can be time-consuming, particularly where checks with third parties, such as foreign regulators are involved. Bearing in mind its obligations under the Stakeholder Protocol, the Financial Regulator will endeavour to reach a decision as soon as possible.

7. Continuing application of fit and proper standards

Fitness

Approved Persons will be expected to remain competent for the positions they hold. With several professions and associations now requiring their members to maintain standards of excellence through continuous professional development (CPD), this is now an issue for appointees. Entities should ensure that Approved Persons meet their CPD requirements, where particular qualifications or memberships have been cited as demonstrating their fitness for a particular position. A failure to maintain such qualifications or memberships, where they are relevant, would raise doubts about the person's continuing fitness and would have to be reviewed by the entity and by the Financial Regulator.

Probity


Probity is an issue not just at the moment of appointment, but on an ongoing basis. The Financial Regulator expects that it is normal practice that Boards of entities⁴ of size and complexity require their own members, together with relevant Managers and their employees to be in full compliance with their contract of employment. This would include adherence to the entity's internal code of ethical behaviour. This code may be implicit or explicit. The internal code should cover guidelines on behaviour to be adopted in relation to guarding against the misuse of systems or processes of the entity for unethical purposes, for example,

⁴ Including credit institutions, insurance and reinsurance undertakings, investment firms, fund service providers and large intermediary firms, but not sole trader intermediaries, mortgage intermediaries and moneylenders.

attempts to facilitate fraud, money laundering or tax evasion, whether for the benefit of individuals within the entity or of the entity's clients. Any serious breaches should be recorded by the entity as a matter of course together with the record of disciplinary action taken. Where an Approved Person is found to be involved in any such activity that should, of course, be notified immediately to the Financial Regulator.

This makes it incumbent on entities to foster a system that supports continuing adherence to the values underlying probity. Moreover, entities have a responsibility to adopt policies and processes that detect instances where ethical behaviour is under threat. For example, a Director or Manager may act with scrupulous honesty. However, if that individual is aware of unethical or dishonest behaviour on the part of a colleague and fails to act to stop it, that reflects on his honesty. There may be many reasons why an otherwise honest person may fail to act in such circumstances. It is the responsibility of the entity to have systems that will detect such instances and that will support those who stand up for ethical behaviour within the entity. A Director or Senior Manager who directs a junior colleague to act in an unethical or dishonest manner is failing to act ethically, fairly and with a proper commitment to compliance. Again, the entity should have systems that bring these behaviours to light and support and reward those who resist pressure to act unethically. Where such instances do arise, the entity should consider appropriate disciplinary action of the person or persons responsible for compromising other colleagues. In any case, where such matters come to light, they should be reported immediately to the Financial Regulator.

Where there has been wrongdoing, the entity should make all reasonable efforts to establish grounds for taking disciplinary action and where appropriate take the action. In any case, arrangements agreed with individuals should not include an agreement to provide a reference that is untrue, inaccurate or misleading and the entity should make every effort consistent with fair procedure to ensure that any prospective employer is not misled by any reference given as a result of a settlement.



If a person is in breach of their contract and/or of their entity's internal code of ethical behaviour and they seek a new position in the industry that is subject to the fit and proper test, the breach will be relevant and will be taken into account when assessing the person's fitness and probity.

While it is difficult to prove probity, equally, it can be difficult to prove dishonesty or failure to act with integrity. This difficulty is felt as much by the Financial Regulator as by individual entities. Entities investigating instances of improper behaviour faced with incomplete evidence may come to an arrangement with an individual involving a severance package. In such circumstances, the entity should give an appropriate reference.



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