

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AND ATHCHÓIRIÚ

### JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM

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*Déardaoin, 20 Meán Fómhair 2012*

*Thursday, 20 September 2012*

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The Joint Committee met at 10 a.m.

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#### MEMBERS PRESENT:

Deputy Richard Boyd Barrett,	Senator Thomas Byrne,
Deputy Pearse Doherty,	Senator Aideen Hayden.
Deputy Timmy Dooley,	
Deputy Sean Fleming,	
Deputy Heather Humphreys,	
Deputy Kevin Humphreys,	
Deputy Peter Mathews,	
Deputy Michael McGrath,	
Deputy Michael McNamara,	
Deputy Dara Murphy,	
Deputy Kieran O'Donnell,	
Deputy Arthur Spring,	
Deputy Billy Timmins,	
Deputy Liam Twomey,	

In attendance: Deputy Paschal Donohoe..

DEPUTY ALEX WHITE IN THE CHAIR.

### **Credit Union Bill 2012: Discussion (Resumed)**

**Chairman:** This is a public consultation on the draft general scheme of the credit union Bill 2012. In the first section of today's hearing, we are delighted to welcome representatives from the financial professional and accountancy bodies.

I welcome Ms Eileen Fitzgerald and Ms Annmarie O'Connor, MABSnd; Ms Eimer O'Rourke, director of retail, and Mr. Felix O'Regan, director of public affairs, Irish Banking Federation; Mr. Kevin Morris, Mr. Tom Fitzpatrick, FMB Chartered Accountants. The format of this meeting will be that we will take a question and answer session with regard to the substantive submissions made by the various bodies to the public consultation process run by the Department of Finance that concluded last August.

I remind members, witnesses and those in the public gallery that all mobile telephones must be switched off. The meeting is being broadcast by UPC on its 801 channel and if a mobile telephone is switched on, it almost certainly will interfere with the broadcast, even if the telephone is in silent mode, sometimes to the extent that the broadcast is disrupted seriously and those watching cannot follow or hear the questions being asked or the answers given. Consequently, I ask everyone to disable the mobile telephones.

I wish to advise the witnesses in the normal way that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by it to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a person, persons or an entity by name or in such a way as to make him, her or it identifiable. Members similarly are advised and reminded of the long-standing ruling of the Chair to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

MABS set out in its submission some general arguments about the challenge to ensure we stay faithful to the credit union ethos on the one hand and that there should be adequate and robust regulation of the sector on the other. This is the balancing exercise that needs to be determined in the course of preparing this legislation. As I stated earlier, we have read the submissions. If the delegations wish to emphasise part of them, they can take the opportunity to do so. The submissions have drawn us to several specific elements of the draft legislation. We have a day of hearings today as we have to complete this exercise quickly because the Bill must be published by the end of September. We only have a day of hearings - briefly yesterday and today.

I ask MABS to address some of the specifics in its submission, for example, prudential requirements. In that regard, MABS draws the committee's attention to heads 3, 6 and 8 in particular. Would Ms O'Connor address MABS's concerns in turn? On head 3, MABS has a concern about a lack of contingency in respect of borrowers who are unable to make their loan repayments. I understand MABS thinks that is overly restrictive. Ms O'Connor might tell us

what her concern is in that regard.

**Ms Annmarie O'Connor:** Our submission is limited on the basis that we fully respect that the heads deal with regulatory and governance matters and the Money Advice and Budgeting Service's primary concern is the clients with whom we deal.

The Chairman is correct on the point we made on head 3 on liquidity. We believe that there needs to be some capacity for forbearance for those members who may not be able to address their commitments within the confines of the timeframes. It is a matter for legislators to see how the two requirements - the prudential requirement but also taking account of the fact that certain members will need more forbearance from time to time in repaying their loans - could be brought together.

**Chairman:** Was that view canvassed in the course of the commission's deliberations?

**Ms Annmarie O'Connor:** I am not fully aware. It is a matter of the practical ramifications for credit unions of being able to manage and assist their membership to manage where more forbearance is required.

**Chairman:** The legislation will be published and it will come back to the House on Second Stage and then on Committee Stage. Do I take it there is no specific change in that regard other than that MABS is drawing the committee's attention to its concern?

**Ms Annmarie O'Connor:** Absolutely.

**Chairman:** That is fine.

On head 6, MABS refers to a stress test. It suggests supplementing the requirement to verify the credit union member's ability to repay a loan with reference to a stress test to safeguard the repayment of the loan in the future. Would Ms O'Connor elaborate?

**Ms Annmarie O'Connor:** It is to look at additional stress testing, particularly in the context of social lending, to ensure that those members can repay the loan and that the application for a loan has been suitably assessed, and perhaps to provide for an additional stress test in certain cases.

**Chairman:** How would the stress test be constructed? Would that happen within the credit union or would there be advice as to a standard stress test?

**Ms Annmarie O'Connor:** I would suggest there would need to be a guideline on a stress test. It is in anticipation of the unforeseen circumstances that may occur in a member's given situation.

**Chairman:** Credit unions have traditionally always had in place a basis and rationale upon which they determine whether - and if so, how much - to lend. Is this in addition to that? Is this something new that MABS considers should be there?

**Ms Annmarie O'Connor:** Consideration should be given to including a stress test. In the perspective of MABS, looking back at the difficulties that borrowers have encountered across all institutions, potentially looking at a stress test or the lending regimes that apply to individuals is something that we would see as being important for the future.

**Chairman:** Head 8 is the question of a strategic plan. There is a requirement in head 8 of

the draft scheme that each credit union would adopt a strategic plan which documents in writing the strategy and objectives of the credit union. That seems eminently reasonable. I have not heard any objections to that. What would Ms O'Connor say in that regard? Has MABS concerns there?

**Ms Annmarie O'Connor:** The strategic plan is to be welcomed. It will be a critical document for each credit union as it moves forward.

Our concern about the strategic plan is that at present there does not seem to be provision made for the areas of social inclusion, financial inclusion or social lending. If there is to be a place for those areas to be addressed specifically or in detail, it is in the context of the strategic plan.

In particular, one of the ideas MABS proposed is that there would be a social audit of the common bond area. That is important in giving the credit union a full understanding of the demographic of its membership. That could include many different matters such as the demographic of the membership within the common bond, the membership's housing status, etc. It would give the credit union a much better understanding of its membership and that would feed into other areas such as risk management. We suggested that in the strategic plan, in terms of the way it is described in the heads, that area is somewhat neglected.

**Chairman:** The sense members would have of the advantages of credit unions is precisely that over the years they would have developed a unique appreciation of the community dimension to what they are doing and the nature of the particular challenges of those in their community. Would it be simply codifying that in some way or putting it down on paper?

**Ms Annmarie O'Connor:** If we are moving into a much more regulated environment, and perhaps moving away from reliance on individuals and personalities within the credit union movement, it would be important with the strategic plan, which will be such a critical document, to have reference to the membership and the common bond area and to have a thorough understanding of the membership and its needs.

**Chairman:** MABS also has suggestions about amendments to the Credit Union Act 1997 but, first, I will turn to my colleagues, Deputies Pearse Doherty and Michael McGrath, in particular, who may wish to comment.

**Deputy Pearse Doherty:** May I direct a question to any of these groups?

**Chairman:** Given that MABS is so specific in terms of heads 3, 6 and 8, it would be better to direct any questions to Ms O'Connor in their regard.

**Deputy Pearse Doherty:** On social lending, the MABS presentation states that in personal lending and social lending certain persons are driven to alternative higher costs. It is an area in which I have particular interest. I have brought forward legislation on this. The Irish League of Credit Unions made a presentation here yesterday and one of the gaps it saw in the legislation was that credit unions could not lend to the community. When one looks at the ethos of credit unions, they are very much voluntary and democratic, and not for profit. The ethos is that they want to part of and give back to the community. They do not want their money sitting in the large financial institutions that make millions of euro for speculators. How important is that aspect in this legislation? Ms O'Connor mentioned that it is focused on regulatory matters but it is missing that other social element. Is it only the change to allow the credit unions to do that which is required, or what other areas would need to be developed?

I have another question for MABS, since its representatives are here. I commend the work MABS does. How do lending restrictions set down by the Financial Regulator on credit unions impact on their members or how is that seen by MABS?

**Ms Annmarie O'Connor:** On social lending, we would hope that within the legislation there would be specific provision within a lending class for social lending so that it would be specifically addressed and permitted. We see it as being vitally important to those with whom we work. Of course, against that one must balance the risk involved in social lending but it goes without saying that it is essential that people, particularly those living on a low income, have access to affordable credit. MABS and the credit union movement have worked together to support that goal, certainly, in MABS, over the past 20 years. It is vitally important and the legislation must address it in some form.

Access to credit generally for those with whom we work is a concern. We would be concerned that if there were greater prohibitions on access to credit in the future people would take recourse to high-cost credit forms, in particular, the likes of catalogue companies and legal moneylenders, and, potentially, illegal moneylending as well. There needs to be a source of mainstream access to affordable credit for those with whom MABS is working. The credit histories of such persons may have been impacted by their financial difficulties. We see the credit union sector and the mainstream banking institutions as being vitally important in that context. However, people must have access to affordable credit because this is essential for their daily lives.

**Chairman:** Before I open the floor to members, I wish to ask a question about the Credit Union Act 1997. I want to ensure that we dispose of the specifics, in the first instance, and then members might want to questions that are more general in nature but which are also important. MABS has identified issues with the proposed amendments to sections 32, 37C and 46 of the 1997 Act. Will Ms O'Connor explain MABS' thinking in this regard? For example, it has drawn the committee's attention to the standard credit agreements and the pledge they contain to the effect that "I/we hereby pledge all paid shares, all payments on account of shares and all deposits, which I/we have now or hereafter may have in the Credit Union". MABS has stated that the proposed revision to section 32(3) of the 1997 Act would, contrary to the intention outlined in the explanatory note, restrict members further from accessing their shares or deposits. What is the nature of MABS' concern in this regard?

**Ms Annmarie O'Connor:** Our concern basically relates to the wording contained in the current draft, which notes that the wording requires further consideration in order that a workable approach can be implemented. In terms of the actual wording, I am afraid I cannot suggest anything at present.

**Chairman:** We would not ask Ms O'Connor to make any suggestions. Is she stating that the current draft does not achieve what it purports to achieve.

**Ms Annmarie O'Connor:** That is our understanding in terms of the way it is drafted at present. We just wish to draw attention to that fact.

**Chairman:** Understood. What is the position with regard to section 37C, which relates to the cooling-off period?

**Ms Annmarie O'Connor:** We are of the view that the cooling-off period should be mandatory. That may be a matter for clarification within-----

**Chairman:** So the net point is that it should be mandatory. Should that be the case in all circumstances?

**Ms Annmarie O'Connor:** Yes.

**Chairman:** What is MABS's concern with respect to section 46?

**Ms Annmarie O'Connor:** Again, our concern relates to the wording used. Specific reference is made to the savings of members of viable credit unions being secured. We wonder whether this will apply in respect of credit unions that are deemed non-viable. Our view is that the savings of all credit union members should be secured. What we are seeking is to encourage an exploration of the wordings proposed.

**Deputy Michael McGrath:** I welcome our guests. I wish to comment on a couple of the points that were made. In view of the fact that MABS deals with many distressed borrowers, I would be interested in hearing the views of the representatives from MABS on the essential differences they experience in the context of their interaction with banks, on one hand, and credit unions, on the other. Quite justifiably, they placed a great deal of emphasis on the role of credit unions in the areas of social inclusion, financial inclusion and social lending. What are their views on how this role can be protected, particularly as it is going to be placed in a proper regulatory context? There is a great deal of concern among banks and credit unions with regard to the Personal Insolvency Bill 2012 and the impact it is going to have on their capital bases and financial reserves. Does the credit union Bill, as proposed, strike the correct balance between protecting the unique role of the credit unions in society and ensuring that there will be an adequate prudential and regulatory regime in place?

**Ms Annmarie O'Connor:** To clarify, I presume the Deputy is referring to the heads of the credit union Bill.

**Deputy Michael McGrath:** Yes.

**Ms Annmarie O'Connor:** We are concerned that an appropriate balance will be achieved. At present, we are not clear that it will be achieved. Anybody who has perused the heads of the Bill would agree that the emphasis is on the regulatory and governance regimes. It is not evident to us that the social ethos of credit unions is adequately addressed within the heads. On that basis, we have raised the various issues to which our submission refers. In the context of our dealings with banks and credit unions, we are obviously dealing with a large number of distressed borrowers at present. We have a debt management protocol in place in respect of voluntary arrangements. We have been involved in working with members of the Irish Banking Federation, IBF, on this in recent years. We have now extended this protocol to the utilities. We are in discussions with the credit union movement at present with regard to putting in place a similar protocol in respect of its members. This would mean that we would have arrangements in place with 70% to 80% of all of the creditors with which we work. That is all concerned with non-judicial voluntary settlements.

The proposed insolvency legislation will have an impact on a cohort of our client group. However, there will be many others who will still wish to seek to have voluntary arrangements put in place. It is critical, therefore, that we have very effective relationships with all the major creditor groups because this is essential in the context of the work we do. We cannot do our work in the absence of such relationships. The protocol we have already put in place has been quite successful in improving our day-to-day working relationships with major creditor groups.

**Chairman:** Our guests from MABS are going to stay with us but I wish to move on to Ms O'Rourke because, as already stated, I wish to get the specifics out of the way before dealing with more general matters. The IBF's submission is quite new in the context of what it says. That is both useful and important. It is fair to state that what it is suggesting is that there must be an equivalence in respect of the type of regulation supervision and governance which will apply to the credit union movement. In other words, the same type of supervision and governance which applies in the financial and banking sector should also apply to credit unions. The IBF is also suggesting that the credit union movement should be required to adhere to prudential risk and corporate governance regulations similar to those which apply to other financial institutions and the banks. Is that the IBF's basic proposition?

**Ms Eimer O'Rourke:** That is the basic proposition. We recognise the very important role the credit union plays in our economy and our society. We see the need for comparable frameworks. However, we are not proposing identical rules and regulations. The latter must be matched to fit the nature of the businesses that are being regulated. The basic principles should be similar.

**Chairman:** The specific issue the IBF raises relates to Part 5 of the scheme of the Bill, which deals with amendments to existing legislation. Is that correct?

**Ms Eimer O'Rourke:** Yes. It may be very clear to other people involved but it was not entirely clear to us whether the conduct-of-business regulation which applies to other financial services providers will also apply to credit unions. Previously, the statutory codes introduced by the Central Bank were not applicable to credit unions as a result of a mismatch between the legislation relating to the latter and that relating to the former. The question which arises for us is whether that mismatch has been addressed. This is important to us because credit union members are also bank customers, clients of insurance brokers, etc., and certain norms and rules apply in the context of the type of information that customers must be given. We are of the view that there should be some comparability in this regard.

**Chairman:** Why?

**Ms Eimer O'Rourke:** In order that customers will understand what they might expect to get. The rules relating to this matter are generally introduced for the protection of consumers. The point is that if it is a valid protection for the consumer, then it should also be a valid protection, in principle, regardless of which route they are taking.

**Chairman:** I have not had an opportunity to read Part 5 in detail. However, it is fair to raise a question as to whether it will achieve what is envisaged. Having considered Part 5, is Ms O'Rourke of the view that it will do so?

**Ms Eimer O'Rourke:** It was not clear to us that it would-----

**Chairman:** Is the IBF of the view that it will not achieve what is envisaged?

**Ms Eimer O'Rourke:** We would not be expert enough to know. We are genuinely asking a question in this regard.

**Chairman:** The IBF's submission notes that the recommendation of the commission and the subsequent amendments specify a number of enactments - including the Consumer Credit Act 1995 - which do not apply to credit unions. The submission also states that the draft Bill does not make clear the extent to which credit unions will be subject to the various codes pro-

mulgated by the Central Bank under section 117 of the relevant Act. I suppose that is something which is ascertainable and we can discover whether it is intended that this would be so.

**Ms Eimer O'Rourke:** Presumably so.

**Chairman:** The IBF is of the opinion that it should be so. If it is established that it is not so, then that is problematic.

**Ms Eimer O'Rourke:** It should be looked at perhaps, yes.

**Chairman:** Are there any questions from members on this specific issue?

**Deputy Dara Murphy:** The IBF's submission seems to focus on areas of regulation which apply to the banking sector and which do not apply to the credit union movement. Is it not fair to say that the credit unions have performed in a much more satisfactory manner in recent years and that a much stricter regulatory framework is required in respect of the banks?

**Ms Eimer O'Rourke:** Our sense is that basic protections should be applicable to each consumer regardless of the entity with which he or she does business. We are certainly not saying the banks have performed wonderfully. We have acknowledged many mistakes that have been made by the industry. Equally, we are not the experts in setting out what should and should not apply to credit unions. However, we have indicated that we support in principle the prudential and corporate governance framework that the Bill as proposed sets out. This is a good start and is the type of structure any industry dealing with customers and financial services requires.

**Deputy Dara Murphy:** To put it another way, there are already significant lending restrictions on credit unions which do not apply to banks. Even though the credit unions did not operate in the same reckless fashion as the banks, they would not require the same regulatory structure because of these lending restrictions. Ms O'Rourke is arguing that it should be the same for them as it is for us but it is not the same when it comes to lending.

**Ms Eimer O'Rourke:** We are not suggesting it should be the same. We are saying there should be comparable frameworks but the specifics may be quite different and appropriate to the businesses concerned.

**Deputy Dara Murphy:** The IBF indicated in its submission that the regulations should be made similar. I will have to read the submission again but this implies that the regulatory structure should be brought to-----

**Chairman:** The IBF stated that credit unions should be required to adhere to prudential risk and corporate governance regulations, as are required for the banking sector.

**Ms Eimer O'Rourke:** That reflects the fact that a basic framework should be put in place. We go on to specify equivalence and, from our perspective, we would argue that equivalent is not the same as equal.

**Chairman:** Do members have further questions specifically on Ms O'Rourke's point that there should not be the same regulatory framework but that there should be equivalence? Ms O'Rourke is staying with us but I also want to hear from Mr. Morris. We will keep our three guests for a while more.

**Deputy Pearse Doherty:** The reference in the submission to such regulations as corporate governance codes, related party lending codes and fit and proper regimes for senior managers



and risk takers includes the specific comment that regulation should be as is required for the banking sector. To be brutally honest, I found this surprising coming from the IBF. I do not know if any credit union was responsible for the catastrophe in which this country has found itself. I know from the figures I receive from the Department of Finance that many managers at senior level, including some of the most senior people in Anglo Irish Bank, continue to be employed by their institutions. At the last count, 22 out of the top 50 people were still employed. It is amusing for them to ask for the same type of regulation to be applied to a voluntary, democratic and not-for-profit organisation, where directors are not remunerated in return for the time they contribute to ensuring their communities receive a dividend. I find this surprising and I do not understand why the IBF has come forward with this suggestion. Is it a lack of understanding of how the credit union movement works or is it that it wants the credit unions to become banks? One of the failings of the existing legislation is the lack of understanding of the unique ethos of the credit union movement. I am not arguing for less regulation but comparisons of the type of oversight and regulation required for Anglo Irish Bank with that of my local credit union in Gweedore do not make for a sustainable argument.

**Ms Eimer O'Rourke:** All regulation, whether prudential or conduct of business regulation, comes down to protecting the consumer. The consumer who walks into a bank is the same person who walks into a credit union. In so far as we were invited through a public consultation to provide brief and high-level views, this is what we did.

**Deputy Pearse Doherty:** The banks cost the consumers, who are the citizens of Ireland, €14,000 per person as a result of the bailouts. The credit unions have not cost that type of money. People did not need to be protected from the credit unions. As I noted yesterday, my party believes in strong regulations that are in the interest of citizens and credit unions and that recognise the unique sense of the credit union movement. Does Ms O'Rourke think it appropriate to impose the same type of regulatory structure on some of the most risky lenders, which have been the banks in the past, as on low-risk lenders in the credit union sector? I am not dismissing the fact that credit unions have become involved in riskier products. Does she contend that regulation should be one-size-fits-all?

**Ms Eimer O'Rourke:** No, we do not contend that regulation should be one-size-fits-all. There has to be proportionality and the rules have to be matched to the risk involved in any operation. We are speaking about a principle but, in terms of how it is implemented, it has to have the agility to match the various businesses involved.

**Deputy Peter Mathews:** The credit union framework for prudential business has operated well over the years. It is inappropriate for the IBF to make any remarks on this subject because the credit union movement has, through its experience and operation, carried out the type of prudential assessment appropriate to the business it conducts. Credit unions are in a position to evolve and address any new risks that may arise as well as old risks that have to be faced in a different manner. It is not appropriate for the IBF to suggest the frameworks that operate in the banking context.

**Deputy Heather Humphreys:** I agree with previous speakers. Credit unions have always had a concern for their members and customers. We cannot say the banks have shown the same concern given the role that the pursuit of profits has had in causing our current mess. The credit unions have been mindful of the needs of their members and customers and this has to be taken into account when we consider governance and regulation in the sector.

**Ms Eimer O'Rourke:** We are not seeking to push a view. We asked a question in response

to consultation and we responded to an invitation to appear before the committee.

**Chairman:** The IBF is entitled to appear before the committee to make its submission. I now invite Mr. Kevin Morris to make a submission on behalf of FMB Chartered Accountants. I understand his comments pertain to a number of net issues. One issue that arises is that of public interest entity. He is concerned that the level of intervention in forthcoming European measures will be relatively onerous but fears that what is envisaged in this legislation may be even more onerous. Does he think we should wait for the European measures to be finalised? I ask him to explain to the committee the context of the public interest entity and the audit requirements.

**Mr. Kevin Morris:** I will preface my remarks by noting that we are very supportive of the draft scheme. The commission on credit unions has come up with some excellent suggestions. However, our concerns arise in the area of audits, which is a small part of the overall scheme. Credit unions are co-operative, not-for-profit organisations. They currently have a guidance note issued by the Financial Regulator which requires auditors to rotate in terms of the engagement partner only every five years. We feel that works very well at the moment. We believe the proposed mandatory firm rotation in the draft Bill is overstepping the mark.

**Chairman:** I ask Mr. Morris to explain the firm rotation requirement.

**Mr. Kevin Morris:** The firm rotation requirement is as follows. A firm, as such, would need to retire as auditor of a credit union if it has audited its financial statements for six years and there is a further cooling off period of four years. We believe that is not in the best interests of the movement for the various reasons outlined in our submission. However, returning to the Chairman's original point, I believe it is also in conflict with statutory audit directives that relate to public interest entities. I know there is some confusion as to whether a credit union sits in that particular paddock or not. However, even in that regime the statutory audit directive, SAD, requires auditor - that is, individual - rotation every seven years. We feel that to introduce this - to use Deputy Pearse Doherty's phrase - one-size-fits-all mandatory approach to auditor rotation is not in the best interest of the movement.

**Chairman:** In what respect? Does it relate to cost?

**Mr. Kevin Morris:** There are a number of reasons. I am a member of Chartered Accountants Ireland. Obviously one must be independent and apply professional scepticism. It is very important that in the planning stage of any audit each firm assesses itself to be happy that it remains independent. One must assess at that point the number of years one has been involved in the appointment and one's over-familiarity with the client. That is an issue and it is safeguarded under the current rules by requiring a different responsible individual to rotate to look after that client as an engagement partner once every five years.

**Chairman:** What is the current regime?

**Mr. Kevin Morris:** It is just that. However, the proposed Bill seems to go further - a giant step further. We do not believe it is anyone's best interest given that these are not-for-profit organisations and auditors do not provide any non-audit services in general to credit unions, which has been one of the main debating points at European level.

**Chairman:** Should the Bill be changed to the extent that it should not change the current regime? Should we maintain the current regime?

**Mr. Kevin Morris:** I believe we should maintain the current regime, which works quite well. Obviously there may be isolated cases where it has not worked. The consultative committee of accountancy bodies has made its own submission, and while it is generally in agreement with what our firm is proposing, it has also stated that in isolated cases it might be the option of the regulator to request a rotation.

**Chairman:** Are there examples? Of course, I am not going to ask Mr. Morris to give details. However, is he aware of examples where it has not worked well and where there has been a problem?

**Mr. Kevin Morris:** I could not answer that question because I am not privy to that information. We are all aware of examples of credit unions in difficulty as reported in the newspapers. However, they are probably not because of audit failure and rather for imprudent lending at director level.

**Chairman:** Is there a European directive in preparation in this regard?

**Mr. Kevin Morris:** There is an ongoing consultation process in Europe, largely related to listed entities, which is completely different from the credit unions, which are not-for-profit organisations run by volunteers.

**Chairman:** However, when making his submission Mr. Morris told us we should have regard to what is happening in Europe. Is it relevant or not?

**Mr. Kevin Morris:** What is proposed in the Bill would give rise to a difference of opinion with what is involved in the SAD. We would have one set of rules that are European led and another set of rules led by the Financial Regulator.

**Deputy Michael McGrath:** I thank Mr. Morris for his comments and submission. I can see both sides of the argument. My instinct is that it is not particularly healthy for the same firm of auditors to audit a credit union indefinitely. I know there is the proviso that the engagement partner needs to change every five years. Certainly the role of the auditors in auditing the banks in recent years is something that could be called into question and could be the subject of a separate inquiry given that they failed to highlight the risks that were clearly building up in the banking system. In the case of financial institutions and credit unions, the bottom line is the risk to members. We need to ensure that all of these bodies are being operated effectively and that members are protected. It is not necessarily healthy to advocate an indefinite relationship between a credit union and one particular auditor. Does a similar provision apply in the case of banks as is provided for in the general scheme? Can auditors remain with banks for an indefinite period?

**Mr. Kevin Morris:** We are not auditors to any banks so I am not sure of the answer to that. However, I know there is an ongoing debate about the issues relating to the failure of the banks. I am trying to make the point that this is a different set of circumstances. There are no dominant shareholders. Each member has one vote. They are largely run by willing volunteers who depend greatly on a shoulder to lean on. They have built up trust with the relevant audit partners in the firms over the years. I agree there are arguments on both sides. However, the general scheme as proposed is a one-size-fits-all knee-jerk proposal and is not necessary.

**Deputy Pearse Doherty:** I thank Mr. Morris for his presentation. I see the sense of the provisions to change auditors every five years and I understand the key partner requirement. Knowing how a company works, just moving a key partner means there is still a familiarity

and it is not sufficiently robust. However, I appreciate we are discussing a different group of institutions.

Mr. Morris mentioned there would be a cost factor in appointing a new audit firm, which could be significantly higher for some of the smaller credit unions. How would this come about? Is it that when a credit union stays with a certain firm, it has built up a relationship and is getting the service cheaper? Can Mr. Morris quantify his assertion?

How would the requirement to change the company, as distinct from the key partner at present, every five years impact on the availability of audit firms for smaller rural credit unions? I am sure it is not a problem in the capital city, but is there an issue in, for example, west County Cork or County Donegal? Are there sufficient audit companies in those areas to deal with the demand?

Is the organisation Mr. Morris represents a group of auditors?

**Mr. Kevin Morris:** I will deal with one question at a time. Regarding the cost, when one takes over a new audit engagement, be it a credit union or any medium-sized company, there is a period of familiarisation that must occur. One needs to document the systems and the various controls inherent in the organisation. In our experience, that can be very costly. That is why I maintain it can be costly to change auditors. The new auditors will not be familiar with the systems and will need to spend a number of weeks at the start getting to know the new systems, the new people and the habits of the organisation.

**Deputy Pearse Doherty:** If the key partner must be changed, does this not happen anyway?

**Mr. Kevin Morris:** No, because the firm will have papers which will already have documented the internal control systems within the organisation, so that will not be an extra cost.

On the availability of auditors for rural credit unions, is the Deputy asking that if a local firm must retire, whether there will be availability of another firm to take its place, which is contrary to what I am suggesting? I do not know what would happen in that situation. It depends on availability within the area. They may have to travel a number of miles outside the county to find a firm that would suit the requirements.

**Chairman:** That is Deputy Pearse Doherty's concern.

**Deputy Pearse Doherty:** Yes, I am concerned that it would be an additional burden on credit unions because if one has to change the company, as distinct from the key partner, one may have to travel and there are additional costs involved. Does Mr. Morris simply represent a firm of chartered accountants?

**Mr. Kevin Morris:** FMB Chartered Accountants is our own firm.

**Deputy Pearse Doherty:** Is Mr. Morris speaking on behalf on his firm?

**Mr. Kevin Morris:** Absolutely.

**Deputy Peter Mathews:** It is a number of years since I was involved in auditing myself - carrying out the work of auditing rather than auditing myself.

**Chairman:** The good people of Dublin South do that.

**Deputy Peter Mathews:** Deputy Michael McGrath is also an accountant. It is important

that on a five-year basis, the firm that audits an enterprise, regardless of whether it is a voluntary enterprise, PLC or private limited company, brings fresh eyes, thinking and standards. In respect of the permanent audit file to which Mr. Morris referred and which documents the systems, the patient's file can travel from one hospital to another hospital to do the update review. As a professional, I do not think it prohibitive that those permanent records of the internal workings of a company or organisation can travel. They might be better understood by a fresh pair of eyes or brain. I do not think it sufficient that a partner in a firm rotates with another partner because, essentially, the partners have the same financial interests in the fee and the standard of the work. It is a more courageous challenge for the profession to welcome the opportunity to rotate as between firms the work done as audit work for credit unions and other companies as well. The travel costs incurred in carrying out the work because the person might be at a greater distance than heretofore, which were referred to by Deputy Pearse Doherty, will all balance out if the firm in town A does an audit of a credit union in town B and then after five years, there is a flow of the work as between firms and credit unions. It will perhaps lead to fresher thinking and work and crisper, *al dente* audits rather soggy ones. It is only a thought.

**Mr. Kevin Morris:** I thank Deputy Mathews for his comments. It is not the first time I have heard them and it is an ongoing debate within our profession as to whether it is a good thing to rotate or not. I can only go on our own experiences. I might add that where audit firms were asked to rotate in other countries, such as Italy and Spain in the past, it was an absolute disaster and has not worked. There is empirical evidence to suggest that it may not be the best idea in the world.

**Deputy Peter Mathews:** I take the point if that is referenced to the Parma audit. However, we have a banking sector with comprehensive losses of €135 billion in this country. Perhaps there was an element of complacency in the overall prudential reviews and tests carried out over a long period of time - over ten years. I will not particularise professions but, in general, 'Establishment' Ireland got complacent.

**Chairman:** Does that refer back to some extent to the point made by Ms O'Rourke? I do not want to put words in her mouth but it seems to raise the issue of how onerous the audit requirements for credit unions ought to be. Should they be equivalent to those that apply to the banking system? This is an example of the kind of issue Ms O'Rourke was raising. I do not want to put words in her mouth but the thought struck me that this is the kind of area she might have had in mind. Is this the case?

**Ms Eimer O'Rourke:** Not specifically but one will always look at standards across different industries and company law so one must always have regard to what is going on elsewhere and what is best practice.

**Deputy Pearse Doherty:** I have another question for Ms O'Rourke following on from what we were talking about. She has not given us her opinion of the legislation in her written documentation so perhaps the organisation does not have an opinion on this. The legislation deals with a three-tiered strategy based on asset size. As a result, there will be different requirements and governance in respect of the credit union and tiers one, two and three. There is a two-tier structure in the other part of the island under the SFA but it is based on risk and complexity. One of the arguments put forward at the meeting of the committee yesterday concerned the best approach. Should we be looking at a tier structure under asset size alone so that one has the same type of regulations for a smaller, highly risky credit union with the same asset base or one with low-risk products but in a large urban area so it has a large asset base? Has Ms O'Rourke an opinion on this?

**Ms Eimer O'Rourke:** We did not look at that. There are many others who will appear before the committee who will have a much more in-depth view and more expertise in this area.

**Chairman:** It would be fair to describe Ms O'Rourke's intervention as raising a flag on an issue. Is that not what she is doing?

**Ms Eimer O'Rourke:** Yes.

**Chairman:** Would our guests like to make any concluding remarks? Would they like to comment on anything their respective fellow guests said? We will wrap up fairly soon but I will give them an opportunity to make any concluding remarks if they wish.

**Ms Eimer O'Rourke:** I have nothing further to add.

**Mr. Kevin Morris:** No thanks.

**Ms Annmarie O'Connor:** I reiterate that we feel it is really important that adequate acknowledgement is given to those areas we have outlined in the context of the proposed legislation. These areas are social and financial inclusion and social lending. If they were omitted, it would be a deficit.

**Chairman:** I thank Ms O'Connor, Mr. Morris and Ms O'Rourke for attending the meeting. The submissions will be published and we will forward a transcript of the hearings to the Minister for Finance. We will try our best to produce a summary of the issues as the committee sees them to furnish to the Minister within the next few days and certainly within the next week. I thank the delegation for attending the meeting.

*Sitting suspended at 11.08 am and resumed at 11.30 am.*

**Chairman:** I welcome Mr. Gerard McConville, Dundrum Credit Union, Mr. Philip Hosford, Gurrabraher Credit Union and Mr. Pat Owens, St. Mary's Parish Credit Union, all of which made submissions to the joint committee on this exercise. I want to remind everyone that as this meeting is being broadcast by UPC on its channel 801 they should ensure their mobile phones are switched off as they have a tendency to interfere with the signal, thus disrupting the transmission.

I wish to advise the witnesses that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by it to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a person, persons or an entity by name or in such a way as to make him, her or it identifiable. Members similarly are advised and reminded of the long-standing ruling of the Chair to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

As we are under some time pressures in this exercise, in terms of the requirement on the Minister to publish the relevant legislation by the end of September, we will move directly to engagement with members. This is an important exercise on which the joint committee has received a considerable number of submissions, which have been published. The transcript of

the joint committee's meetings will be sent to the Minister. The committee will also attempt to put together a list of the main issues arising out of these hearings.

While it is clear from the submission received from Mr. Philip Hosford that Gurranaברה Credit Union supports the findings of the commission and believes that as far as possible they should be implemented he has, nevertheless, raised a number of points, largely on prudential requirements, governance, stabilisation and restructure, which it is fair to say are the issues of most concern to people commenting on the heads of the Bill. On prudential requirements, Mr. Hosford has drawn our attention to heads 2, 6, 7, 10 and 16. I will ask him to deal specifically with those points first, although Members may have more over-arching questions which they wish to ask of him. We will have an opportunity for that debate later.

The point is made in Mr. Hosford's submission that head 2, which relates to reserves, is not sufficiently clear in the Bill. Perhaps he would elaborate briefly on that point.

**Mr. Philip Hosford:** We are very much in favour of having strong capital. Head 2 provides detail on the capital levels for credit unions, namely, a basic capital level plus a capital level around the risk weighting of assets and a capital level around operational risk. We would like more detail in the legislation around how this would be put together, in particular on the risk weighting of assets. The main assets in credit unions would be loans, investments and fixed assets. We believe that if there was more detail embodied in the legislation it would provide a safeguard for credit unions that there might be caps in particular areas and different capital requirements which apply to different types of assets. That would give us something we could work with. We are happy for the Central Bank to have a large role in giving an indication based on the risk of our individual credit union of what our capital levels should be. If there was a bit more detail embodied in the legislation, it would give us more to work with. We would know, for example, in the area of lending there is a higher capital requirement based on commercial or development lending than on secured or personal lending. We would know what we are working with a bit more and it would give us a bit more detail.

The other point is that we felt if there was a cap in a particular area, we would know the maximum capital that we might have; if it were 14% or 12%, for example, we would know what we are working towards. Overall we are very much in favour of strong capital and we see it essential to have capital built. If there was more detail, we would have more to work with and it would take away a bit more of the unknown from our perspective.

**Chairman:** With regard to lending, section 3 would specify that the bank may impose specific lending limits. The witnesses have indicated that principle is worthy but that consideration should be given to how this would be implemented in practice. Is it again a case that more detail is required?

**Mr. Philip Hosford:** We are happy with lending limits in particular areas, although there are certain areas where we would have reservations, particularly around the concentration of lending and how that is implemented. With regard to concentration of lending, the Central Bank may indicate that only a certain of lending can be in commercial or personal lending. We have no issue with such concentration of lending, as they are easy to implement. We have no difficulty with a straight restriction in a particular area.

It is different if the concentration of lending gets a bit more detailed and takes in a term like "per employer". There is a definition in the Credit Union Act 1997 of "family or connected party" and there have been previous issues with the Central Bank in the restriction of lending based

on a connected party. There have been difficulties in that definition. To take the definition of a “connected party” in the Credit Union Act 1997 and implement a lending restriction based on it would be very difficult because it is so broad. It would take in a spouse, partners, first cousins or grandmothers. If the Central Bank imposed a restriction of lending on that basis, it would be very difficult for us to say that if a person’s first cousin got a loan last week, the person in question cannot get one this week. There is a practical element in that regard. We have no difficulty in terms of restrictions on size or particular classes of loans. With regard to concentration, there is scope for a bit more thought to be put into the implementation on the ground.

**Chairman:** Head No. 7, dealing with investments, was highlighted as being an issue for our attention. The issue is the accounting rules on the distribution of income.

**Mr. Philip Hosford:** With regard to investments, we are quite happy overall with the content, and we do not see any issue in terms of restricting different classes of investments. Section 4 raised a slight red flag with a sentence indicating that the Central Bank can make regulations with respect to the distribution policy of investment income.

We have concerns in two areas in this regard. First, there are accepted accounting rules around how income is recognised and distributed. We feel we apply those and we are happy that we have consistent accounting policies which should still apply. Second, this could be used as a mechanism of the Central Bank to curtail income in credit unions. If we can only distribute income on a restricted policy, the Central Bank will have a mechanism to indicate that income can be reduced in a particular year because a credit union would not be allowed to distribute certain income if restrictions are tightened. Our fear is that if the restrictions are continually tightened, it will affect our income on an ongoing basis. There are two elements in that we are happy the accounting rules should still apply but we would not like to see a policy that is too restrictive. We would be quite happy to stick with the accounting regulations in that regard.

**Chairman:** Head No. 10 deals with risk management and compliance officers.

**Mr. Philip Hosford:** We are quite happy with the concept that there would be risk management and compliance officers. The point is that there will be an internal audit function, a risk management officer and a compliance officer. Who will fill these roles? The risk management and compliance officers cannot be directors. We would not have any major issue in this area but there is a question mark over who will fulfil these functions.

The next question arising is that a risk and audit committee can be set up. The internal audit function can report to the audit committee if it is set up. There is no indication that the risk officer can report to the risk committee if that committee is set up. The current draft indicates that the risk and compliance officers would report directly to the board of directors. If personnel are reporting directly to the board of directors, there is an obvious need for somebody capable and confident enough to do that. It struck us that there is a lack of integration between all the different functions of internal audit, compliance and risk officer. From our perspective, we will have a risk and audit committee. How will they liaise?

**Chairman:** There is a bit more work to be done on how these ideas relate to each other and so forth. That is not an objection in principle but we may need to organise it a bit better.

**Mr. Philip Hosford:** We are very happy with the principle. Risk management and compliance are very important, as is internal audit, but how will they work together and who will, in practice, fulfil these roles? Our credit union may appoint me as the risk officer. I am not speci-



cally excluded from the position but part of the role of the risk officer is to assist the manager; in effect, I would be assisting myself in those circumstances.

**Chairman:** There is one net point on outsourcing regarding a definition in head No. 16 about material business activity. This is in circumstances where a credit union determines that it should outsource a particular aspect of its business. There is a reference to “material business activity” but that is not defined.

**Mr. Philip Hosford:** There is no definition of that. With regard to outsourcing, we have some functions that are outsourced, and we see it as a much bigger issue going forward. It may be the case that a credit union would need permission from the Central Bank to outsource a material activity, so a definition on that would help.

**Chairman:** Governance is an issue that has preoccupied many observers and people involved here. We do not need to dwell too long on the nomination committee. This exercise is an opportunity for the witnesses to note what is of concern and we will not be resolving the issues today. This is a pre-legislative process that is to raise flags and draw the attention of this committee and the Minister to the issues. The nomination committee is concerned with the approval of the regulator and the witnesses have concerns about delays.

**Mr. Philip Hosford:** There are a couple of issues. We have no issue with the Central Bank approving nominations but currently there is a very defined timeline; for example, nominations must be received by a particular date, the committee would take on the nomination and it would be passed on to the annual general meeting. The draft does not mention timeframes and it seems that it is up to the nominating committee to define timeframes. It would be a good idea to have specific timeframes applying across the board and on a uniform basis for all credit unions. For example, a nomination could be in by 30 June.

**Chairman:** There is an issue with the blocking of a nomination.

**Mr. Philip Hosford:** There is a section regarding the proposing of candidates to members. It seems unclear as to whether the nominating committee is allowed to propose candidates. Currently, other members would propose members in the process. Section 10 would indicate that if a conflict of interest may arise, the nominating committee can block a nomination. This is an open-ended provision and it may facilitate times when a nominating committee could decide to block nominations for other reasons. It seems an open-ended process as a committee could argue that it foresees potential conflicts of interest that may arise in particular areas and block a nomination. That could be an issue.

**Chairman:** Finally in this area there is a question where a director may be allowed to hold office even in circumstances where he or she is breach of section 14.

**Mr. Philip Hosford:** There are other sections which indicate that a directorship can only be held for nine years in a 15-year period. This suggests that the nominating committee can allow a breach once it documents the rationale for it. Although it may not be the intention, it seems to conflict with other provisions in the draft. If it was clearer, it would avoid potential issues in the future.

**Chairman:** Regarding No. 30 in Part 3, on stabilisation, the witnesses draw attention to the definition of viability in the explanatory note. Given that it is defined in the explanatory note, it is a fair point that the Minister should consider a definition of viability in the body of the text of the Bill.

**Mr. Philip Hosford:** That is the point.

**Chairman:** Regarding restructuring, which has arisen in other submissions, the suggestion is that levies could become a runaway element if there is no limit on the number of levies that can be imposed.

**Mr. Philip Hosford:** We have no issues with levies but we considered putting caps on them in particular areas. One cap is in place in respect of a maximum of 50% of the cost of the Credit Union Restructuring Board, ReBo. If we had more detail on caps on levies, the levies cannot run away.

**Chairman:** We have until one o'clock so we can ask each of the three gentlemen about the overarching issues. Are there any questions on the specifics of Mr. Hosford's points?

**Deputy Michael McGrath:** I welcome the delegations and I thank Mr. Hosford for his remarks. On the issue of levies, the draft scheme provides for three separate levies. What will be the impact of that provision on Mr. Hosford's credit union in terms of its viability? There is a concern that levies are open-ended and that there is no indication of a likely liability. It could result in some credit unions becoming non-viable. This is separate to the restructuring and consolidation that will inevitably happen within the sector.

I am interested in the different perspectives contained in the submissions. We will deal with the submission from Mr. Owens, in respect of St. Mary's, presently. Mr. Hosford appears to be taking a positive view of the Bill and saying he does not see a major difficulty for the operation and governance of the Gurranabraher Credit Union whereas the representatives from St. Mary's Credit Union are saying the Bill will strangle the life out of credit unions and that there is no attempt to preserve that which is good about credit unions. These are different perspectives and perhaps that is related to the circumstances of individual credit unions. Perhaps that will emerge over the course of our discussions.

Regarding term limits, what practical difficulties will it cause if the credit unions must rotate board members along the lines proposed in the general scheme of the Bill? Will it cause direct difficulties for Mr. Hosford's credit union?

**Mr. Philip Hosford:** Regarding the board and its rotation, we do not see any difficulty. The board is quite happy with the fact that the term of a director is limited to nine years and the term of executives is limited to three years. The view of the board is that governance is essential and best practice is very important. It is a voluntary position and if one has completed nine years it may be time for someone else to take on the mantle. People on the board are voluntary directors. The credit union should not be their top priority in life and if one gives nine years of one's life, perhaps one has done enough. It is a time-consuming role. Nine years is enough and perhaps we should allow others to come in and take on the mantle.

The board does not have an issue with the rotation of the executive positions on the board. In certain credit unions, the chairman has been the same person for 25 years. That is not to say that the person is not very capable but it is not best practice to have the same person as chair of the board for that length of time. The board has taken the view that this is a positive step. One is not precluded from being involved if one is not a director.

Another question concerns the impact of the levies. As a larger credit union, this year we have a surplus of €2 million and levies may amount to 10% or 20% of the operating surplus. It is a more serious situation if a credit union does not have a surplus as the imposition of levies

could push a credit union into deficit. Difficulties arise in this situation because the credit union must use its reserves, which affects its capital levels.

Regarding the overall perspective, different credit unions have different views and size is a major factor. We are not a very big credit union, with €85 million in total assets and 16,000 members. On an overall basis, the draft Bill and the commission report are very positive and will provide a platform for a sustainable credit union model into the future. Restructuring is an important part of that. There will be changes and challenges and not everyone will like them but overall it is the best thing for the credit union.

**Chairman:** We have plenty of time for discussion on big-ticket issues so we will remain on the specifics of the Gurranaברה Credit Union.

**Deputy Pearse Doherty:** The presentation and the submission are very helpful. The issues raised are detailed and I cannot see why the issues cannot be addressed in legislation. Like the previous speaker, I am surprised at the divergence of opinion on the board of directors and the changes to the term limits but I understand there are different views in the credit union movement.

Mr. Hosford talked about how new entities - the audit committee and the oversight committee - will fit together. He seeks clarity on this point. Does Mr. Hosford have a view on how the committee should gel? Should the legislation go into detail on how the committees should fit together?

Mr. Hosford mentioned being supportive of the commission's report and, broadly, the legislation. While the legislation deals adequately with some areas, some credit unions have spoken to me about their issues in respect of governance. There is also concern that certain elements are missing.

**Chairman:** Mr. Owens has very strong views on that point. We will hear from Mr. McConville next and it will open up onto that issue when we come to Mr. Owens.

**Deputy Pearse Doherty:** Is there anything missing from the legislation that the witnesses would like to see?

**Mr. Philip Hosford:** The first question concerns the integration of risk and internal audit. Our view is that there should be a risk committee and an internal audit committee, that the internal audit committee should report to the audit committee and that the audit committee should report to the board. The risk management officer should report to the risk committee and the risk committee should report to the board. The compliance officer is stand-alone and reports directly to the board. The compliance officer should have a role in integrating, particularly in respect of internal audit, to see what work is being done and to see what risks arise. These roles are all interlinked and that is how we seek to implement it based on what is in the legislation.

On the question of whether there is something missing from the legislation, we could come up with points we would like to see included but we are satisfied with the Bill. We see a couple of key stumbling points in our operation and they are addressed in the Bill.

**Chairman:** Mr. McConville, the manager of the Dundrum Credit Union, has an innovative proposal on a flexi-loan account, which he believes should be provided for in legislation. Perhaps he can explain his proposal.

**Mr. Gerard McConville:** We are already doing it in that a top-up loan is a feature of credit union lending. People borrow for holidays, then for Christmas and then for a first communion. Our difficulty is that, as mentioned in our submission, 40% of our lending is under €1,000 but in value terms that amounts to 9% of our lending. The administrative costs and the direct costs are the same for a loan of over €1,000 as for a loan of any amount. Much of our small lending is economically not viable and what we propose is that would be changed to allow us to do a line of credit, a running account or whatever name one wants to put on it. We broached this subject previously with the Central Bank, or the former IFSRA, and the understanding we got from it was that the wording of the credit union legislation prevented us from doing these things because the wording in the credit agreement specifies an expiry date and a number of repayments. As it would be a running account, one could not have an expiry date and a number of repayments. As far as we are concerned, it is just a matter of amending the credit union legislation to allow that type of account to be offered by credit unions.

**Chairman:** As far as you are aware, is there any objection in principle to that being introduced - on the official side?

**Mr. Gerald McConville:** No, not that we are aware of.

**Deputy Pearse Doherty:** It is a very interesting concept. Will Mr. McConville give me an example? It is my understanding that if a flexi-loan arrangement was worked out, I could go to my local credit union and say I was pre-approved for a loan up to say €10,000 based on my income and so on. Would that be for a year or for two years? If it was for a year and my car broke down, I could use €5,000 for the car and I would still have €5,000 left if I wanted to go on holidays. How does one then put in the safeguards?

The bank used to telephone me and, I am sure, many other people to say we had been pre-approved for an increase in our overdrafts and in the limit on our credit cards, which kept going up, and everybody was spending like crazy. Then overnight the bank said that our overdrafts were gone. People who were pre-approved for overdrafts lost their jobs and fell into arrears and so on. How does one put safeguards in place in regard to somebody who presents today and is pre-approved for €10,000 but in six months time, loses his or her job and is in a terrible situation?

**Mr. Gerald McConville:** We do not like the term “pre-approve”. We would not pre-approve anybody. There would be modest limits of €1,500 to maybe €3,000. We would have no objection to that limit being set in the legislation, at perhaps the discretion of the Minister or the Central Bank. We see it very much in terms of day-to-day expenditure. One of the issues credit unions have had is that because they have only offered one loan, big ticket items, such as home improvements and car loans, have got mixed in with the day-to-day borrowing requirements. The consequence of that is that if one borrows for a car loan and six months later one requires a small Christmas loan, a holiday loan or whatever, that all gets mixed into the one loan so, effectively, one is putting short term credit over a longer period of time. We would see this as a safeguard for people that they are separating out their short term needs from their long-term needs. The safeguard would be that there would have to be a limit which could only be increased if one did a full review of the account. There would be an annual review so that one would re-establish the person’s ability to repay on an annual basis. Those are the sorts of safeguards we would have in place.

**Deputy Kevin Humphreys:** That is an excellent idea. Anybody who has been a member of a credit union knows about top-up loans which are used on a regular basis. I used them on

many occasions in my earlier life. How large is Dundrum Credit Union?

**Mr. Gerald McConville:** We have €90 million in assets and we have about 25,000 members.

**Deputy Kevin Humphreys:** Both credit unions are at the top range or the mid-range of €10 million to €100 million. The impression I am getting is that there are not many problems in the legislation for that range - that is, if one is in the upper range - but if one falls down towards the bottom to the €10 million range, the legislation is quite difficult. Is that Mr. McConville's impression as well?

**Mr. Gerald McConville:** We believe the flexi-loan would apply equally to all credit unions with no difficulty.

**Deputy Kevin Humphreys:** I accept that. I am taking it that Dundrum Credit Union would not have major problems with the legislation.

**Mr. Gerald McConville:** We would welcome most of it. We would definitely have concerns about the terms of office. If one has somebody with experience, one needs continuity. There is something in the Central Bank legislation which provides that one has to make an exception for beyond nine years and we think that should probably apply to credit unions as well rather than having an absolute barrier to people continuing on beyond nine years.

**Deputy Kevin Humphreys:** Larger credit unions would have a larger talent pool. Listening to Mr. McConville's contribution and to the previous one, the concern I have is that the geographical area and the talent pool is quite tight in the small credit unions.

**Mr. Gerald McConville:** That could be true.

**Deputy Dara Murphy:** I wish to come back to the issue of the rolling flexi-loan. How would it differ from an overdraft? We are all aware of the joke about credit card limits being limits not targets. I am a little bit concerned about borrowing for day-to-day purposes. What we are trying to do everywhere is to live day-to-day within our means and to borrow for the exceptional events. If people had a rolling continuous debt, would there be the same penalties for not having it in credit for one month of the year? What incentive would there be for people to arrive at a point where they get a loan for item A and clear it, which is the strength of the system as it currently stands? Will Mr. McConville flesh that out a little bit?

**Mr. Gerald McConville:** Another way to look at it is that one could describe it as a credit card but without the excess of charges, the high interest rates, penalties and so on which go with credit cards. It is a similar type idea but because the credit union operates on a not-for-profit basis, our motivation is to allow people to budget and to manage their money prudently. As I said earlier, we envisage that it would be a low limit and we would have no difficulty with that being written into the legislation or being done by ministerial order or whatever. We would see €3,000 as being probably the upper limit of that type of account. In terms of encouraging people, it would be more proper to call it a flexi-account rather than a flexi-loan, which is how I referred to it, but that was in terms of the credit agreement and so on.

When people need to borrow, they will know they have that comfort if they need the money for Christmas, holidays or whatever. However, even when they do not need the money, they are used to putting in €10 or €20 per week. If they go into credit, they get interest or a dividend on their credit. It works both ways in that it encourages savings and prudent management of

people's finances.

**Deputy Kieran O'Donnell:** How big is Dundrum Credit Union?

**Mr. Gerald McConville:** We have 25,000 members.

**Deputy Kieran O'Donnell:** What is its size asset-wise?

**Mr. Gerald McConville:** It is €90 million.

**Deputy Kieran O'Donnell:** It would be at the upper end - a big credit union.

**Mr. Gerald McConville:** Yes.

**Deputy Kieran O'Donnell:** My understanding of the credit union was that people went to it when they required a loan for a specific purpose - maybe to buy a car or whatever. What is the motivation for providing this particular product?

**Mr. Gerald McConville:** We see it as a win-win situation for everybody. All we are doing is maybe taking a different approach to it. As I said earlier, 40% of our loans are for under €1,000. Already a large proportion of our loans are for very small amounts. The difficulty is that the value of those loans is only 9% of our lending. Given the administrative and regulatory costs, from a practical point of view, we see it that this will save on administrative costs. Very tight controls are still in place. Credit unions are already doing top-up loans - it is a feature of credit union lending. Since they are doing top-up loans, they have to issue credit agreements, the documents which go with that and the pre-contract information each time. It amounts to about 12 pages of documentation.

**Deputy Kieran O'Donnell:** It is an administrative issue.

**Mr. Gerard McConville:** I am trying to outline that from different perspectives there are different motivations. From our perspective there is the administrative side; from a governance point of view, we can be confident the small lending is not high risk. By being able to automate that to an extent, we can spend more time on the bigger loans, making better assessments. We have limited resources so we must allocate them as best we can. From the members' point of view, it gives them the knowledge they have access to limited credit where they need it but they cannot get carried away in the manner the credit card companies allowed. From the regulator's point of view, it knows credit unions will not be constantly topping up loans and letting credit get out of hand. We see it as a comprehensive package.

**Chairman:** I want to dispose of the flexi-loan account issue soon and then we can move to the broader issue.

**Deputy Peter Mathews:** With €90 million of loan assets, and 25,000 customers, the average loan size is €3,600. If a flexi-loan or line of credit was put in place, it would need to be reviewed on a six monthly or yearly basis. It would also need to be controlled to the extent that only customers with proven track records of repayment could avail of it. Otherwise the situation could arise through unforeseen circumstances that people could fall into hard core overdrafts. Half of the €90 million could become non-recoverable.

**Deputy Heather Humphreys:** I can see the merits of this, people would have the comfort of knowing they have a facility with the credit union they can call upon if necessary. From an administration point of view, it costs the same to issue a loan of €100 as a loan of €10,000. For

that sort of small loan that is granted on a regular basis, there is definitely merit in this idea. People will know they can go to the credit union for a small loan that will possibly keep some of them out of the hands of the moneylenders. That is part of the function of credit unions, that they try to help people to organise their finances properly. I can see the merits of such a loan; it would be an added service credit unions could offer and it would be worth considering its inclusion in the legislation.

**Mr. Gerard McConville:** The €90 million is our total asset base, there are loans of €35 million and only a third of members are borrowing. If there was a six monthly review that allowed us to keep issues under control, we would have no difficulty. Credit unions could get into trouble anyway by overlending. At present, every loan is considered on an individual basis. We see this as a prudent management of lending because it places a cap on this type of lending so a credit union would be aware of its maximum exposure in this type of lending. It would act as a protection.

**Deputy Kevin Humphreys:** When I borrowed from the credit union, a proven saving record was needed and it was not possible to get a top-up loan without a proven repayment record. I presume would apply to the flexi-account.

**Mr. Gerard McConville:** That is exactly right. With a credit card, even if a person's record is bad, that person can continue to raise his limit. The credit union would offer a flexi-account but the person would have to apply to the credit union to draw down on it. It is not something that could be drawn down automatically.

**Deputy Kevin Humphreys:** There is a safeguard mechanism in the way the credit unions work. The proven saving and repayment record mean someone cannot top up without proven repayment history on previous loans.

**Mr. Gerard McConville:** If someone fell into arrears that facility could be withdrawn.

**Chairman:** We have the submission from Mr. Pat Owens, who represents St. Mary's parish credit union in Limerick. It is critical of the draft scheme in general and specific terms. We can discuss the broad philosophy in the draft but he goes as far as saying the Bill makes no attempt to preserve what is good about credit unions or to enshrine their ethos in legislation. He is concerned the ethos is undermined by draft legislation and it reproduces a standard banking model that is not appropriate. He agrees, however, that a transparent regulatory system is required and targets should be set out but that is not what the Bill does. The governance standards required are not appropriate to credit unions and should not be the same standard as those applied to multinational financial institutions. Mr. Owens also expresses concern about volunteerism being threatened by some of the provisions of the draft scheme and about the requirement for credit unions to merge. His advice is the entire legislative process should be postponed for 12 months because it is being rushed.

I want to dispose of the specific points as well but I wanted to make sure we put this in context because Mr. Owens is critical. Classes of credit union were mentioned and we know there is a three tier structure envisaged in the legislation that is asset based but Mr. Owens thinks that should be extended to a five tier structure, still asset based.

**Mr. Pat Owens:** The Bill suggests an asset base and we think this should be an interim measure only. The regulation should be linked to risk and asset base is only one measure of risk. The more assets that a credit union has, if they go bad, the greater the damage, as we have

seen in the country in general. That is not the only measure of risk but to bring that aspect into the legislation, the present tiers, as suggested by the commission, particularly that between €10 million and €100 million, are much too broad. A credit union with assets of €12 million is a different operation from a credit union like that of Mr. McConville, with €90 million in assets. St. Mary's parish credit union has €49 million in assets so we are in the middle. We feel that it is fine for credit unions up to €10 million, but there should then be tiers of €10 million to €30 million, €30 million to €60 million, €60 million to €100 million and then over €100 million. That would bring us to a situation where we are treating like with like in the services each credit union can offer. A credit union with an asset base of €49 million might not have the resources to offer some of the services the larger credit unions could offer but we are going to be subject to the same level of regulatory interaction as them.

Even from the regulator's point of view, it makes sense to have tighter bands. We would suggest the regulator has already embraced this concept with the prism model that has been introduced for regulation of all institutions in the country, which categorises financial institutions according to the level of risk they pose to the national economy and regulates them accordingly. They have already embraced the concept in their overall operations and we are saying it should be embraced for credit unions, which should be regulated according to tighter bands.

**Chairman:** There are two or three other issues. What is Mr. Owens's view of the role of treasurer?

**Mr. Pat Owens:** The credit union is a financial institution with an elected board of directors. The draft scheme suggests we have no financial officer on the elected board. The reality is that the role of treasurer needs updating. The role as set out in the Credit Union Act 1997 is outdated. Certainly, in our own case and many others it is not what happens on the ground. As manager, I prepare the management accounts each month and then meet the treasurer to go through them and answer any query he has. We then go to the finance and planning committee and he presents the accounts and it raises queries. If it is happy with the accounts, they are proposed to the board which accepts them having been satisfied with the answers to questions it may have had. At the end of the year the treasurer is the person responsible for presenting the accounts to members. We think this is vital.

**Chairman:** Is that contained in the proposed Bill?

**Mr. Pat Owens:** It should be maintained because the members are the ultimate owners of the credit union. They elect the board to operate the credit union on their behalf. What the draft Bill is stating is that in doing that they have no hand, act or part in appointing somebody to monitor and control the financial operations of the credit union. We think that removes a vital link between the members and overall financial control of what is a financial institution.

**Chairman:** How does that relate to Mr. Owen's other concern about the role of manager as envisaged in head 25?

**Mr. Pat Owens:** It does not directly affect us but quite a number of credit unions, particularly those with assets less of than €10 million, still operate without paid staff. It seems to us that the draft scheme will not allow them to continue in that way. If one looks at subsections (1) and (3) of head 25, in which it is suggested each board must appoint a manager and that the manager cannot be a member of the board, this leaves smaller credit unions that do not have paid staff in a situation where they must employ a manager or else amalgamate.



**Chairman:** We had a great deal of discussion on head 20 yesterday, as well as section 10 dealing with prohibitions. Mr. Owens is drawing our attention to sections 14 to 16, inclusive, which set the term limits. We know it is a three year term of office and that a credit union member can serve no more than nine years in a period of 15. Mr. Hosford referred to this earlier in reasonably positive terms. Does Mr. Owens not subscribe to that point of view?

**Mr. Pat Owens:** We would not necessarily share the same opinion. We are operating from a smaller pool of potential directors. We have about 8,500 adult members in a total membership of 10,000. The legislation and other requirements set by the Central Bank impose high standards of fitness and probity for people who can serve on the board. We are concerned that over a number of years from a pool of 8,500 members we must continually renew the board with people who meet a standard set at a level that can be adjusted at any time. It takes time to bring people up to that standard. For a credit union to meet the fitness and probity standards, it must invest more heavily in training. We already invest heavily in training. Quite a number of our directors have met the current minimum competency requirements, even though they are not obliged to. The current minimum competency requirements refer more to insurance products than to financial institutions, but some of the directors have obtained these qualifications.

**Chairman:** Let me tease out the issue. A person looking at it would say one can serve six years and take a break for three years and then serve again for a further three years. One can serve for nine years out of 15. That does not sound hugely onerous.

**Mr. Pat Owens:** Let me outline a number of points. This applies to all committees. One has a period in which a person is being trained, learning the ropes and getting used to the system, after which he or she becomes more confident about the role and starts to learn about the overall operation and makes a much greater contribution. To make a comparison, a qualified accountant will contribute much more to an accountancy firm than a trainee accountant. As one develops, one becomes more involved in the role. We must remember that credit union volunteers would be prized in other organisations that are looking for volunteers. If one is obliged to be removed from the board for a three year period, one may become involved somewhere else and find that the competency requirements one had previously met have been raised again and that another period of training is required.

We think also that it goes against the democratic principle on which credit unions are founded. Members are entitled to elect the board that they want to run their credit union. It is much like what applies to the democratic process in the Dáil. I do not know if legislation that would restrict Deputies to serving nine years in office would be passed by the Legislature.

**Chairman:** We are not determining how much should be lent to credit union members.

**Mr. Pat Owens:** The public might go for it, but I do not know whether the legislation would be approved?

**Deputy Kieran O'Donnell:** A genie might have been released from the bottle.

**Chairman:** We are not doing anything as important as lending money to people. Is Mr. Owen as concerned as Mr. Hosford who was worried about the workability of the nomination procedures? Mr. Owens's final point relates to levies and costs, another point Ms Hosford raised. Are Mr. Owens's concerns similar to those expressed by Mr. Hosford?

**Mr. Pat Owens:** Our concerns are similar. We have a concern that the nomination committee would have serious difficulties in operating, based on the sections set out in the draft

Bill. We have a serious concern about the procedure of seeking pre-approval for nominating somebody. There is no suggestion of time limits. We deal with the Central Bank on a regular basis. It has a set number of days by which it must respond to various things and our experience is that it is usually towards the end of the period that one receives a response from it. There are more than 420 credit unions in the Republic. If each one is submitting nominations for two or three candidates to the Central Bank at the same time, will the Central Bank have the staff to deal with this? Will it pull staff from other vital jobs to vet the people concerned all in one go? There are serious issues.

**Chairman:** Is there a similar concern about the levies?

**Mr. Pat Owens:** There has been no analysis anywhere of the extent of levies.

**Chairman:** There is no cap as Mr. Hosford stated.

**Mr. Pat Owens:** There is no cap. There is no indication of what the percentage will be. There is no indication of what they will be based on; however, there is an indication that credit unions that cannot afford them will not be charged. Does this mean that the other credit unions must pay an extra amount to cover this? There is no certainty around any of the measures. The big issue for us is that we are being asked by the Central Bank on an ongoing basis to prepare projections for three to five years? How can we build projections when we have no idea of the sums of money that we will be charged?

**Deputy Pearse Doherty:** I thank Mr. Owens for his presentation which has been circulated to members. He did not pull punches in his written submission when he stated the draft Bill as presented would not provide enabling legislation for credit unions but would, in fact, strangle the life out of them. That is definitely shooting from the hip. Many of the points raised by him were familiar, as they had been raised yesterday by the Irish League of Credit Unions which shares many of the same concerns. We have raised these issues with it. I agree with the views of speakers today on them. I hope we will take them on board as we deal with the legislation on Second and Committee Stages. I would like to tease out Mr. Owens's specific comments about the tiered structure. He seemed to suggest that if it was to be based on assets, there should be a five-tier approach. Am I correct when I suggest his preferred option would be based on risk and complexity?

**Mr. Pat Owens:** It would be better if there was a focus on size, risk and complexity.

**Deputy Pearse Doherty:** Okay.

**Mr. Pat Owens:** Obviously, the bigger one is, the bigger the risk one poses in general.

**Deputy Pearse Doherty:** Of course.

**Mr. Pat Owens:** The level of risk involved differs depending on the products one is offering.

**Deputy Pearse Doherty:** If that option is not pursued and there is a focus on assets alone, does Mr. Owens think there should be a five-tier approach?

**Mr. Pat Owens:** Yes.

**Deputy Pearse Doherty:** I agree with Mr. Owens that we should proceed in that manner if we are not able to get the preferred model, based on risk, complexity and size. Approximately

80% of all credit unions fall into the middle of the three tiers which covers those with assets of between €10 million and €100 million. Is that not the case?

**Mr. Pat Owens:** That is my understanding. Between 20 and 25 credit unions have assets of more than €100 million. It is possible that quite a few have assets of less than €10 million.

**Deputy Dara Murphy:** Is Mr. Owens certain that there are between 20 and 25 credit unions with assets of more than €100 million?

**Mr. Pat Owens:** I think so. I am not an expert on the overall size of credit unions, but my understanding is that between 20 and 25 have assets of more than €100 million. Having said that, our belief is the legislation will cause many more credit unions to end up in that category because it will force amalgamations.

**Deputy Pearse Doherty:** Does Mr. Owens agree that if the legislation goes ahead, as drafted, with no treasurer on the board of directors, what will actually happen is that somebody will be appointed as a treasurer anyway? Is it possible that a person will carry out the role the treasurer has always carried out, although perhaps not with the title of “treasurer”?

**Mr. Pat Owens:** That is quite possible. If legislation pushes an operation in a certain direction which is not the direction it believes it should be taking, those involved will try to find a way of working around it, while remaining within the legislation. The Deputy’s suggestion might be possible. The problem is that a person who is appointed in that way will carry absolutely no weight. The regulator will have absolutely no engagement with that person because it will not recognise him or her. The fact that credit unions are about and start with their members has been lost in all of this. We have a serious concern that members are being sidelined during the rush to ensure this legislation is put through on time, which is being done to meet other requirements. That is why we are concerned about the removal of the direct link between the member and the finances of the credit union. I could present the accounts at an AGM without a problem, as I deal with them every day. I am well aware of all the accounts and could answer all the questions members would have. Perhaps that would be seen as a good thing in some cases. We certainly believe that by electing a board to run the credit union on their behalf, the members are imposing certain duties on them. The most important thing for a credit union is its finances. That is the most important thing the board of a credit union is charged with running. We understand there is an official view that all the directors of a credit union are equally responsible for its finances. There is a concern that if one director was nominated to take sole responsibility for the finances of a credit union, it might give the other directors the “get out of jail” card of saying “it is the treasurer’s job and nothing to do with me.” We do not believe that is the case in the existing structures, or will be the case in any future structure. We believe directors are well aware of their responsibilities to members and the financial security of the credit union.

**Deputy Pearse Doherty:** I agree with Mr. Owens on that point. His analogy regarding what is happening with the treasurer being removed, which involves the Secretary General of the Department of Finance presenting the budget each December, is a good one. We have had a great deal of discussion on head 20 which relates to the board of directors and on the term limits. The proposed subsection (10) provides that the spouse, partner, child, parent or cohabitant of someone who is working for the credit union voluntarily will be unable to serve on the board of directors of the credit union. If that provision is enacted, what impact will it have on the board of directors of Mr. Owens’s credit union?

**Mr. Pat Owens:** It would not have an immediate impact because we do not have such a situation at present. In the past we have had fathers and sons on the board and it has never caused an issue, to our knowledge. The longer term problem is that we are already working from a limited pool of people. We have to ask ourselves how many of our 8,500 members will be willing and able to give the time and commitment required. We are working from a small pool as it is. People often get a love of the credit union movement from family members who are involved with it. When I was growing up, my mother was a director of a credit union in Belfast. I have always been aware of credit unions and had an interest in them. That interest is often passed on. If a member of this committee was told he or she could not stand for election as an elected representative because his or her cousin was already in the Dáil, it would not sit well with him or her. It does not sit well with us. We believe the issue of conflict of interest which can arise on any board needs to be addressed. That should not mean having to determine that a conflict of interest arises immediately when two people are related to each other. There should be no suggestion two such people are likely to form some sort of clique to take over.

**Chairman:** I wonder whether Mr. McConville or Mr. Hosford have anything to say on the 2010 prohibitions.

**Mr. Philip Hosford:** I will make two brief comments. I have personal experience of it. I also have experience of it in my credit union. We have a director whose son works in the credit union. It will, therefore, have a direct impact on our board. One of the directors will not be able to sit on the board anymore. Initially, he was not that pleased about it. When one considers it as an overall issue, it is not a good principle to have an employer sitting on the board - I refer to a voluntary person who was elected onto the board - if one of his or her children is an employee. In many cases, although not all, such a person would find it impossible to approach matters relating to the credit union in a totally independent manner. The role of a director is to do the best thing for the credit union, rather than the best thing for his or her son who might work for the credit union.

I used to be a director of my own credit union. I am not referring to Gurrabraher Credit Union, where I work. My mother was a supervisor at the credit union at the time I was on the board. My view is that it is not a good structure to have in place. One would not expect one's mother, brother or sister to go against one when things arise. When a contentious issue arises, one expects the members of one's family to support one. My experience is that they do. That leads to conflict on boards and the formation of groupings. In our view, the best way to avoid this is to ensure family members are not in these roles.

**Mr. Gerard McConville:** Generally speaking, we would agree with that. There should be no potential for a conflict of interest involving family members to arise. Many of us got our love of credit unions from other family members. It should be a generational thing. When a father retires, his son or daughter might decide to go on the board.

**Chairman:** Having checked the matter since yesterday, I think it is the case that the various prohibitions set out in the draft scheme are included in the commission's report, with a single exception, the sibling prohibition. I mention this for the sake of completeness more than anything else. It is suggested in the draft scheme that provision should also be made for the word "sibling" to be added. I know that is the only difference between the draft scheme and the commission's report on the prohibitions. I have checked it.

**Deputy Kieran O'Donnell:** I welcome Mr. Owens and his colleagues. I particularly welcome Mr. O'Halloran and Mr. Hennessy from my constituency in County Limerick. I would

like to get clarification on the size of Mr. Hosford's credit union. What level of assets does it have?

**Mr. Philip Hosford:** We have assets of €85 million and 16,000 members.

**Deputy Kieran O'Donnell:** How many branches does it have?

**Mr. Philip Hosford:** We have two offices.

**Deputy Kieran O'Donnell:** I would like to receive the same clarification from Mr. McConville in respect of his credit union.

**Mr. Gerard McConville:** We have four offices.

**Deputy Kieran O'Donnell:** Those in attendance represent two large credit unions and one medium-sized credit union. Is that correct? Mr. Owens has spoken from the perspective of a particular cohort of credit unions. How many credit unions among the main cohort have assets of €50 million or less? Would most credit unions in Ireland have such assets?

**Mr. Philip Hosford:** I am speaking off the top of my head.

**Chairman:** The witnesses have been invited to represent individual credit unions.

**Deputy Kieran O'Donnell:** Is it correct that a director of a nominating committee may remain on the committee for more than nine years provided the committee gives valid reasons for any such decision? Does this issue need to be clarified in the Bill?

**Mr. Philip Hosford:** That is the point that we raised, namely, that our interpretation or reading of section 12 on the nominating committee is that the committee may permit a director to remain in place for more than nine years provided it documents reasons for this. This provision appears to be in conflict with other sections in the Act.

**Deputy Kieran O'Donnell:** Does Mr. Owens believe credit unions would be able to work with section 12 if it were clarified? For instance, could exceptional members of the nominating committees be able to remain on the board for more than nine out of 15 years? We should bear in mind that smaller credit unions are experiencing difficulties in replenishing their boards.

**Mr. Pat Owens:** Again, we come back to the democratic principle. To act in the manner the Deputy suggests would allow a group on the board to determine that one of its members could remain in place for longer than the nine year period. Where are the rights of the membership in such a scenario? Members elect directors and if anyone should decide who should serve as directors of a credit union and for how long they should do so, it is the membership. The Deputy's proposal would transfer members' rights to perform this function to a small committee of the board. I am not arguing that committees would abuse this right but that it runs contrary to the democratic principles of credit unions.

**Deputy Kieran O'Donnell:** If the section were amended to allow members to make the decision on extending board membership to beyond nine years, could the provision work?

**Mr. Pat Owens:** That is precisely our line of argument. Why is a limit being imposed in the first place? Let the membership make the decision. Each director stands for election every three years. The longest term a director can serve without standing before members for re-election is three years. Members get to decide who they want to run their credit union every

three years.

**Chairman:** Mr. McConville wishes to make a point on that issue.

**Mr. Gerard McConville:** Our position is that the issue would be resolved if credit unions were treated in the same manner as other financial institutions. Exceptions beyond nine years are permitted for the latter whereas greater restrictions are being imposed on credit unions for some reason. We do not understand the reason for this approach.

**Deputy Kieran O'Donnell:** We probably agree that requiring any such extension in the term of a member of the board to be ratified by the board and members could offer a way forward. The section, as drafted, appears to put credit unions in a different category from other financial institutions. Perhaps this provision could be amended to address that specific issue.

**Mr. Pat Owens:** I agree.

**Deputy Kieran O'Donnell:** The ethos of credit unions requires that directors are elected by members who are similar to the shareholders of a company. Is it possible to allow the treasurer to continue to reflect back to the membership while producing a formula that would tighten the structure? Treasurers effectively assume the role of manager of the credit union. Could the structure be revised to give more comfort to the regulator while maintaining the ethos of the credit union?

**Mr. Pat Owens:** We do not have a problem with updating the role of treasurer. Having been written at a different time and in different circumstances, it has become outdated. Where a credit union has a manager, all the operational responsibility for the accounts should be transferred to him or her. However, to obliterate the role of treasurer is not the solution. A solution is required which allows the members and board to have either a treasurer or financial controller, financial officer or financial director - one can use whatever title one wishes - who oversees the accounts on behalf of the members.

**Deputy Richard Boyd Barrett:** I thank the witnesses for providing highly educational perspectives on the credit union movement. As the meeting proceeds, I am learning a great deal about issues affecting the movement. I have great sympathy for the views being expressed by Mr. Owens. If I understand his argument correctly, the one-size-fits-all approach to credit unions, which essentially amounts to over-regulation, could undermine the fundamentally democratic ethos of the movement. That is a compelling argument.

On the question as to whom we trust to regulate the credit unions, I am happy to have the State step in and regulate the banks much more thoroughly than was previously the case. It appears, however, that the credit unions are about to suffer a backlash arising from what the banks did when they were not subject to regulation. Despite not being guilty of the types of reckless behaviour in which the banks engaged, the credit unions are being placed under serious threat. While it is preferable that the State regulates the banks rather than having the banks regulating or failing to regulate themselves, as was previously the case, I would prefer the credit union members rather than the State to regulate credit unions because I trust the former more than the latter to perform this function. I need to be convinced of the need to regulate credit unions or permit the State to interfere in them in such a way that may undermine the democratic control of the membership. I am very sympathetic to that point of view. The arguments made by Mr. Owens are extremely compelling.

The other issue that appears to arise is size. This is partly an issue of defending the principle

of members exerting democratic control over their credit unions. However, it also appears to be the case that a different perspective is taken depending on the size of the credit union in question. I have sympathy on the need to address the issue of conflicts of interest because it is one which arises. Again, however, are credit union members not the best people to decide on this matter? If there is a potential conflict of interest, I presume the issue can be raised by members at the annual general meeting. Are members not the most appropriate people to make a decision on such matters? If one chooses not to allow members to make such decisions, it may not be a major problem for larger credit unions which have larger pools of people but in smaller credit unions it could have the inadvertent effect of hampering their ability to function because they cannot draw on a sufficiently large pool of individuals to allow them to engage in rotation. The point about maintaining experienced people in the credit union is a valid argument because one must build up skills and knowledge. I am also sympathetic to the idea that ordinary people can decide to elect people who they believe to be competent and those who they elect can then educate and train themselves in the relevant area and build up a skills base.

Does Mr. Owens agree that the credit unions are suffering a backlash arising from the actions of the banks? The irony is that the credit unions could become more like banks as a result, which is the last thing we need. We need the credit union model to continue because credit unions provide the type of financial services we need as opposed to the chaos we had in the for-profit banking sector.

**Chairman:** The next speaker is Deputy Kevin Humphreys. Mr. Owens will have an opportunity to respond later.

**Deputy Kevin Humphreys:** Deputy Richard Boyd Barrett's passion for the credit union movement is clear to us and Mr. Owens. There is merit in the band element. Maynooth Credit Union has been in touch. While it only has assets of €17 million, it is being lumped with those which have assets between €10 million and €100 million. Therefore, there would be merit in looking at the bands.

I disagree with Mr. Owens with regard to the manager's responsibility. His or her responsibility is to make a report to the board and no matter the size of the credit union, I would not like to see the manager also being a director. This should apply, even for smaller operations outside the credit union movement.

The credit union movement must be regulated, as credit unions control a sizeable portion of the market. The credit union managed by Mr. Owens is at a figure of €47 million, while those of his colleagues are approaching the figure of €100 million. The State has a responsibility to regulate this sector. A small number of quite large community credit unions have run into difficulty owing to the lack of regulation. As colleagues have said, we need a clean sweep. There is a role for regulation. We have a responsibility to citizens to ensure the sizeable financial institutions a number of credit unions have become are regulated. There is merit in considering bands, but I disagree that managers should be directors.

**Chairman:** I will change the plan somewhat and continue with the contributions of members and then wrap up with the responses of our guests.

**Deputy Dara Murphy:** I want to direct my questions towards a particular area. Based on the comments and submissions made yesterday and today, particularly by the two larger credit unions, there is broad support for the Bill and its motivation. The focus of discussion is on a small number of sections. It will be interesting to see if our guests argue or make incendiary

comments such as that the Bill is a “backlash against what has happened” or “endangering the credit union movement.” The motivation of the Bill is to protect the credit union movement; it is certainly not a backlash as suggested yesterday when it was said that at the end of this process, the 3 million credit union members would be out on the streets with placards. That will not happen.

One of the issues raised yesterday by the Irish League of Credit Unions which we have not yet discussed was the issue of social finance. While there are disputes between the ILCU, managers and the other association about tiers and regulations and for how long people can serve on boards, it appears there is no real argument against allowing credit unions lend money for social benefit projects guaranteed by the State. This proposal from the ILCU has huge merit. Is there a reason clubs seeking sports capital are precluded from applying for credit union loans? Many clubs applying for sports capital are getting some money from the State, using some of their own money and borrowing the rest. However, they are precluded from applying to credit unions. Why is that? Should the Credit Union Bill be amended to allow Government-backed schemes to become customers of credit unions?

**Deputy Heather Humphreys:** There is no question but that volunteers have played a huge role in the credit union movement and that it is very important that we protect them. The credit union movement has changed completely and volunteers and their role need protection. We must ensure they will continue to play an important role.

It would be very useful for the committee to know how many credit unions do not have paid staff in order that we have a broad view of the issue. With regard to the role and responsibilities of the treasurer, as Mr. Owens said, the credit union movement has changed during the years and the treasurer’s role was defined when credit unions were at a different stage of development and most did not have professional staff. However, that is no longer the case. It might be said credit unions have become victims of their own huge success. The same has happened with regard to the role of manager during the years. Clarity must be provided and the role must be defined clearly in order that in the overall framework of corporate governance we have accountability and responsibility. Treasurers and managers must also be accountable to credit union members. It is important that the roles of manager and treasurer are clearly considered, defined and provided for in the Bill. The credit union movement has changed significantly in the past 15 years. Unfortunately, some of the old rules must change, but that is something everybody accepts.

**Chairman:** I can only afford delegates a few minutes to wrap up having heard members’ views and responses. They may wish to respond to some of the views expressed, but there were also some questions asked. Deputy Richard Boyd Barrett asked whether this was all a backlash against what had happened under the broader scheme. Deputy Kevin Humphreys raised the issue of a manager not being a director and asked about social lending. Deputy Heather Humphreys raised the broader issue of providing for clarity on roles.

**Deputy Heather Humphreys:** I also wondered whether we could get a figure for the number of volunteers.

**Chairman:** I heard that question, but it would not be fair to ask the representatives of individual credit unions, but we will try to pursue that issue. We will begin with Mr. McConville.

**Mr. Gerard McConville:** I will deal with those issues in reverse order. We fully support the concept of social lending.



**Chairman:** Of which the credit unions have some experience.

**Mr. Gerard McConville:** Yes. With regard to a manager being a director, we do not see that as a runner at all. There should be a clear division between the executive and governance functions.

On the issue of there being a backlash, I will confine my response to the flexi-account. We see it as ironic that credit unions are now more heavily regulated, yet there are unregulated companies such as department stores that are allowed to maintain running accounts or flexi-accounts whereby people can run up a large bill. There is no regulation and we would see the proper place for this being within a regulated entity.

**Mr. Pat Owens:** To clarify, I did not suggest at any stage that a manager should be a director. What I said was that, according to the draft Bill, the manager should take the place of treasurer or financial officer on the board. However, he or she is not on the board.

**Deputy Kevin Humphreys:** I apologise; I picked Mr. Owens up wrongly.

**Mr. Pat Owens:** I just wanted to clarify that matter. We do not advocate the manager should be a director.

To respond to Deputy Richard Boyd Barrett's comments, as we stated clearly in our submission, we would welcome appropriate regulation. There is a role for State regulation, but this should support the concept of democratic control by the members rather than take it from them.

Credit unions have been involved in social lending during the years. While many sports clubs may receive grants, they also come to us to borrow to fund the provision of facilities and equipment. The ILCU's suggestion is that the Government roll out some sort of bond which credit unions could buy that would be used specifically for the purposes of social lending. We have funds to invest and if the Government gave us a reasonable return on our money and it went into social lending, we would be quite happy to lend funds.

**Mr. Philip Hosford:** First, we are totally in favour of social finance.

Regulation and democratic control, from our point of view, are two very different things. There has been a slight backlash in that there is a lot more regulation of the credit unions now. We welcome regulation, as long as it is proportionate and does not become excessive. There has been much talk about democratic control. To give the committee some context here, we have 16,000 members but only 160 turned up to our annual general meeting last year. In essence, only 1% of our membership turned up to vote. We are struggling with democratic control ourselves. There is no question that the draft Bill before us takes away democratic control because directors can remain in place for nine years. Even after that, they can still be involved in the credit union in other roles, even if they are not elected members of the board.

On the issue of restructuring, the reason the credit unions have survived so well in recent years is that we are all independent, limited companies. That is what has saved us. It would be ironic then, if the number of companies was to be reduced to a very small few because that would, inherently, increase the risk for those companies. However, restructuring is required. Our view is that disorderly restructuring could cause difficulties. The Credit Union Restructuring Board, ReBo, and the provisions being set up there will facilitate orderly restructuring, which will provide the mechanisms for the credit union movement to be more sustainable into the future.

**Chairman:** I thank Mr. McConville, Mr. Hosford and Mr. Owens for contributing to the discussion. I thank all witnesses for attending this morning and for making their submissions, all of which will be published. A transcript of these proceedings will be sent to the Minister for Finance. The committee will also prepare its own short summary of the issues, which will not be a deliberate view on each and every question but just a set of issues and agenda items. The witnesses have given us much food for thought and contributed much to the debate.

**Deputy Heather Humphreys:** Would it be possible to invite the members of the Commission on Credit Unions before the committee because the draft legislation was based on the report they prepared? It would be beneficial if we could have even a short exchange with them and put some questions to them.

**Chairman:** Strictly speaking, it would be more appropriate to have this kind of discussion in private session but certainly we will consider that matter over lunch. However, the time-frame is very restrictive indeed.

**Deputy Heather Humphreys:** I accept that.

**Deputy Kieran O'Donnell:** It would be worthwhile to meet them, nonetheless.

**Chairman:** The meeting is suspended until 2 p.m.

*Sitting suspended at 1.05 p.m. and resumed at 2 p.m.*

**Chairman:** I welcome Ms Carmel Motherway of Motherway Consulting, Mr. Eoin O'Sullivan who is representing Enterprise IT, Mr. Des Gunning who is a member of the Dormant Accounts Fund Disbursements Board and Ms Noreen Byrne of the UCC Centre for Co-operative Studies. This is the third session in our consideration of the draft Credit Union Bill. I will ask delegates to speak briefly to the submissions they have made, but this will be, largely, a question and answer session.

I remind members and delegates that mobile phones should be switched off completely. The meeting is being broadcast by UPC on channel 801. If a mobile phone is switched on, it may interfere with the broadcasting signal and disrupt the broadcast.

I advise that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the joint committee. If they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are advised that only evidence connected with the subject matter of the proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a person, persons or an entity, by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice that they should not comment on, criticise or make charges against a person outside the House or an official by name in such a way as to make him or her identifiable.

I invite Ms Motherway to make her submission. I wish to explain to Ms Motherway and to the other witnesses that the committee has received all the submissions and the members have had an opportunity to read them. Like many of the submissions we have received, Ms Motherway's submission is very helpful because it focuses on a couple of net issues. From my reading of the submission the crucial issue seems to be the question of restructuring and the dangers she says are associated with the merging of credit unions. I ask her to elaborate briefly on that

point, bearing in mind that we have the submission.

**Ms Carmel Motherway:** In that case I will be brief. I perceive there is an underlying and fundamental risk and vulnerability present in the credit union movement and I am not satisfied that this has been fully addressed, possibly, by the work of the commission. I am a little concerned about the extent to which it is reflected in the heads of the Bill. To put it succinctly, my suggestion is that the emphasis is on capital adequacy and a position is set for a minimum reserves amount - there is no real maximum amount but an optimum amount is suggested. My point is that a small credit union which does not have even 7% of reserves but with a very broad and diverse saver base, in our experience in our work, seems to be in a stronger position than even a very large credit union that suffers from a savings concentration, even when that larger credit union has a good degree of capital adequacy of 10% of reserves or greater. That is the basic point we want to make.

**Chairman:** How could the system get around that? Could there be a public policy to reduce the size of certain credit unions?

**Ms Carmel Motherway:** It may have come across as half joking but it is wholly in earnest. Sometimes the best way to strengthen a credit union is to allow it to shrink rather than grow. If a credit union gets itself into the situation where it has excessive amounts of surplus funds for which it does not have loan demand, then there are a couple of dangers which are immediately obvious. One danger is that it becomes some sort of savings or investment club. At the time of the foundation of credit unions, the credit union movement pioneers expressed grave and justified concerns about the development of two classes of credit union members. Today we have three classes of credit union members.

I will elaborate on that point. There is a very large number of members with very little savings who tend to do very little or no borrowing. The middle group consists of the borrowing cohort with typically, modest levels of savings but doing the bulk, if not all, of the borrowing. The tiny group - I have set 3% as a good bar for understanding the extent of the problem - are at the other side of the graph. The examples I have cited are focused on 3% of members holding 33% and greater of the assets of the credit unions. Those present who are credit union personnel and those who are familiar with credit unions will know well that this is setting the bar quite low, actually. Even if one applies that 3% as a starting point, there are potentially 3 million members, notionally, in the credit union movement - we will not talk about that today, hopefully. If one takes that 3 million membership as an example, it means that approximately 90,000 people between them are responsible for upwards of €3 billion. That is a risk which, in my view, has not been fully understood, identified or addressed but we are aware of it through our work. We undertake this fundamental analysis with every credit union we work with. To put that in context, we have worked with upwards of 60 credit unions over the past ten years in this frame and at this technical level. Therefore, I think we have credibility in raising the flag on this issue. As to how the problem is to be addressed, it must be accepted that if credit unions are to be understood and accepted as voluntary member-owned and member-run organisations, then there are great swathes of things they must be allowed to self-determine. However, if they are to be allowed to do that, then in effect, we are asking them to set their own appetite for risk. By setting their appetite for risk, in turn, this will trigger the degree of regulation and supervision that is required to protect the savings of not only the small group of people but all the members and also the functioning of the credit union for the very large number of group of members who do not own the wealth but are in dire need of the services.

We advise that starting with self-determination, they should be allowed to set the appetite

for risk, that they should be regulated and supervised accordingly and a very good weather eye is kept on how things progress. By all means, credit unions should be required to operate within certain intelligent parameters. I would dearly love if we had the opportunity to sit down the people who set these things and suggest some of those parameters, based on our experience but I do not know if that can happen.

**Chairman:** Another way of putting it is that this would be setting a limit on the growth of credit unions. Would that be counter-intuitive for people who see themselves as having a developmental role and are of the view that one achieves more by building up? I ask what kind of an instrument would allow an intervention to occur that would stop the growth of a credit union.

**Ms Carmel Motherway:** Heaven forfend that anyone would impose the *ne plus ultra* on credit unions for the sake of it. Alex Laidlaw is a credit union guru and I will paraphrase his advice. He advised credit unions not to grow for the sake of growing either; to keep it realistic to the needs and wants of the members in the bond. I will list the very simple ways this problem can be addressed. One way is to remind the credit unions, in a gentle but persuasive manner, that only part of their job is to make funds available for access to credit. I refer to section 6, subsections (a) to (g) of the Credit Union Act 1997, which lists the objectives of credit unions and refers to their remit to educate people about the wise use of credit. The big aspect in the commission's report and the heads of the Bill which we tend not to talk about too much is the promotion of thrift. I know this is deeply unfashionable and untrendy but I am unapologetic. We cannot make people better off or more financially independent or autonomous by lending them money. This can actually become more dependent if we continue to lend them money. The only way to make people better off is by increasing their store of wealth and their autonomy, by them having savings. That is the other half of the job. It is not a question that we are worried about cutting the big savers out of the picture; we are quite happy to keep the big savers, Chairman, but what we would like to do is to give credit unions sufficient operational flexibility to allow them to create and craft products that incentivise savings.

I am conscious of time but I will give an example. Many people are bringing their debt problems to the credit unions. They want to get better value from the credit union than they currently get from other lenders. Those loans are seen as quite risky and they necessarily need to be approached with a degree of caution. We could craft a product that allows us to charge, for example, the 12% allowed by law - the normal percentage for that credit union rate of charge might be 9%, these are all nominal figures, not APRs, to keep it simple. If we decide this is a debt loan which is riskier - it is a debt consolidation - we will recognise that fact and we will price in the risk, something the Central Bank has been encouraging us to do for a long time. We will charge 12%. If that loan is repaid correctly over the full period the difference between the 12% we have charged and the 9% we would have liked to charge, will be owned by the member by way of savings. Instead of giving it as a loan interest rebate at the end of the year, it is given as a lump sum - complete with any accrued interest or dividend that would have happened in the meantime - to the member for his or her own use. By the same token, if the member has not repaid the loan in the correct manner and there is a problem of arrears or delinquency of some sort, then the credit union retains those funds and writes them off against the outstanding principal on the loan. That is a simple solution and not difficult from an operational perspective but that would need to be enabled in law.

**Chairman:** I am sure members will have questions about that. If I may ask a question on the other net issue, the proposed amendment to the Credit Union Act 1997, in respect of the permission to withdraw one's savings. As I read it that is a proposal to liberalise the position,

in a sense, compared to where matters currently stand. I believe Ms Motherway has a concern about that. I ask her to tell us about the proposal and then to state her concern. I think I am right in how I have described it.

**Ms Carmel Motherway:** Yes, although I can see how it seems counterintuitive for somebody like me to be concerned about this. As it stands, where a credit union member wishes to withdraw his or her savings, the latter are held, notionally and in most cases actually, against any outstanding loan. The member must apply to the board for permission to withdraw and permission may be granted up to a level of 25% of the contingent liability, that is, the member's own liability or any guarantee for which he or she is responsible. The proposal in the heads of the Bill is to remove that requirement in order that, in effect, a member can withdraw shares that are put into play after the loan is issued. In other words, the shares at the time the loan is issued may be attached to the loan and cannot be withdrawn, although anything that comes in afterwards may be. Our concern in this regard is that a relatively liberal arrangement is being exchanged for something more restrictive. Take, for example, a person who owes €4,000 in principal and has €6,000 in shares. The loan, in other words, is covered and everybody is happy. Under the existing arrangement, if the member needs access to these funds, he or she can request a withdrawal up to 25% of the contingent liability. Under the new proposal, however, the shares attached to the loan at the time of issue cannot be withdrawn. That is a cause of concern to us.

Our second concern is slightly more esoteric. As I said, part of our job is to promote and incentivise savings in order that people can build a store of wealth and thus live more independently. The credit union does so by encouraging a model of saving while borrowing which facilitates members in setting aside even modest amounts in savings at the same time as they are repaying a loan. The proposed prohibition in terms of attaching shares to the existing outstanding loan balance removes the credit union's capacity to mitigate risk and could hinder it in doing its job.

**Deputy Michael McGrath:** I welcome the delegates and thank them for attending. Ms Motherway has made several interesting observations. On the issue of the funding imbalance, if I am correctly interpreting what she is saying, the risk is essentially one of an over-concentration of the deposit base among a relatively small percentage of savers. There are clearly risks inherent in this because if these savers move their money out, the funding base is undermined. Likewise, the loan-to-deposit ratio at an overall level within the credit union would be impacted upon. Are there controls or rules governing this situation as it stands?

Ms Motherway expressed the view that a small credit union with a low level of reserves might be in a better position than its larger counterpart with large capital reserves but an over-concentration of depositors. That is an interesting observation. However, the function of the reserves is to act as a buffer for absorbing losses and any bad debts that might emerge. There is an increasing trend in that regard. Surely, therefore, depleted reserves present a greater risk than an over-dependence on savings.

**Ms Carmel Motherway:** The other factor that comes into play is liquidity. Where there is this type of savings concentration, a credit union must watch the liquidity position very carefully, but that is not reflected strongly enough in the heads of the Bill. To the best of my knowledge, the main control in this regard is the requirement under the existing Act that one member cannot have more than 1% of the assets of a credit union as shares or deposits. The issue is the difference between 1% of a small number and 1% of a large number. Consider an example of what the commission referred to as a medium-sized credit union with, for example, 35,000

members which amounts to a large member base in itself but €100 million in assets which places it squarely in the middle of the range. While, for instance, 3% of the member base amounts to some 1,050 members, the restriction means they can hold up to €33 million out of a total asset base of €100 million. That is the degree of concentration about which we are talking. In the case of a credit union with fewer members, say, 30,000 but more than €200 million in assets, the corresponding figures would be some 900 members accounting for approximately €66 million. This is an actual as opposed to a potential problem which represents a grave underlying risk.

The question then arises as to how to address a situation where a credit union with smaller reserves might apparently be in a stronger position than a counterpart with greater reserves. From an operational perspective, we spend a large portion of our time seeking to assist credit unions to ensure they are compliant. It is not a very difficult task because most of them perform well in this regard. The bottom line, however, is that if there is a savings concentration problem, even if the union is very liquid, and if a sufficiently large chunk of the money wants to move, that credit union is in trouble. In fact, its capital reserves would not even come into play in that scenario and this is where we see the main risk. A factor to consider in this regard is that while one might assume it is older people who have worked and saved hard all their lives who hold most of the shares, our analysis shows that, in fact, the greater portion of members are people at the upper end of the economically active age bracket, that is, workers in the 45 to 60 years age bracket. Without wishing to be indelicate, the problem gets worse over time as members start to die. There is no guarantee that the next generation of a member's family will retain his or her money within the credit union. There are several good products on the market - I hate to advertise them - offering wonderful returns, notably the Exchequer-type products from An Post. If part of the job of a credit union is to do the best for its members, it could well be argued that we should be advising members who have a great deal of money invested with us that they could be getting a far better return elsewhere. In other words, if we do our job properly, we will make the problem worse.

**Deputy Kevin Humphreys:** Ms Motherway referred to the difference in interest rates. If there is a higher repayment, that in itself could create a difficulty. Does she envisage longer repayment terms to address this?

**Ms Carmel Motherway:** The not-for-profit aspect of credit union lending enables us - in fact, requires us - to match the repayment capacity of the member intelligently with the loan he or she is taking out. In the case of a debt consolidation loan, for instance, where a person is paying an interest rate of 16% or 18% on a credit card debt, he or she will make an immediate gain by transferring that debt to the credit union. In some cases, however, people are paying lower rates on a portion of their outstanding debt such as mortgage-type debt at 6%, 5% or even better, or car loans from finance sources at 8%, 7% or even better. One must always look at the individual's repayment capacity and never go beyond it.

We generally seek to avoid stretching out a loan over time because doing so incurs a greater cost of credit for the member. He or she might be paying less interest but over a longer period of time, it will stack up. In essence, we seek to balance two imperatives in our work. On the one hand, we have the credit union ethos which obliges us to look after members and avoid making loans that are not good for them. On the other, there is the practical and business sustainability side. One can be ethical until the cows come, but if one's operations are not sustainable, one is in trouble. That is the balancing act in which we are constantly engaged. We must set the rate at a level which makes sense for the broad membership and the particular member. When a member is sitting across from us requesting assistance, he or she is the only member in the

world. Our objective is to look after that individual and make sure we do right by him or her.

**Deputy Kevin Humphreys:** I accept that totally, as a credit union member myself. My point, however, is that the example Ms Motherway gave referred to the additional interest rate which would be returned on a lump sum. When one's circumstances are very tight, one would do well to meet one's loan repayments, let alone accumulate savings at the same time. Whenever I had a credit union loan, my ambition was to clear it as quickly as possible. Adding an additional percentage to this could put people under intolerable pressure.

We engaged in a discussion at one of the earlier sessions in respect of flexible or top-up loans. What are Ms Motherway's views on that matter?

**Ms Carmel Motherway:** Is the Deputy referring to Dundrum credit union?

**Deputy Kevin Humphreys:** Yes.

**Chairman:** We will take that question from the Deputy but I am concerned to ensure that we do not stray beyond the specifics of the information contained in the individual submissions. We can deal with more general matters at the end of our discussion.

**Deputy Kevin Humphreys:** I just want to discuss these flexible or top-up loans from the point of view of interest rates, etc.

**Chairman:** Fine. We will deal with that matter later.

**Deputy Kevin Humphreys:** I am not seeking an answer, I was merely outlining the reality.

**Ms Carmel Motherway:** If I could comment briefly, the leeway exists in extending the loan out by reducing the principal component. That is where the wriggle room is to be found. However, there is a line of reasonableness one does not cross. It is down to each loan officer and member to discuss the best way forward. Most of the time we get it right, but not always.

**Deputy Paschal Donohoe:** I thank Ms Motherway for her presentation. I have two questions in respect of her oral submission. The first of these relates to the analysis she put forward to the effect that a solvency problem could be triggered by a liquidity issue as a result of the high concentration of the deposit base within a particular group of depositors. I am unclear as to what Ms Motherway believes should be done about this core issue. As a result of what has occurred in other areas of the economy, we are, tragically, all too aware of what can happen when things of this nature go wrong. Will Ms Motherway outline her specific ideas on what can be done to tackle this issue?

My second question relates to a phrase Ms Motherway used when referring to the model for regulation. She stated that if a model of self-determination is used, then individual credit unions are allowed to set their own appetites for risk. How realistic and credible is such a model, particularly in view of the fact that - as we have seen in the past - if bodies are allowed to set their own appetite for risk, the consequences of this go beyond such bodies when things go really wrong?

**Chairman:** We will note both of those questions. Deputy Mathews wishes to pose a question. We will return to the matters that have been raised before we conclude.

**Deputy Peter Mathews:** I apologise for being late. I arrived during a very interesting part of Ms Motherway's presentation when she was referring to solvency, the spread, stickiness and

depth of the deposit, etc. The credit union movement began as a mutual savings framework for, effectively, lending on an unsecured basis. In those early days, the banks tended to be the province of wealthy people and businesses. I refer to landed people, those who owned assets or businesses and individuals with cheque accounts in this regard. Then there were the building societies, which were the mutual, long-term saving and borrowing institutions. The next cog in the machine of finance was the credit union movement. Credit unions understood the working capital requirements - short-term and unsecured in nature - of households.

The economy has developed and we have moved through inflation, deflation and stagflation. All those contexts determine whether there is a viability for the sectors - banking, mortgage-lending on a mutual basis or credit union lending and saving - to which I refer. The risks relating to funding these organisations have changed as a result of the maturities of the funding sources and the breadth of what is involved. Ms Motherway made a very good point in respect of the generational stickiness of the money. At present, €66 million is held by 900 customers. That is €75,000 each. As Ms Motherway indicated, these individuals are probably in their retirement years and are not seeking competitive advantage in the context of the return on their investments. A vulnerability exists in this regard because €66 million is a shockingly large proportion of an overall deposit base of €200 million that is funding the short-term, unsecured loans to which I refer. That is both the problem that exists and the reality which needs to be expressed in order to get the relevant framework and legal and regulatory mechanisms in place in order to govern this area of activity.

**Ms Carmel Motherway:** I completely agree. The Deputy referred to the origins of credit unions in the context of lending on a unsecured basis. My colleagues from UCC are probably better placed than I to comment in this regard but I believe it was Bishop Lucey who referred to a man being able to borrow with the security of only his character.

**Deputy Peter Mathews:** His word.

**Ms Carmel Motherway:** Yes, and that was the original idea.

**Deputy Peter Mathews:** Stockbrokers once did that.

**Ms Carmel Motherway:** We will not go there. However, they should be honoured in their absence. The founding generation of credit union volunteers - or pioneers, as we call them - had a very strong belief that members should never be allowed to become either savers or borrowers and that there should always be a link between the two. I must be honest and state that when I compare the Ireland of the present day with that which existed in the 1950s-----

**Deputy Peter Mathews:** There is a chasm between the two.

**Ms Carmel Motherway:** There is a chasm but a great deal of it is sadly familiar. I unashamedly support the idea of going back to basics and I have no difficulty with the idea of credit unions becoming larger, more important, sophisticated, relevant and useful organisations. For goodness sake, however, let us proceed carefully and organically and allow them to determine that.

**Chairman:** Will Ms Motherway address the two issues to which Deputy Donohoe referred and we can then move on?

**Ms Carmel Motherway:** Certainly.



**Chairman:** What Ms Motherway is telling us is both extremely helpful and useful.

**Ms Carmel Motherway:** One point I would make to Deputy Mathews is that member loyalty kicks in and thank God for that.

**Deputy Peter Mathews:** I know.

**Chairman:** We will come back to the Deputy on that matter.

**Deputy Peter Mathews:** People do business with certain other individuals because they like them and not because of price.

**Ms Carmel Motherway:** I will provide short, specific replies to the two questions Deputy Donohoe asked. The first point we would make is that credit unions should not be merged. If two credit unions have the underlying risk or vulnerability to which the Deputy refers, then for goodness sake do not merge them. If, however, it is felt that there is a need to merge them, then this should at least be done in an organised and controlled manner in order that the credit unions involved can be encouraged to address the savings or funding imbalance prior to any merger taking place. It is probably our primary concern that the ReBo work would kick in and that this might happen without anybody becoming fully aware of that underlying vulnerability. That is why we stuck our heads above the parapet for the first time in almost 11 years and made a submission. We normally just get on with the job and do not really say much.

**Chairman:** Is the sort of thinking Ms Motherway is advocating capable of being inserted into the process now or is the implication of what she is saying that the entire scheme of what is envisaged would have to be reviewed?

**Ms Carmel Motherway:** I am glad to say it is not that drastic. It could be logically inserted at the due diligence stage.

**Chairman:** Okay.

**Ms Carmel Motherway:** At a very early stage. Deputy Donohoe's second question relates to self-determination in the context of risk appetites. He needs to get ready for this: we have these instruments called credit policies. The credit policy of a credit union, its share policy and some joined-up thinking in the context of the credit control or collections policy are what constitute the risk appetite of that credit union. Effectively, certain things suggested in the heads of the Bill would go into that territory and would reduce the flexibility credit unions currently have in the context of setting their credit policies. As a result of the fact that we can only deal with those who are members of the co-op and because of our operating forum's co-operative structure, there should be some degree of comfort for the members of this committee, as legislators, in that the knock-on effects are confined to that co-op in the event of its failing. However, I would be the first to agree with what the Central Bank is doing on the prism side of things in the context of its reference to impact of a failure, even at a low-risk firm. There are many low-risk firms and they will not have that big an impact. There are only 400 or so credit unions and everybody involved with them knows everyone else. One of them has a big impact. So I absolutely take the Deputy's point.

**Chairman:** Will Mr. Eoin O'Sullivan outline the position in respect of saving stamps, his concerns in respect of them and how the law ought to be changed?

**Mr. Eoin O'Sullivan:** I wish to provide some information on the savings stamps service

and how it is traditionally realised. At present, this service is realised on a paper-based medium. In other words, if a member goes to his or her credit union and hands over €2, he or she will get a paper savings stamp in return. We have been made aware of a number of issues in this regard, including loss and theft of savings stamps, a risk in the context of fraud and money laundering and the lack of an audit trail. At present, there is no information which links a member to any stamp which he or she purchases.

In regard to the savings service as a whole, we as a company have taken it from a paper-based medium to a digital medium. Instead of members getting a paper-based stamp, they get a tamper-proof card and information on it is linked to the database. From a loss or theft point of view, the card cannot be copied. For example, if I were to lose my card, a photograph is linked to it if it were to be handed into the credit union and there is also PIN protection on it. Therefore, those provisions solve those two issues.

In terms of fraud and money laundering, some paper-based stamps are issued from a machine in the banking hall, which removes staff from being involved in that service and there are no controls in place in that respect. If I were to purchase such stamps in the credit union, there would be a lack of an audit trail. I do not have a member number in that respect and there is not a name attached to those stamps, therefore, the system is open to money laundering in that respect. There is no audit trail in place and no reports available on stamps. That ties into some of the recommendations that were made in the draft scheme of the credit union Bill.

Some issues are highlighted on risk management systems and systems of control, operational risk and internal audit. Our minimum proposal is a suggested amendment to the statutory instruments under which savings stamps are outlined. The condition to be fulfilled currently is that the credit union must account on its books for all sorts of transactions and we would make an additional minimum amendment that an audit trail should also be provided in respect of stamps either on a paper-based medium or a digital medium.

**Chairman:** It is very straightforward-----

**Mr. Eoin O'Sullivan:** It is.

**Chairman:** -----if it is accepted and there is not a counter argument to what Mr. O'Sullivan has said, or I am certainly not aware of one. What he has described, on the face of it, sounds to be persuasive.

**Deputy Michael McGrath:** How widespread is the use of these savings stamps?

**Mr. Eoin O'Sullivan:** From a company point of view, we deal with 35 credit unions on a digital based medium and I am sure there are many more, perhaps 20, which use paper-based stamps, but I would not have the full figures in front of me. I can confirm that we deal with 35 credit unions.

**Deputy Michael McGrath:** Is Mr. O'Sullivan saying that the only evidence of such a transaction is the physical possession of the stamp, that there is no record of it?

**Mr. Eoin O'Sullivan:** On the paper-based medium, the only record is the number of stamps one has sold. If one is providing the service, one would buy stamps in bulk and one could go back and check the figures and would know them from that perspective. One would have an account set up for all the stamps that are purchased and they would be put into that account. However, there is no audit trail. If a person were to buy stamps in the credit union today, I

would not have no information linking that person to the stamps he or she had purchased. From a reporting and operational risk point of view, controls and an audit trail need to be put in place in order that the credit union would know that a person has purchased stamps.

**Deputy Michael McGrath:** What is the position if a member loses the stamps purchased?

**Mr. Eoin O'Sullivan:** The member would be out that amount of money.

**Deputy Michael McGrath:** It is just like losing cash. That is a problem. Therefore, that needs to be accounted for. If the conditions to be fulfilled were amended and an audit trail, a minimum, be it on a digital medium or a paper-based medium, were put in place, it would solve those problems.

**Chairman:** Are there any other questions on this issue? If any occur to colleagues, they can return to it before we conclude and if the witnesses want to add anything further during the general discussion we will have later, they can do so.

I thank Mr. Gunning for his attendance. I mentioned that he is a member of the dormant accounts board but emphasise that he is not here on behalf of that board. Is it not correct that the issue he has raised relates to the work and remit of the dormant accounts board in terms of having the credit unions listed as bodies that would also be covered by it? Mr. Gunning might explain the position.

**Mr. Des Gunning:** It is very nearly correct and I thank the Chairman for the opportunity to clarify the position. What I propose relates to the dormant accounts fund which has a life independent of the board. The board will cease to exist on the decision of the Minister sometime in the next few months.

**Chairman:** I understand legislation has gone through the Houses-----

**Mr. Des Gunning:** It has not gone though on the material end yet but it will go through. I want to be clear that this is in regard to the dormant accounts fund. What I propose is that the credit unions be brought under the dormant accounts fund, that dormant balances within credit unions, which are financial institutions, would be transferable to the fund in exactly the same way as dormant account balances in any other financial institution. In my submission to the committee, I quoted from the Dáil Official Report of 20 June 2001 what the Minister for Finance of the day. He stated:

The Government ... agreed that officials from [the] ... Department [of Finance] should continue to hold talks with the Irish League of Credit Unions with a view to reaching agreement on a formal basis, for the treatment of dormant accounts in credit unions. Such discussions are ongoing. [It will be my] ... hope ... we can provide for inclusion of dormant ... accounts at a later date, possibly by way of extension of the current scheme by ministerial regulation.

It is clear it was the intention that credit unions be treated in the same way as other financial institutions for dormant accounts purposes from the inception of the dormant accounts legislation. I ask that the Legislature move on this and a way to do so relates to a provision of the 1977 Credit Union Act under section 44 which has never been used.

**Chairman:** To row back a bit on that, I ask Mr. Gunning to tell us why that would be a good idea and he should not assume colleagues have too high a level of knowledge.

**Mr. Des Gunning:** It is good practice for any financial institution not to have within its accounts money that does not belong there-----

**Chairman:** This would be a means to do that.

**Mr. Des Gunning:** -----and this would be a means to deal with that. I have moved around during my life and if I left a tenner in a credit union in west Cork in 1977, that money does not belong to the credit union, it would probably be in the general reserve but it would not belong there. It would belong properly in the dormant accounts fund because that legislation is now in place. As a matter of good housekeeping, any credit union treasurer or supervisor would want the dormant accounts fund to apply.

**Chairman:** Historically, why has that not occurred? Why has it not been applied?

**Mr. Des Gunning:** I would prefer not to get drawn into that. It may have to do with the politics of the time and controversy between the credit union movement and the Department about DIRT, tax expenditures and issues of that nature that were controversial in the early 2000s. I do not know the reason but I am aware that it was intended and that a staying hand was put on it for rather a long time.

**Chairman:** I interrupted Mr. Gunning when he was about to tell us about the instrument through which this could be done.

**Mr. Des Gunning:** The instrument that could be used is section 44 of the Credit Union Act 1997. That section allows any credit union, at its own discretion, to establish a special fund and such a special fund may be applied to a number of prescribed purposes, including community development. To give some background information on this, I lived in London in the early 1980s and I joined a credit union the week I moved back to Ireland. I have been a credit union member ever since, for almost 30 years. I have been a teller, a volunteer supervisor and stood for election to boards. Therefore, I am an active credit union member. I wrote a paper on the matter in 1993. I was searching at the time for a local investment clause in credit union legislation and I was very happy in 1997 when the Credit Union Act included a local investment clause but it is an enabling clause and not a mandatory clause. I was very disappointed in the 15 years since then that the clause has not been used. One credit union, namely Tullamore Credit Union, has created a fund and I was involved in that process in 1999 but, to the best of my knowledge, it has not used it. I am looking to the committee and the Oireachtas to find a way to encourage credit unions to apply the section 44 process to create special funds.

The Oireachtas has an instrument available to it in the matter of tax expenditures. All credit unions gain from tax expenditures, even credit unions that serve relatively small numbers of relatively affluent people. By virtue of being organised as a credit union, they gain from tax expenditures. The gain that credit unions get from tax expenditures has not been quantified on either side. The lack of information on that is regrettable and it would be better if it were quantified. There should be a trade off between the State and the credit union movement or the application of tax expenditures to continue in return for something on local investment.

**Chairman:** Excuse the naive character of my question but the legislation that is going through the Houses will bring under the Minister's remit the disbursement of funds. I am speaking here about the generality of dormant funds. Is there a role for the process in what Mr. Gunning has in mind or would this be separate to that? Would it be a separate track of dormant funds disbursement by the credit union movement or would the Minister, as successor to the

dormant accounts board, have a role in it?

**Mr. Des Gunning:** I will back-track slightly. I am happy that Mr. Michael Morley, the chairman of the board, has taken time to attend this afternoon. The dormant accounts board made two submissions on this matter, one to the Minister on the Dormant Accounts Act, and one to the Commission on Credit Unions. The dormant accounts board said that a credit union should quantify its dormant balances, report on them and then decide either to put them into a section 44 fund locally or remit them to the dormant accounts board. Personally, I support the dormant accounts board. I suggest to the committee that is what each credit union would be empowered and challenged to do. Credit unions have been enabled to put funds into a section 44 fund for the past 15 years but they have not done so. In the eight years after the section 44 provision was enacted, as Mr. Brendan Logue gave evidence to an Oireachtas committee in May 2010, credit unions got very much involved in investing in exotic financial instruments, perpetual bonds, instruments that yielded losses something exceeding 100%. It is a pity that happened in the eight years after the provision was made for a local investment clause and there was no local investment whatsoever. That must inform the approach taken in this regard. Where there are dormant balances I emphasise that they would be better applied to some local development use outside of the credit union itself.

I have a quote from Séamus P. MacEoin, whom I consider to be a sort of intellectual pillar around whom the credit union idea took shape in this country from 1951 to 1956. Before we had any credit unions he was sculpting the idea out of the notions of Alphonse Desjardins and Raiffeisen. One of Séamus P. MacEoin's final legacies to the movement was to drive the adoption by the Irish League of Credit Unions of a set of operating principles. To quote briefly:

The credit union vision of social justice extends to both the individual members and to the larger community in which they work and reside. The credit union ideal is to extend services to all who need and can use it. Every person is either a member or a potential member and appropriately part of the credit union sphere of interest and concern. Decisions should be taken with full regard to the interests of the broader community within which the credit union and its members reside.

That is an operating principle but it is very difficult to travel around this country and look at magnificent credit union premises and have it clear and manifest that the credit union within those doors is operating that particular principle as a priority. The opportunity is there and that is why I make this submission on the widening of the dormant accounts fund and a greater focus on creating special funds under section 44 at local level.

**Deputy Michael McGrath:** I thank Mr. Gunning. Could he remind us of the definition of a dormant account, in terms of the period for which an account must be inactive? Given his experience of the amount of dormant accounts that were in the banks and financial institutions, could he give an estimate of what might be the percentage of the deposit base that could be classified as dormant accounts? What was the typical percentage in the banks, for example? If credit unions set up a section 44 special fund, as opposed to transferring dormant accounts into the dormant accounts fund, what would they do with such a special fund and what would be the status of it and its intended purpose?

**Mr. Des Gunning:** The Dormant Accounts Act refers to a balance that has not had a customer-initiated transaction in 15 years. Internationally, that is at the conservative end of the definition. In the state of California it is three years but I am sure they have more repayments in California than they have in Ireland. I have not been able to estimate the quantum of dormant funds in Irish credit unions.

**Deputy Michael McGrath:** What was the level in the banks?

**Mr. Des Gunning:** There is no record, as there is no requirement to report. As far as I understand it from my informal inquiries of credit union board members, who are cautious and discreet people, a mid-sized credit union with about 35 years in business, dating from the 1950s on would expect to have between 2,000 and 10,000 dormant accounts. A lot is down to the personalities of boards, management and their turnover. It would vary quite a bit. Anyone I have asked agrees with me that if it is there it is in the general reserve, as likely as not, and it would be better if it were documented.

The third question Deputy McGrath asked me is to what purpose funds might be put. There are two parameters in that regard. One is the discretion of the credit union and the other is legislation. Even as it stands, a section 44 fund where established can be used for social, cultural or charitable purposes, including community development. The establishment of such a fund at present is entirely a matter for decision by a majority of the members.

To return to the evidence given by Ms Motherway, it is for the members to decide, but Mr. Logue, who is a former regulator, said in his testimony to the committee on regulatory affairs in March 2010 that the democratic system of credit unions has broken down. It is a dramatic statement but from my observations I tend to agree with him for the reason that we just heard about, namely, that if I have a large amount of money on deposit in a credit union I have a huge incentive to be on the board of the credit union but if I am getting on with my life and I have a loan out for a few grand that I might clear off or get re-financed, I am probably less likely to be highly motivated and focused on being on the board of the credit union. Based on analysis, one will see from Ms Motherway's evidence that there tends to be a greater than average proportion of people representing the group identified. That affects decision making, so when it comes to a decision to establish a section 44 fund, one is asking perhaps the more conservative and older cohort of the credit union to make the decision on behalf of the credit union, which is a challenge.

**Deputy Peter Mathews:** I thank the witnesses for their contributions. I did not understand the reference to tax expenditure. What is it? The definition of a dormant account is that there has been no customer-originated activity for 15 years. That means one could have an interest roll-up for 15 years because it would not require the customer to intervene. People hold prize bonds for 20 years and 25 years but they are by no means dormant. Balances on deposit at a credit union or even in an old-style mutual building society for 15 years are far from dormant.

I suspect that perhaps directors might not have large balances at all. People go onto boards of directors of various types for different reasons than for protecting the investment they might have. In fact, often people are tempted onto boards because they are controlling other people's money, OPM, as I call it. That is the biggest temptation of all. That is why things go wrong.

**Chairman:** I invite Mr. Gunning to make a note of those points Deputy Mathews has just made. He will remind Mr. Gunning of them if he forgets. I will take questions from other members before Mr. Gunning replies.

**Deputy Heather Humphreys:** I thank the witnesses for the presentation. One point we have failed to take into account is the fact that credit union membership is part of a common bond and they are very restricted in their membership. I do not think the rules relating to dormant accounts apply in the same way as they do to banks because credit unions are based in the community. There is a social conscience behind the credit union movement and credit unions

make great contributions. One only has to read their annual general meeting booklets to see that they contribute to their community every year. The legislation is probably sufficient. I do not believe it is necessary to change it but we must be mindful of the common bond within which credit unions work. That is relevant to this discussion.

**Deputy Paschal Donohoe:** I now have a sense of panic because the first two of my three questions were answered by Deputy McGrath and my third question was put by Deputy Mathews.

**Chairman:** It happens.

**Deputy Paschal Donohoe:** I wish I had indicated earlier but I am not a member of the committee and the Chairman may not have allowed me speak.

**Chairman:** Members of this committee are well versed in asking questions that have been asked already but in a slightly different way.

**Deputy Paschal Donohoe:** In that case I will innovate quickly and ask Mr. Gunning two different questions.

**Deputy Peter Mathews:** The Deputy can ask it in Irish.

**Deputy Paschal Donohoe:** First, what impact does he believe the implementation of a proposal like this one would have on the operation of the credit union movement? Will it be neutral, beneficial or negative from the point of view of the credit union movement? My second question follows up on a point made by Deputy Humphreys. Given the different nature of the credit union movement from, say, the banking system, will Mr. Gunning elaborate on the reason he believes a measure like this one would be applicable to it and the benefit it would bring to the dormant accounts structure?

**Mr. Des Gunning:** Prize bonds are not covered by the dormant accounts legislation. A prize bond is never deemed dormant in law. At one time the board examined whether there were any dormant prize bonds and we were assured there is none, therefore, the question of age does not arise with prize bonds.

Regarding the advice on the 15 years, I defer to my colleagues in the Irish Banking Federation, IBF, who have been represented on the dormant accounts board. One of the advantages of having a board was that it allowed the Irish Banking Federation to bring their expertise to it. The IBF is comfortable with the way the rules about no customer-initiated transaction work in the Irish banks. There has never been any controversy about it, therefore, I am comfortable with whatever regime is in place because the experts who sat with me on the dormant accounts board, whose judgment I trust, have said there is no difficulty with it. I am sorry but may have missed a question.

**Chairman:** Deputy Heather Humphreys was expressing a general view in respect of this and felt that there was already a contribution-----

**Mr. Des Gunning:** Some credit unions are extremely large. Common bonds are not what they used to be and the recommendations of the commission and the view of the registrar who spoke at a meeting in Kilkenny on 4 September is that there will be amalgamations. Common bonds will grow into fields of membership and that intimate personal touch will not be a feature of credit union life in the way it was previously. I do not contradict anything the Deputy said

about the merit of credit unions and the standards that are brought to their operations. I support everything in that regard.

**Deputy Heather Humphreys:** In terms of an explanation of the tax expenditure-----

**Mr. Des Gunning:** In 1998 and again in 2011 the Department of Finance made statements on its website to the effect that tax expenditures in favour of credit unions should be continued. That is the Department's declared position.

**Deputy Heather Humphreys:** What are they?

**Mr. Des Gunning:** I have not researched them for this meeting. One I can bring to mind is that in 2003-----

*(Interruptions).*

**Mr. Des Gunning:** It is a pity they have not been documented. I am not the right person to do it. I do not have the skills but in 2003 there was a change in the Finance Act that brought credit union deposit funds into line with funds deposited by the Courts Service, namely, courts funds. Credit union funds were lined up with that type of fund for investment purposes in 2003, and that resulted in a net loss to the State because otherwise those products would have been subject to an exit tax at 23% and that exit tax was withdrawn. That is a tax expenditure because the Exchequer is at the loss of that measure being in place, and credit unions are better able to aggregate capital as a consequence of it. I am fairly confident there are others but I apologise that I am unable to identify them and I regret that they are not identified and documented to allow me pass around a schedule. That might be another day's work.

**Chairman:** A job for somebody, although I do not know for whom.

**Mr. Des Gunning:** Not for this citizen.

**Chairman:** Deputy Donohoe asked a question.

**Mr. Des Gunning:** The question of impact is interesting because it is in the interest of every credit union to go into its AGM in the period from October to December when AGMs are held and create for itself a section 44 fund and to have that fund available on the balance sheet of the credit union until such time as an appropriate demand arises on it, which could be for some piece of infrastructure for which there is matching funds available from the local authority, the European Union or wherever where matching funds would be a significant contribution in a time when matching funds are more difficult to get than they were 20 years ago. A material example that occurs to me is that I live in a city area and we do not have any market facilities in the area where I live. There is no public open market and to have one one would need a hard stand, water risers for market traders to have access to water, and power points. If the credit unions were on board with a section 44 fund under the community development heading, with local authority backing one could develop designated stand space, hard stand it and, with some cash from a credit union section 44 fund, develop a market stand which would be a commercial outlet for traders and also a civic space and a place of recourse. That is an example of how a section 44 fund could be turned into something material. The expenditure side would be immaterial. It is the other end of the spectrum from the idea of shipping a cartload of money to an international finance fund management firm in Frankfurt or wherever. Section 44 money is to spend in the locality on items that people can touch, smell or hear.



The impact of that is to bring more people into a friendly association with the credit union because while I celebrate all the wonderful credit union buildings throughout the country, and I saw them all going up, they are a little intimidating at the same time. Most credit unions are supportive of organisations like the Society of St. Vincent de Paul, and that is catching on the tail of things, so to speak, but a fund that is developmental and oriented towards the infrastructure will bring more people into a friendly association with a credit union and help address the sort of generational issue touched upon in an earlier submission.

**Chairman:** I thank Mr. Gunning. I welcome Ms Byrne from the UCC centre for co-operative studies. We have her submission in which a number of issues are identified. I believe we got additional documentation from Ms Byrne-----

**Ms Noreen Byrne:** You did.

**Chairman:** -----which was very helpful. We will go through each of the issues on which members may have questions. The first has to do with lending, and Ms Byrne refers to head 6 of the scheme. She states that the requirement that a loan ought to be made for provident or productive purposes should remain in the Act. What is the proposal in that respect? Is Ms Byrne saying it has been taken out and it should be left in?

**Ms Noreen Byrne:** The proposal is to remove provident and productive purposes and I am proposing that it should remain for a number of reasons. The provident and productive aspect has been the cornerstone of the credit union movement from the beginning. It is very much part of the identity and just as my colleague, Ted O'Sullivan, told me yesterday, it often appears in the mission statements of credit unions. Its removal would cause unnecessary confusion because it communicates to the credit union member and loan officers that the credit union might be a different entity.

The other point about "provident and productive purposes" is that it is useful language that everybody understands. Members, board members and loan officers understand it. It gives people a language for evaluating lending practice.

**Chairman:** What is the rationale for removing the provision?

**Ms Noreen Byrne:** I am not sure. It may be perceived to be old-fashioned. There would need to be clear rationale for its removal. Perhaps removal may open up business opportunities for the credit union.

**Chairman:** Many of the objections outlined to us suggest proposals are unduly restrictive on credit unions. This appears to be the opposite in that it opens up possibilities. I am not expressing a view but stating it appears a restriction is being removed. I may be wrong.

**Deputy Peter Mathews:** Are holiday loans provident or productive?

**Chairman:** We will stick with Ms Byrne, but I take the Deputy's point. Ms Byrne believes the provision is important and ethical and should be retained.

**Ms Noreen Byrne:** Yes. It creates an orientation towards the member and how the member is viewed. If one thinks according to the "provident and productive" principle, one must put oneself into the member's shoes. In this regard, Deputy Mathews asked whether a holiday loan, for €10,000, for example, is productive or otherwise. In the credit union, one would like to give such a loan but one must put oneself into the member's shoes and, as a consequence, one

might encourage him or her to go on a small holiday, for example. This often happens where the member is buying a new car, for example.

**Chairman:** That is interesting.

**Ms Noreen Byrne:** That changes the thinking in the credit union and changes one's orientation towards the member. That orientation should not be undermined because it is very important. There is no bank where one puts oneself in the customer's shoes although it is, of course, a question of selling a loan and getting it back.

**Chairman:** That is very clear. Head 20, subhead 7, pertains to the duration of service of a director. Is that correct?

**Ms Noreen Byrne:** Yes. This has been well discussed.

**Chairman:** It has been well ventilated. Ms Byrne is repeating the points and stating there is undue restriction.

**Ms Noreen Byrne:** There needs to be clear rationale behind the period of nine years. Why not 12 years? If it were 12 years, it might make a fundamental difference. I am not sure whether there is a clear rationale for the nine-year period.

**Chairman:** Ms Byrne quoted a commentator who said that, by encouraging premature exit, there could be a risk of strengthening the power of management, thereby not improving the lot of shareholders. Is that correct?

**Ms Noreen Byrne:** Yes, it is interesting. The late Professor Edward Cahill from UCC wrote a book on corporate failures. Issues he highlighted were managerial or CEO dominance and a weak board. Management may be more permanent than the board because the latter changes and has a higher turnover.

**Chairman:** That point was not made heretofore and it is interesting.

**Ms Noreen Byrne:** I refer to sitting on a board.

**Chairman:** Head 30 concerns viability. There was some discussion on how it is to be defined. Is that what Ms Byrne is touching on?

**Ms Noreen Byrne:** That is what I am saying also. It is very difficult to be prescriptive in the legislation on viability. An unclear definition of viability makes it very difficult to manage a credit union because one is never sure from day-to-day whether one is actually viable. One assumes oneself that one is viable according to one's own criterion but the Central Bank is setting the criteria. There is almost shifting sand underneath one.

**Chairman:** Is that an example of where stabilisation or support is needed or indicated?

**Ms Noreen Byrne:** I speak in the general sense also.

It is very hard to set out clear criteria for viability. However, one can be more prescriptive regarding transparency. It is a question of determining how a decision on non-viability is reached. Perhaps the legislation could be prescriptive on transparency.

**Chairman:** Ms Byrne touched on a number of aspects that ought to be considered in her submission, which is very helpful.

Head 47 pertains to restructuring and the submission of a restructuring plan. Could Ms Byrne explain her concern in that regard?

**Ms Noreen Byrne:** My key point is that, in the legislation, restructuring is defined quite narrowly. It only revolves around amalgamations, transfers of engagements and resolutions. The commission report is much broader and the definition therein includes not only amalgamations, etc., but also the idea of shared service networks, such as CUSOs. The legislation is supposed to be in line with the commission report but it is clearly not.

The remit of the credit union restructuring board will be based on the narrow definition of restructuring. This cuts off opportunities for credit unions. It is proposed that credit unions be incentivised. I am not sure how this will work in practice. Perhaps it would involve identifying an area and incentivising one credit union to merge with others, for example. This introduces a different dynamic in an area. It makes it very difficult for credit unions to enter a collaborative structure if they have a foot in a collaborative arrangement and another foot outside it. To some extent, this interferes with an organic process.

**Chairman:** There are three or four issues remaining. One concerns the definition of a special resolution. I refer to amendments to the 1997 Act. There is a two-step process envisaged for the passing of special resolution by a credit union.

**Ms Noreen Byrne:** Yes. Could I go one step back?

**Chairman:** Yes.

**Ms Noreen Byrne:** Transfers of engagements can proceed in two ways. There may be a special resolution-----

**Chairman:** Does this pertain to the restructuring issue?

**Ms Noreen Byrne:** Yes. The special resolution involves two meetings of the membership. One can also proceed by way of board resolution. In practice to date, board resolution has been used. This is allowed for in the Act in circumstances where it is expedient to merge two credit unions in a crisis. It is deemed expedient. It is interesting that almost all transfers of engagements to date have been by board resolution, without a membership vote.

My issue concerns the definition of “expedience”. The push has not been from the Central Bank but from the credit unions themselves. The Central Bank and the league have facilitated it. Does expedience pertain to an exception or convenience? If it is a matter of convenience, it becomes the norm rather than the exception. This may be useful in the shorter term because it is more efficient but, in the longer term, one is going down a slippery road. This would never happen in the agricultural co-operative sector. It is unusual that it is happening here.

The change suggested in respect of the special resolution is that, instead of having two meetings, there should be one. Instead of having an information session and a voting session, the two are to be combined. In the short term, this increases the efficiency of the whole process but it is not desirable in the longer term, especially if there is a provision included in the legislation. Having an information and voting session at the one meeting is not really appropriate. One is led to believe the sky is falling down and that one needs to vote immediately.

**Chairman:** It is almost likely to defeat the purpose of an information session, in the sense that people need an opportunity to reflect on what they hear.

**Ms Noreen Byrne:** Yes.

**Chairman:** Ms Byrne also has thoughts on the circumstances in which a credit union may be minded to provide additional services and how it would bring that about. I refer to the instruments or measures it would need to adopt to be able to provide additional services.

**Ms Noreen Byrne:** I am less worried about this one. When a credit union wishes to develop new products or services, it is cumbersome to be obliged to bring the proposals to an annual general meeting and all of that. However, a proposed major change of direction should be brought before the membership. When it is brought before the membership, one must think it through well and must justify it and in a sense, this also reduces the risk. While it increases the efficiency in the short term, it introduces risk for the long term.

**Chairman:** Ms Byrne raised two final issues regarding an appeals process and what she considers to be the somewhat curious absence of a definition of what is a member in the Act.

**Ms Noreen Byrne:** The question of the appeals process reverts to the issue of viability. When a decision is made that a credit union is non-viable, there should be a real appeals process but I am unsure whether this is set up in the draft scheme. That is my only comment on that issue. As for the definition of membership, the members are the owners of the credit union, as well as being the users of the service of the credit union. Consequently, it seems unusual there is no definition of what is a member in the Credit Union Act 1997. This appears somewhat odd because with the exception of the member, everyone else is defined and the member is defined elsewhere in other credit union legislation. Moreover, there is no indication in the draft scheme that this will change. It is a measure that could and should be introduced easily.

**Deputy Michael McGrath:** I welcome Ms Byrne and her colleague, Mr. Ted O'Sullivan. I thank them for a comprehensive submission and for the helpful supplementary information that was supplied. As Ms Byrne mentioned, the joint committee has gone into some detail on the term limits but I wish to tease out her views in this regard. She has suggested the limit should be 12 rather than nine years. Does she believe there should be any limit or is her point that in the event of there being a limit, it should be 12 years?

**Ms Noreen Byrne:** In the event that there is a limit, it should be 12 years. I would be happy enough with a 12-year limit.

**Deputy Michael McGrath:** In the supplementary documentation provided, Ms Byrne referred to the restructuring and consolidation that will take place in the sector. She points to the model of the Irish agricultural co-operative movement and cites the west Cork model as an example, whereby four independent co-operatives jointly own a central processing unit, namely, Carbery Milk Products. Is this the sort of model Ms Byrne envisages evolving in the restructuring? Does she envisage the evolution of clusters of credit unions operating along the lines of a co-operative model, whereby certain services would be centralised and a local presence would be maintained in each community under such a structure?

**Ms Noreen Byrne:** I do not envisage such an option emerging because the legislation does not allow for it. The draft scheme does not refer to it at all. It simply focuses on restructuring in respect of amalgamations and transfers. Consequently, it does not allow for it. The other point is the credit union restructuring board, the ReBo-----

**Chairman:** Does Ms Byrne not think it should?

**Ms Noreen Byrne:** I think it should include such a possibility of clustering. The centre held an interesting conference a week or so ago on credit union services organisations and some of the supplementary documentation we have attached is from the speakers who attended the event. Their conclusion in respect of the idea of mergers is that while they will work in the short to medium term, they do not work in the long term because one merely ends up merging entities, retaining the same model and moving assets around the place. Consequently, in ten years time or whatever, one will end up with the same kind of issue. Their view on the idea of credit union services organisations, CUSOs, is that it allows the credit union to keep local the important relational aspects, that is, the interface with the member. However, one can collaborate on and cluster together some back-office operations to cut down on one's costs or potentially to create another source of income or whatever. The interesting point about the west Cork model is the four co-operatives concerned, namely, Bandon, Drinagh, Barryroe and Lisavaird, are strong on the ground. It actually is a very efficient model in that Carbery deals with and concentrates on the global stuff, while the co-operatives such as Bandon and Barryroe focus on the local. In a way their entire orientation is towards the local, which means they get involved in interesting projects such as onion production or renewable energy. For example, Barryroe is involved in pig production. The model allows for this because such co-operatives are looking to the local, while Carbery deals with the global scenario. Moreover, representatives of the aforementioned co-operatives of course also sit on the Carbery board. The west Cork co-operatives have been highly successful in respect of milk prices and so on and have beaten many of the other co-operatives. Their structure facilitates this because they are so member-focused.

The phrase, "local presence", has been thrown around a lot over the past two years or so. However, what does "local presence" mean? It does not simply mean an office or whatever. There is a great difference between having an office and having a board at which all the decision-making is made. A student at the centre is conducting some research at present on a credit union that was merged. He is finding that while the credit union is able to provide some additional services, the members say it does not outweigh the loss of the relational aspect and so on because when the members now approach the credit union, the decision is made somewhere else, which makes a huge difference. Another feature of having a board in a credit union is there is someone who is walking down the street and picking up ideas locally. All that entrepreneurial and innovative stuff is gone and basically while one retains a local, flag-flying presence, in a sense it is an empty shell. I consider such a local presence to be a key competitive advantage of the credit union and it is only later, when one starts to erode it, that one will perceive what was lost, by which time it is too late as there is no going back.

**Deputy Michael McGrath:** This is even more of a factor at present, with bank branches closing nationwide.

**Chairman:** Each of the four submissions has been enormously informative. I compliment the witnesses on the clarity of their responses. The joint committee is moving through this material quickly and it is evident that some members, myself excepted, are quite expert while many of us have a lot less expertise. Consequently, this session has been extremely informative and definitely will inform the process in which the Minister and the Oireachtas are engaging to prepare this legislation and presumably its ultimate passage in whatever shape it will take on foot of the outcome of these deliberations. I thank the witnesses for their attendance and submissions, which I emphasise have been extremely helpful in the case of all four contributors.

I propose members take a five-minute comfort break. On a formal note, I seek the joint committee's agreement to do what I have been saying it will do all day, namely, to publish

forthwith all the submissions on the committee's website, including all the additional documentation, as well as the summary by the clerk to the committee, Mr. Lenihan, of these submissions, which also would be helpful. Is that agreed? Agreed.

*Sitting suspended at 3.29 p.m. and resumed at 3.39 p.m.*

**Chairman:** We will resume our consultation of the draft scheme of the credit union Bill 2012 with credit unions representative bodies. I welcome Mr. Joe Mulvey from the National Supervisors Forum, Mr. Kevin Johnson who is chief executive officer of the Credit Union Development Association, Ms Selina Gilleece from the Credit Union Managers Association and Mr. Pádraig Ó Cearbhaill who is chairman of the Credit Union Advisory Committee. We will move swiftly to engagement of members with witnesses on the basis of their submissions to the joint committee, for which I thank them. I can assure the witnesses that members have seen the submissions and are aware of their contents.

I remind members and witnesses that this meeting is being broadcast by UPC on its channel 801 and that all mobile phones should be switched off for the duration of the meeting as they cause interference with that broadcast, making it difficult for people watching to hear what is being said.

I wish to advise the witnesses that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by it to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a person, persons or an entity by name or in such a way as to make him, her or it identifiable. Members similarly are advised and reminded of the long-standing ruling of the Chair to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

The joint committee will hear first from Mr. Joe Mulvey of the National Supervisors Forum on the four main categories of the draft scheme of concern to it as set out in the forum's submission. The first issue of concern is head 17, prudential requirements and the term "oversight committee". Am I correct that the forum believes the oversight committee should be called the "oversight board" to signify its particular importance?

**Mr. Joe Mulvey:** I thank the Chairman and members for the opportunity to appear before them today. The forum has some reservations about the name. While the legislation in this area in the Six Counties retains the title "supervisors", the trend here is to use the term "board oversight committee". The word "oversight" causes us some concern in that it could be understood to mean we will have an oversight function, or not, as the case may be. In every other jurisdiction in which credit unions operate the term "supervisory committee" and its role is clearly defined. No one has ever sought to change that title or role. Our proposal is in some way conciliatory to the desires of the people who drafted this Bill. While we are were willing to meet them half way we would wish to retain the identity of being independent of the board and of our being not just another committee within the board but a supervisory committee of the boards and their activities around credit unions countrywide. That was the reason for our original suggestion. Our preferred choice would be to retain the title of supervisory committees within the credit union structure. However, failing this we would prefer to be renamed "over-

sight board”, which ensures our autonomy and identifies our independence and the role which we play within the credit union structure.

**Chairman:** On subhead 6 of head 17, internal audit function, it is proposed in the draft scheme that the internal audit function would report the results of its evaluations and recommendations to the audit committee, where one exists. The forum is proposing that the internal audit function should in addition also report to the oversight board.

**Mr. Joe Mulvey:** Yes. This, of all the issues highlighted in our submission, is the one of most concern. We must rid ourselves of the idea that the board of a credit union would appoint an internal audit function - it may be an internal or external appointment - which would carry out the internal audit. This would simply be a case of the piper calling the tune because there would be no independence of stand back in terms of the operation of the credit union. In addition, where an internal audit function identified any issues of concern to the credit union these could be swept under the carpet. We have had evidence of internal audits within our banking structure not being taken seriously. We welcome the introduction of the internal audit function. It is good housekeeping in any commercial organisation to have an internal audit function. However, we would argue that when making its findings it should report to the proposed supervisory committee-board oversight committee. We believe it is important that the committee be the third point on the triangle, thus ensuring any findings or recommendations are acted upon quickly.

A time limit should also be provided for to ensure that when problems are identified, the supervisory committee brings them to the attention of the board, which should act upon them within one month, thus ensuring anything that is untoward or in need of repair or action is not put on the long finger but acted upon quickly. The essence of the credit union movement is to not let problems fester and get out of control but to maintain a solid hold on them. This would be the role of the supervisory committee following report of the internal audit function to it. It is all about governance, compliance, good business and keeping one’s house in order. The size of the credit union does not matter. It is important there is someone in place to ensure that where inadequacies are identified they are addressed and within a specified timeframe.

**Chairman:** Head 18 deals with general requirements in respect of governance. In this regard, the forum is concerned about remuneration policies. What is provided for in subhead 1 is that remuneration practices and policies must be consistent with and promote sound and effective risk management. Am I correct that the forum believes there is a case to be made for elaboration of this provision?

**Mr. Joe Mulvey:** We would welcome continued promotion of volunteerism and believe that remuneration should not come into effect. There have been soundings that some form of remuneration to people within the credit union movement will come into effect down the line. It is part of the ethos of the credit union that individuals are volunteers. As the joint committee has heard from previous witnesses volunteerism needs to be promoted. Providing for remuneration of individuals risks spoiling what is already good and efficient. That was the point we were making.

**Chairman:** Does it happen at all?

**Mr. Joe Mulvey:** Currently, the treasurer of the credit union receives remuneration. However, that is dependent on the number of staff in receipt of remuneration. We would not like to see any changes made in this area. What is currently provided for works.

**Chairman:** There is a proposal to remove the office of treasurer.

**Mr. Joe Mulvey:** Yes.

**Chairman:** What happens if that occurs?

**Mr. Joe Mulvey:** Therein could be the problem. That could result in there being dominant individuals on the boards of credit unions. We have already had some dominant people on the boards. This proposal paves the way for the chairman and manager of a credit union to be the two dominant individuals. That is not necessarily a bad thing but they would be the ones steering the operation of the credit union.

**Chairman:** Am I correct that what the forum is advocating is an absolute prohibition on remuneration of anybody in the system?

**Mr. Joe Mulvey:** Yes, except in respect of legitimate expenses.

**Chairman:** Yes out-of-pocket vouchable expenses.

**Mr. Joe Mulvey:** Currently the supervisory committee can engage experts to look into aspects of the credit union which it believes needs to be looked at from a governance point of view. Heretofore the legislation would have stated the credit union shall meet all the expenses reasonably incurred by the supervisory committee in the carrying out of its duties. In the proposed legislation, this is not as clear or as absolute.

**Chairman:** Has the National Supervisors Forum a recommendation regarding the procedure for the removal of a director or a board?

**Mr. Joe Mulvey:** Not at this time.

**Chairman:** Is the National Supervisors Forum just noting this?

**Mr. Joe Mulvey:** Yes.

**Chairman:** Regarding head 22, the National Supervisors Forum proposes there should be an additional subhead such that the board could facilitate the oversight board to have continued access to all books, documents and reports. It is also proposed that the board of directors must within one month respond in writing to the oversight committee on all matters raised at quarterly meetings with the board. What is the thinking behind this?

**Mr. Joe Mulvey:** We feel there is not enough meat on the bones of the draft Bill regarding access to documents for the supervisory committee. Heretofore in the 1997 Act, the supervisory committee was given access to all documents and could attend all meetings. That is not specifically clear in the new draft Bill.

**Chairman:** In head 25, the National Supervisors Forum has proposed an additional provision that to facilitate the work of the oversight board, it would be provided with all requested assistance to enable it to carry out its functions. Can Mr. Mulvey explain this?

**Mr. Joe Mulvey:** Again this comes back to putting meat on the bones of the new draft Bill.

**Chairman:** These are the various responsibilities of the manager.

**Mr. Joe Mulvey:** Yes, this would reinforce the idea in the legislation that the board over-



sight committee would be provided with all necessary documentation and facilitated in doing its work, which is overseeing the operation of a credit union from a governance and compliance point of view. We are just trying to make sure we are dotting the i's and crossing the t's while the Bill is at this stage.

I must stress we welcome the general Bill but these are small issues that could be dealt with at this point. They are not going to rock the boat but safeguard, heretofore, procedures that worked for the credit unions, their supervisory committees and their members. The supervisory committee is there as the watchdog for the members and is the channel through which any irregularities or difficulties can be brought to the attention of the Central Bank. With the way the Bill is drafted, there is a potential to erode that role to a certain degree. We are trying to copperfasten our role in the credit union movement.

**Chairman:** Head 27 deals with the nomination committee. Is the National Supervisors Forum proposing a separate nomination committee?

**Mr. Joe Mulvey:** Yes, we would like to see the supervisory-oversight committee take care of its own nomination procedure when it comes to vacancies that occur on the committee. Otherwise, it could be open to manipulation by members of the board. We have evidence from some credit unions that they would be manipulated by their boards to nominate certain individuals to the supervisory committee so as to afford the board an easy ride. To maintain our integrity and independence, the supervisory committee should be tasked with the job of nominating suitably qualified persons.

**Chairman:** That means the oversight board would establish a nomination board to deal with vacancies for the oversight board.

**Mr. Joe Mulvey:** Yes

**Chairman:** That means it would generate replacements.

**Mr. Joe Mulvey:** The process is there and works pretty well. Our concern is who oversees it. It would be up to the oversight board to headhunt suitable replacements to go on to the oversight board.

**Chairman:** Are there any risks, even remote, of manipulation or self-perpetuation?

**Mr. Joe Mulvey:** The beauty of it would be that there would be no contamination between the two boards in so far as they could maintain their independence. Flawed as it may be, the oversight board would be independent and could not carry on a legacy from the board of directors.

Germany has a tried and tested system of oversight committees that works. Many companies there have a board of directors but also have a supervisory board to ensure the board's work does not go untoward. This two-tier senate board is used in many companies there and they have found it works quite well. I know we are subject to much German influence in finance. We examined this system and noted it works. It is also used in Canada. The supervisory board does not get involved in the business of the board but ensures it is carried out.

**Chairman:** Head 29 concerns the titles of the members of the oversight board. If the committee is to be retitled as proposed in the legislation, the National Supervisors Forum wants the members of the board to retain the title of supervisor.

**Mr. Joe Mulvey:** We would like them to retain the title of supervisor. This is purely for identification purpose and clarification of the role. We are there to supervise the whole operation of a credit union from a compliance, governance and best-practice point of view.

**Chairman:** Are there any questions for other members?

**Senator Thomas Byrne:** Yes, I found this submission interesting and persuasive. While at first glance one would question some of the suggestions to change the titles proposed, when one listens about it in-depth one can see the reasoning behind it.

**Mr. Joe Mulvey:** We are doing this to get a best-practice point of view. It is all about governance and making a credit union operate as efficiently and effectively as possible.

**Chairman:** That is appreciated.

Mr. Kevin Johnson of the Credit Union Development Association, CUDA, made a submission to the committee. Again it concentrated to some considerable extent on this broad question of governance. It is an area that has preoccupied most of the delegations that have presented to the committee. We have had much discussion on head 20 concerning term limits. What is Mr. Johnson's view on the nine-out-of-15 rule proposed in the draft Bill?

**Mr. Kevin Johnson:** First, I thank the Chairman and the committee for the invitation to attend today's meeting.

For those who may not be familiar with us, CUDA is a legally incorporated representative body. We currently represent 12 credit unions in the Republic of Ireland. Those 12 credit unions are owned by and serve approximately 250,000 members and they would represent a little over 10% of the assets of the credit union sector.

We have consistently campaigned for the reform of the legislative and regulatory framework for the credit union sector. We were active participants in the Commission on Credit Unions and we continue to strongly endorse its findings and recommendations. We very much welcome this draft general scheme of the Bill as it reflects the commission's findings and recommendations.

Five months have passed since the commission published its recommendations and we have had an opportunity to move into an implementation phase where we have started to do work on preparing for all of this change. As has been acknowledged in the past day and a half, it is a significant amount of change and a number of items have surfaced. As the Chairman mentioned, the nine years in 15-----

**Chairman:** I stressed that one. I will go through the others.

**Mr. Kevin Johnson:** There are a few others.

**Chairman:** I have now found Mr. Johnson's submission and will be able to take him through the issues he identified. I have read it also but I could not find it momentarily. Would Mr. Johnson deal with the nine over 15 first?

**Mr. Kevin Johnson:** It is in the context of new thinking about the implementation phase. Our member credit unions very much look forward to embracing these challenges, stepping up to the plate and embracing the voluntary approach to the restructuring. During a period of change, and particularly around consolidation and mergers, we do not want a situation where a

board is totally focused on the merger and then taking its eye off the ball. It probably ties in a little with the next item, which is around the numbers. We merely want to ensure that the board maintains the appropriate level of experience to be able to implement and cope with the change, and also ensure that members and their communities continue to be served.

We put forward a suggestion - it has come up on several occasions already at the committee - simply looking at the existing code in the Central Bank which leaves it for the nomination committee to put forward a case where a director has particular expertise that would be needed for continuity. In the spirit of it, the concept of the term is not a problem. It is really in the context of the implementation.

**Chairman:** Is it CUDA's view that the nine year rule is too restrictive and the system would be better served if the Central Bank's rules in respect of credit institutions generally were applied?

**Mr. Kevin Johnson:** Yes. As I stated, the code allows a case to be put forward and that would address the problem.

**Chairman:** Yesterday it was urged that the Minister should consider the possibility that, instead of there being any rules at all in statutory form, the credit unions should be invited to initiate their own rules. At least, I think that is what we were told yesterday afternoon. Does Mr. Johnson agree with that?

**Mr. Kevin Johnson:** No. That is not what we are saying.

**Chairman:** Is that the way to solve the problem?

**Mr. Kevin Johnson:** No. We would agree with the spirit and principle behind the idea of the fixed terms, which is to ensure a renewal. To be clear, we do not see this as an attempt to in any way undermine the critical role of volunteers in the credit union sector. It is volunteers, aided and supported by management and staff, who built the credit union sector in Ireland to its present strength. What we are trying to do is ensure that it continues to grow and to be strong. There are many roles for the volunteers within the sector. It does not necessarily have to be at a director level. One development we would like to see come out of this is more preparatory work where the nomination committee would work on succession plans and where other volunteers would be developed so that when members elect them as directors they are effective from the outset.

**Chairman:** To remind committee members, the Central Bank approach to this is that institutions shall review board membership at least once every three years, institutions shall formally review the membership of the board of any person who is a member for nine years or more and it shall document its rationale for any continuance and so advise the Central Bank in writing, the frequency with which board membership is renewed shall be documented, and the renewal frequency shall consider the balance of experience and independence sought. Is that the kind of regime Mr. Johnson would rather see implemented?

**Mr. Kevin Johnson:** Yes. If a board is fortunate to have some specific expertise that is necessary at that time, it would make sense to keep it.

**Chairman:** Is it Mr. Johnson's view that head 20(14) should be amended in order to provide for that?

**Mr. Kevin Johnson:** Yes.

**Chairman:** I do not want to restrict Mr. Johnson in any way. If there is any overarching comment that he wants to make about the philosophy lying behind any of this, he should feel free to make it and there will be an opportunity to do so. However, I do not want to let him go without ensuring that we touch on each one of the specifics CUDA has raised.

The next aspect is the resolution fund levy in the overall context of Part 4. What is this issue about two funds? Is this another concern about a proliferation of levies and a worry about their cost or is it some other CUDA concern?

**Mr. Kevin Johnson:** It is as the Chairman summarised. We would like to see the commission's recommendation implemented. The commission's recommendation was that there should be a thorough analytical assessment of the affordability of this to credit unions. There are a number of levies. There is the regulatory levy, there will be the resolution levy the Chairman mentioned and there is a restructuring body, ReBo, levy. Rather than looking at these individually, it is essential that we get a handle on the full cost of these to ensure the affordability of them in their totality. That is the point.

**Chairman:** I understand that.

On the tiered approach in respect of restructuring, we heard a number of bodies questioning the various bands. Is that also the point CUDA is raising?

**Mr. Kevin Johnson:** Yes. If the Chairman will forgive me, I would add a minor clarification. First, a table, on page 96 of the commission's report, sets out the three bands and it is clear that the table is illustrative. It was never set in stone that way. We simply acknowledge that the middle band, from €10 million to €100 million, is a broad band and another one can be put in there.

If I may expand a little on the idea of the tiered approach by way of clarification, our understanding and interpretation of it is that it is not trying to punish or restrict anybody, particularly smaller credit unions. What it is trying to do is ensure that there are appropriate levels of regulation. If one looks at it, the middle tier is very much the current position. The idea is that the smaller credit unions would have less onerous responsibility and regulation foisted upon them and other credit unions that wanted to grow and develop their services would have additional requirements to meet.

Another minor point probably worth noting is that there is nothing prohibiting a credit union in a lower level which wants to provide more services for its members from applying for that higher level but it would have to be willing and able to meet the higher levels of regulation. It is merely to clarify the logic and thinking, as we would interpret it, behind those tiers.

**Chairman:** Mr. Johnson's submission notes that he has already indicated to the Department in regard to part 5 of the scheme that a stand-alone single point of reference should be developed for credit unions and that it refers to a sector impact analysis. I ask him to elaborate briefly on what he has in mind.

**Mr. Kevin Johnson:** There appears to be a degree of confusion. This is a draft general scheme of a credit union Bill intended to be passed as the Credit Union Act 2012. As the 1997 Act will continue to be in place, we will have two Acts alongside a raft of other legislation governing credit unions. We ask that time be invested in helping the credit union sector by

consolidating legislation affecting credit unions into a credit union Act.

**Chairman:** Would it ultimately be possible to extract all of the legislative provisions that have a bearing on credit unions and include them in a single Bill? Is it not inevitable that some of the regulatory framework applying to the credit union movement cannot be extracted?

**Mr. Kevin Johnson:** I agree that it would be a daunting task to extract every provision, but a good place to start would be to consolidate the two credit union Acts into one. It would help to dispel much of the confusion. People are examining certain amendments and thinking matters have not changed because some of the measures contained in the 1997 Act will continue to be valid.

**Chairman:** Would Mr. Johnson like to add anything further by way of general comment?

**Mr. Kevin Johnson:** We would like to address issues pertaining to the implementation of the proposed new regime. It will be a massive ask for credit unions and serious thought will have to be given to the question of how it is to be implemented and regulated and the time-frames within which it will be developed. We would like the Central Bank to set out transitional arrangements in order to help people to make plans. The committee got a good flavour of this problem from other representatives. There is a degree of confusion in terms of costs and prioritising what has to happen. Transitional arrangements and timelines would be very helpful.

We also need to have certainty and guidance in order to facilitate implementation of these measures. It is fair to say everyone involved in the credit union sector would operate much better in an environment of certainty.

One other Bill we hold dear to our hearts is the Personal Insolvency Bill 2012. We have made submissions to the Department of Justice and Equality on it, but we ask this committee to consider endorsing a particular suggestion in regard to it.

**Chairman:** I do not want to stop Mr. Johnson from making his remarks, but that Bill which is very complex is being dealt with by a different committee. We are not actively engaged in deliberating on it, but that does not mean we are not interested.

**Mr. Kevin Johnson:** I appreciate that. Ours is a simple suggestion, but we believe it has merit. Where a protocol is in place that has been approved by the Central Bank, the legislation might simply acknowledge that it shall be the first process to be followed before entering into personal insolvency arrangements. We think that would have a significant and positive impact.

**Deputy Heather Humphreys:** I thank Mr. Johnson for his presentation. There has been extensive discussion of the role of treasurer. I ask Mr. Johnson for his views on the role of treasurer as proposed in the Bill. Does he believe the Bill will restrict a credit union board in designating a specific director to take responsibility for examining in detail the financial reports produced by management and staff? Has he considered whether a finance committee could be established to fill any vacuum that may be created by the lack of a mention of treasurers in the legislation? Are credit union service organisations regulated by the Central Bank?

**Mr. Kevin Johnson:** I will take the Deputy's questions in the order they were asked. Our understanding of the draft general scheme is that it does not prohibit a board from nominating one of its directors as treasurer. Our interpretation of the Bill is that it tries to distinguish between what we would describe as executive functions, that is, management and operations, and non-executive functions in terms of overall governance and strategic direction, which would be

the primary role of the member elected board. It is good to see that the role of manager is being properly recognised and specified, although that in itself comes with a number of challenges for the holders of that role. We have found from experience that stronger and well run credit unions exhibit a positive relationship between manager and treasurer. It is essential that every member of the board understands the fundamentals of the business. The preparation and presentation of accounts are functions for the manager, but there is nothing to prohibit a board from nominating a director to take a lead role in financial matters. The commission's report recommended that at least one member of the board should have financial experience. We have seen examples of finance committees working very well in a number of credit unions. We certainly welcome the proposed role for managers. These provisions simply formalise what already obtains in many credit unions, as well as placing a responsibility on managers to perform.

Credit unions can participate in credit union service organisations, CUSOs. The Credit Union Development Association is a CUSO because we are owned by a number of credit unions and have been established for a specific purpose. We exist to deliver value to our credit unions and, in fairness to them, they challenge us to deliver value at least once per year. There is nothing to stop a credit union from participating in a CUSO, but its nature depends on where it is regulated. CUSOs are regulated by different parts of the Central Bank according to their nature.

**Chairman:** As there are no further questions for Mr. Johnson, we will proceed to the Credit Union Managers Association. I welcome Ms Gilleece and I thank her for her submission. The chief point is that the association supports the final report of the commission. It makes the observation that the commission's report was agreed unanimously by those who attended and participated. It also takes the view - we have had some discussion on this - that the general scheme reflects and is faithful to the contents of the commission report. That is the essential message in the association's submission. However, I ask Ms Gilleece to elaborate.

**Ms Selina Gilleece:** I thank the committee members for giving us the opportunity of addressing them. The Credit Union Managers Association is the representative association for professional credit union managers in Ireland. Our membership comprises approximately 260 credit union managers. The function of the credit union manager is to work at the coalface with credit union members on a consistent daily basis and to liaise with our voluntary boards. As Mr. Kevin Johnson has already indicated there is a very strong and healthy relationship at the moment between credit union managers and credit union boards of directors which we would like to see continue.

The Credit Union Managers Association felt there was an absolute need for new legislation on credit unions. We are acutely aware of the difficulties credit unions are experiencing in the current economic environment. Much of the discussion in the past two days has centred on what I would consider to be minute matters considering the major difficulties for all financial institutions and, in particular, credit unions. Mr. Kevin Johnson alluded to the forthcoming personal insolvency legislation and its potential impact on credit unions.

Credit unions have sustained themselves throughout the economic storm the country has faced in recent years. It is a credit to the volunteers and the credit union members and staff that we have managed to do that. However, we are by no means perfect. It is commendable that credit unions are still lending and have not sustained the levels of losses of other financial institutions. However, it would be remiss to say we are perfect - we are not perfect and have our faults.

In September 2010 the Registrar of Credit Unions said that without proper systems of ac-

countability, risk management and control, credit unions would continue to struggle to meet the demands of an increasingly sophisticated member base in which they operate. In most cases, problems arising in credit unions can be traced back to poor governance. Historically where there are problems in credit unions in many cases those problems have been caused by poor governance. We are delighted the draft Bill reflects the commission report's recommendations on proper governance. As a credit union manager representing credit union managers, I can say that we believe all aspects of the draft Bill reflect the changed economic environment and increased levels of regulation, and that it is balanced and proportionate.

I have some concerns over some of the comments about the proposed tier structure for credit unions. Members should recognise that the tier 2 structure for the €10 million to €100 million-credit unions will not change how we are regulated at present. It is important to clarify that point because people might be under the impression that if the Bill is introduced all sorts of weird and wonderful things will happen in regard to regulation. We are being regulated and will continue to be regulated in regard to tier 2 credit unions. As Mr. Johnson has said, tier 1 credit unions with low risk levels might be regulated less severely which is positive. Obviously it is important from a prudential perspective that credit unions with an asset base in excess of €100 million should have stronger regulation. Credit union managers have no difficulty with that.

The other aspects of the Bill have really not been discussed in the past two days. They deal with matters such as the central rulebook. We welcome this because it provides clarity to us when we are doing our jobs. In order to find out what is wrong with the HSE it is necessary to ask the nurses and doctors, who are doing the job of dealing with patients on a daily basis. We are dealing with members who are under severe financial difficulty and we are acutely aware of these difficulties.

We welcome the fitness and probity regime. We believe it is appropriate for credit union volunteers, managers and staff to have the appropriate skills, capacity and competency to look after members' money. Protection of members' money is the most important thing.

I will deal with the role of the manager. We welcome that the function of credit union managers is being recognised as separate from that of the board. I wish to clarify any ambiguity as to why these changes are being promoted. The commission's report recognises that the manager and staff are responsible for the operation of the credit union on a daily basis. The board is responsible for the governance and future strategy of the credit union. It is important to have clarity on those two distinct roles and we welcome those changes.

**Deputy Kevin Humphreys:** I thank Ms Gilleece for her submission and presentation. I ask her to expand on the tiered approach. As Mr. Johnson stated earlier, it is only an indicative figure. Would Ms Gilleece see a benefit in widening the tiered approach to have another tier between the €10 million and €100 million?

I believe Ms Gilleece is in a unique position to comment on a matter dealt with earlier - the requirement for the auditor to step down after six years. I ask her to give her views on that. This morning we heard from representatives of MABS. What is Ms Gilleece's opinion on the development of a protocol with MABS? How can MABS work with Ms Gilleece's association in the case of credit union arrears? I also ask her to touch on the issue of social financing. I ask Ms Gilleece, as a manager, to give us a brief flavour of the flexi-loan mentioned earlier.

**Ms Selina Gilleece:** I will deal with the tiered approach first. The Deputy asked if we thought there should be an additional layer or tier included in the current proposed three-tier

structure. I have listened intently to some of the arguments on the proposed tiered system. Yesterday there was considerable debate on promoting the UK two-version model. It was certainly indicated this would be a preferable approach with regard to credit unions in Ireland. I want to ensure Deputies are very clear on the alternative proposal. Credit unions in the UK have 1% market penetration and £1.6 billion in assets as opposed to more than €13 billion in Ireland. The credit union is a relatively new phenomenon in the UK whereas the credit union movement has been in Ireland for 50 years. Version 1 credit unions in the UK are required to have a reserve level of only 3% and version 2 credit unions are required to have an 8% level, whereas in Ireland credit unions are required to have a minimum reserve base of 10%. It is inappropriate to tinker with what is being proposed. As was stated yesterday, credit unions in the UK want to emulate what is happening in Ireland.

As I outlined, tier 2 credit unions will continue to be regulated as they are at present and this is a very important point. Tier 1 credit unions, which are those with less than €10 million, will have slightly softer regulation because of the reduced risk. I use the word “softer” although it is probably not appropriate. Tier 3 credit unions, which have a wider range of investments, risks and activities, will require stronger regulation. This is appropriate because it is about saving and protecting our members’ money and we do not have any difficulty with this.

With regard to the terms of office for the auditor, credit union managers work with auditors more closely than anyone else in the credit union, with annual and interim audits being conducted. We have good and strong relationships with our auditors. The commission has stated it is appropriate for a credit union to seek to replace its auditor at the end of a six year term and this new auditor should not be from the same practice. We believe this is good governance. It reduces the risk of over-familiarity and, as Deputy Mathews stated this morning, it allows the accounts to be seen by a fresh pair of eyes. The suggestion of passing on information from one auditing company to another when an order is being replaced is very good and is best practice.

A question was asked about the development of a protocol with MABS. Credit unions recognise it is important to have such a protocol, but we have difficulties with the fact that at present credit unions working with members in arrears are categorised by MABS as less important than other creditors. Credit unions were responsible for founding MABS 20 years ago and many of us have been involved in the management committee of MABS during the past 20 years. It creates a difficulty for us when MABS approaches us that credit unions are towards the end of the list for repayments. We have seen instances where catalogue companies have had priority over us. We need to work with MABS on a protocol. Other financial institutions have signed up to a protocol with MABS. We see the impact of the mortgage arrears resolution process on credit unions. We have always worked with MABS and wish to continue to do so, but we need to be very careful because personal insolvency legislation is being introduced and we do not know what its impact will be on credit unions. We do not even know what shape it will take or how it will apply to our members. If we want to protect our members’ money we must be very careful in our relationship with MABS.

**Deputy Kevin Humphreys:** What about Dundrum Credit Union’s flexi-loan?

**Ms Selina Gilleece:** We welcome new initiatives. We do not feel the flexi-loan needs to be reflected in the new draft scheme. If a credit union desires to offer an additional service which falls outside of accepted services as defined by the regulator the credit union can apply to the Central Bank and indicate its capacity, competency and risk management with regard to offering the service. We have concerns about introducing credit cards. I mention credit cards because this morning it was described to some degree as a credit card.



**Chairman:** The Deputy drew an analogy rather than stating it was the same thing.

**Deputy Peter Mathews:** It is a credit line.

**Ms Selina Gilleece:** We have reservations. We believe going through the process of signing credit agreements and running Irish Credit Bureau checks on members is a prudent way of assessing capacity to repay. If credit is pre-approved and the member's circumstances change one or two months later, such as he or she becomes unemployed, it could cause difficulties further down the line.

**Deputy Dara Murphy:** I thank the witnesses for coming before the committee. It is significant that an organisation such as the Credit Union Managers Association, CUMA, which represents so many of those who deal face-to-face with customers are so supportive of the Bill as it is drafted. From both it and the Credit Union Development Association I get a sense that while there may be small areas of dispute we should get on with it and deal separately with other areas of reform to the credit union movement later. I get a sense of urgency from the witnesses.

Yesterday, reference was made to the process. Do the witnesses feel nine months was adequate? Do they feel enough time was given at the meetings to deal with all of what we are now discussing? It was stated the report was agreed unanimously by all participants. Was it reluctantly agreed unanimously?

Are the witnesses satisfied the deliberations of the commission were followed through in its report and in the draft legislation? Is there an unbroken chain of integrity between the three? Some groups have suggested that what we see in the draft legislation does not reflect the views expressed during the process. The witnesses seem to suggest they are happy with the process and its integrity and I ask them to restate this.

**Ms Selina Gilleece:** After I comment I will defer to Mr. Johnson. CUMA was represented on the commission by another manager, Mr. Tim Molan, who is not here today. CUMA was involved at every level, including making submissions. We were very happy with our representation on the commission. As someone who was outside the commission and who is very involved in credit unions, it was my clear understanding that when the commission finalised its report the decisions made were unanimous. We were told by everybody they were fully supportive of the commission's report. I would not like the impression to be given that, following the issuing of the commission's report and the draft scheme's publication, there is a groundswell within the credit union movement because of difficulties with the Bill. That is not the case. When submissions are made, it is important that they be balanced and reflect the comments of those who are supportive of the commission's report as well as those who are negative towards it. The Credit Union Managers Association, CUMA, has close contact with many of those involved in the movement and we believe that there is considerable support for the draft scheme and the report, but I will defer to Mr. Johnson, who was on the commission.

**Mr. Kevin Johnson:** The process lasted for nine months, although a great deal of preparatory work was done during the lead-in time. Our colleague, My. Billy Doyle, was our representative on the commission. I deputised for him and participated in many of the meetings.

Without getting into the specifics of the sessions, there was an open and fair exchange and opportunity for all stakeholders to make submissions, which our organisation did on every matter. Ample time was given for every submission brought to the table to be discussed. Our debates were robust at times, which was healthy.

An interim report was published at the end of last year. It gave people an opportunity to see the prudential matters being discussed. Almost a year has since passed. The following stage involved a public consultation process, one that was open to everybody to bring forward proposals. The commission took presentations from various other stakeholders and interested parties.

The draft scheme is somewhat unique, in that it follows an extensive piece of work. The process allowed all stakeholders to have a say. Parties that may not have been represented directly on the commission had an opportunity to present on the matter. I could not fault the process, which explains why we have been so supportive of it. The start and end of our submission to the committee state the overwhelming opinion of our members, namely, let us get on with it.

**Deputy Dara Murphy:** That is where I got the “Let us get on with it” line.

**Deputy Heather Humphreys:** I thank Ms Gilleece for her presentation. We have discussed the restrictions on board memberships and terms of office. What is her opinion in this regard and why did the commission impose some of these restrictions on persons eligible for board membership? How many boards will be affected and what will its impact be? What are the barriers to the formation of credit union service organisations? What are the barriers to the delivery of electronic fund transfer and online services? We have discussed the Dormant Accounts Fund. From the perspective of credit union management, what are Ms Gilleece’s views in that regard?

**Chairman:** As Ms Gilleece is diligently taking a note of the questions, I will take advantage and allow more questions instead of reverting to her directly, if she does not mind. Deputies Spring and Boyd Barrett are next.

**Deputy Arthur Spring:** Two of my colleagues picked up on the matter I wish to address, namely, the consultation process. Point 2.2 of the CUMA’s submission states that there is unanimity on the process, but many people seem to have problems with what has followed. Are the organisations working closely enough together?

**Chairman:** We can only take that issue so far. The point has been well made.

**Deputy Arthur Spring:** Yes. I will not delve into it further. I agree with Ms Gilleece, in that the UK is trying to emulate what has been achieved in Ireland. I have researched the issue via the economic forum.

There is a difference between rural and urban credit unions, yet I am not sure that it is reflected by the regulator or in the draft Bill. It should be taken into consideration. Deputy Heather Humphreys referred to it in her question on replacing directors. Although it might seem that a small nucleus of people are incessantly involved, they are the core. It is the same with clubs in rural areas. If the core people are removed, there may not be many replacements. The same applies in the case of auditors, in that a rural area might have only one or two people with the necessary skillset to look after credit unions. Has this matter been taken into account?

**Deputy Richard Boyd Barrett:** I thank the witnesses for their presentations. I apologise for missing the first of them, but I had another meeting to attend.

I am fresh to this matter. Hearing the different perspectives of those involved in the credit union movement has been illuminating. However, I am curious about how sharply the witnesses’ perspectives on the more controversial issues differ from those of the Irish League of Credit Unions, ILCU, as well as the small and medium-sized credit unions. Why is there a difference?

**Chairman:** I understand what the Deputy is driving at, but the only way to deal with it is to put a contention made by another body to these witnesses instead of asking them to comment on why they believe another organisation does not agree with them. Does the Deputy know what I mean?

**Deputy Richard Boyd Barrett:** Yes.

**Chairman:** The other organisations are not present. If a body that attended earlier said X and the witnesses appeared not to agree with it, the Deputy could put the matter to them. I want to be fair to everyone, including those who are not present.

**Deputy Richard Boyd Barrett:** I understand. I was about to move on to the specifics.

**Chairman:** Am I ahead of the Deputy? That would be unusual.

**Deputy Richard Boyd Barrett:** I was going to use it as a general lead into some of the more controversial issues.

The witnesses see the term limits as a positive aspect on the basis that they would promote renewal at board level. Some of our other contributors saw it as problematic because it lessened the democratic right of members to decide who they wanted. Is there a problem with renewal? The witnesses went on to state that many of the problems experienced by credit unions stem from their governance. Is there a connection between the two issues? Are the lack of renewal at board level and the lack of clarity between the board and people on the front line contributing to problems? Will Ms Gilleece elaborate on this matter?

Other contributors seemed to be very concerned about the role of treasurer, in that they viewed maintaining members' direct line into what is happening with a credit union's finances as being important. Ms Gilleece appears to be suggesting that it is better for the credit union if this is done by the front line professionals. Perhaps she will elaborate on that point and on her point that the problems which credit unions are having are as a result of poor governance. Is Ms Gilleece saying that, in so far as credit unions are in trouble, poor governance and not the impact of the current environment is the problem?

**Chairman:** I think Ms Gilleece was quoting the regulator who stated that most of the problems were by reason of poor governance.

**Deputy Richard Boyd Barrett:** Ms Gilleece appears to share that view.

**Ms Selina Gilleece:** May I respond?

**Chairman:** Has Deputy Boyd Barrett finished?

**Deputy Richard Boyd Barrett:** Perhaps Ms Gilleece would also elaborate on what difficulties she foresees for credit unions as a result of the introduction of the personal insolvency legislation.

**Chairman:** We cannot spend too much time on that issue as that legislation is a matter for another committee. I will allow a brief response to the Deputy's question. We cannot make that legislation the subject of debate here. As I understand it, the Select Committee on Justice, Defence and Equality recently completed Committee Stage of the Bill and it has been returned to the Dáil for Report Stage.

**Ms Selina Gilleece:** The issue of personal insolvency is important. The legislation on personal insolvency provides for debt relief certificates for people who are in severe financial difficulty. This will impact on credit unions. The legislation also provides for other facilities including agreements between debtors and creditors. I appreciate what the Chairman has said and as such will not go into detail now on the issue of debt arrangements. However, these will also impact on credit unions. We are currently trying to quantify that impact and are looking at innovative ways of preparing for it, in terms of setting aside reserves specifically to deal with the impact of personal insolvency when it hits. It was in that context I was referring to personal insolvency.

I will try to clarify the reason it appears we are poles apart from other organisations in regard to governance. The clarity of roles is a hugely important issue for the Credit Union Managers Association, CUMA. As I have already explained, the function of a credit union manager is to operate the credit union. The word “operate” is defined in the commission report. Our function on a day-to-day basis is dealing with members and staff and carrying out the policies of the board. The function of the board is governance. The treasurer of the credit union is defined under the Credit Union Act 1997 as managing director of the credit union. It is the treasurer’s responsibility under that Act to ensure preparation of the credit union’s accounts and so on and their presentation to the board. It is also the function of the treasurer to present those accounts to the members at an annual general meeting.

The impression was given earlier that the treasurer is elected by the members and is, therefore, as treasurer accountable to them. The treasurer is not elected by members - he or she is elected by the board of directors from within the board following an annual general meeting. It is important to clarify that matter. The treasurer is accountable to members through the board. Under this Bill, the manager is given specific functions, including the preparation of the accounts. In reality, the manager of a credit union prepares the accounts. That is what we are paid to do. The Bill is, therefore, reflecting the actual reality in credit unions. The Bill requires that the manager will present those accounts to the board of directors and that the board, or someone designated by it, can present the accounts to members. This is appropriate as it ensures a manager, who has a contract of employment with the board, who does not do his or her job or is not, for some reason, performing can be fired. The position of the treasurer is not so clearly defined because the members appoint the board. As such, members, if they wish to, would have to remove a member of the board. It is appropriate, if it is the case that the manager prepares the accounts for submission to the board on a monthly basis and has various other responsibilities in the credit union, that this, as opposed to something that is not happening, is what is defined.

**Chairman:** Perhaps Ms Gilleece would quickly dispose of her response to Deputy Boyd Barrett’s questions and move on to Deputy Humphreys’ questions.

**Ms Selina Gilleece:** Deputy Boyd Barrett also asked if credit unions are experiencing problems as a result of poor governance. While this may be a question for the Central Bank rather than me, that is the case. I quoted the regulator’s most recent comments on poor governance. This is repeated in previous statements by the Central Bank. It is an issue in credit unions. I cannot go into detail on the matter now. However, if the Deputy requires more information it might be worth his while asking the Central Bank the reasons it believes poor governance has caused problems in credit unions.

On Deputy Humphrey’s question - this also addresses Deputy Boyd Barrett’s concerns around terms of office - it is unfortunate that we appear to be poles apart from other organisations. However, we believe it is appropriate for a board member to step down after nine years,

which is a long time, but to continue if he or she so wishes as a member of the audit, credit, credit control or other committee. There are many committees within the credit unions and a huge amount of work to be done. We are suggesting not that a board member step down after nine years and leave the credit union but that he or she step down after that period, upskill and become involved in other areas within the credit union and, if he or she so chooses, to take up a position on the board again after six years. I do not understand why this proposal is at issue. The person will continue to volunteer and give his or her service. We are not in any way seeking to undermine the work of the volunteer. We are simply seeking to reorganise, to improve and upskill and ensure that the board and nominations committee canvass within their common bond to get new people involved in credit unions. It may not be popular to say this but many of the people currently on credit union boards have been there for 35 or 40 years. The proposal being put forward seeks to change this and to bring in new people and skills. We do not have any difficulty with that and cannot understand the reason anyone else would have a difficulty with it.

**Chairman:** Mr. Johnson wishes to add a postscript. Has Ms Gilleece completed her responses?

**Ms Selina Gilleece:** Perhaps I could make a brief comment on dormant accounts. A witness at the committee earlier spoke about changes to dormant accounts legislation. It is important to point out with regard to dormant accounts in credit unions that there may be a member with €10,000, €5,000 or €2,000 in a credit union share account, for example. The person may have no need for the money but it is in the account for a specific purpose that in the event of the person's death, the money saved will be automatically doubled, and the person may want to leave the money to children, a spouse, etc. If we start fiddling with that and requiring credit unions to take out money that is considered dormant, that insurance is gone. There are many credit union members who save because the additional insurance exists at no cost to them. It is a very important point about dormant accounts.

**Mr. Kevin Johnson:** I have three brief points. Deputy Humphreys mentioned electronic funds transfer, EFT. There are currently 68 credit unions providing either EFT or automated teller machine facilities. Deputy Boyd Barrett mentioned governance. We are interpreting and accepting the legislation as trying to attain a balance between the evident passion that exists for delivering value to members and their communities with ensuring the competence exists to steward the business. In other words, the business is the only source of income and capital. It is the only way to fund the delivery of benefits to individual members, families and communities. That is why it is so important to attain that balance. Although the processes are there, some of them have never been set out, so we welcome the great clarity this legislation will bring. As we indicated earlier, people will operate much better in an environment of certainty.

With regard to personal insolvency, the key message we try to emphasise is that the credit union model is very simple. Members put money into a union and other members borrow it. There is no third party of access to capital anywhere else. When a person gets a loan, the commitment is to the fellow members and the duty of the credit union is to get it back for those members.

**Deputy Richard Boyd Barrett:** It is not for bondholders.

**Mr. Kevin Johnson:** There is no one to be burned.

**Chairman:** A social bond.

**Mr. Kevin Johnson:** That is why it is important.

**Chairman:** I am anxious to move to Mr. Ó Cearbhaill, who has been sitting patiently for quite a while. He is our last witness in a long day.

**Deputy Peter Mathews:** Ms Gilleece mentioned the separation between the board and the manager of a credit union. Perhaps I am getting confused but is it correct that the treasurer is elected from the board, and the treasurer is *de facto* the managing director? Is there not a connection? It seems the board and the general manager are not separated.

**Ms Selina Gilleece:** I am not clear about the issue. Under the 1997 legislation, the board of directors is elected by the members. After the annual general meeting, the members of the board appoint the executive officers, including the chairman, secretary and treasurer. Under the 1997 Act, the treasurer is the managing director and has responsibility for accounts, etc. As I mentioned, that is not what happens on the ground, where the manager is responsible for producing the accounts and so on.

**Deputy Peter Mathews:** The manager is different from the treasurer.

**Ms Selina Gilleece:** Yes. The manager is paid to do a job under a contract of employment. The treasurer, although a managing director, is elected by the board, which is in turn elected by the members.

**Deputy Peter Mathews:** Is that a good arrangement in the experience of the witness?

**Ms Selina Gilleece:** With regard to what is being proposed, we have no issue with what is in the draft scheme, where the manager is recognised as the person responsible for doing the job that we do. The Bill is proposing that there is no treasurer and the board is responsible for governance.

**Deputy Peter Mathews:** The dormant accounts, as described in earlier sessions, relate to where there is no activity on behalf of the share member or account holder for 15 years. Once defined as such, it could be hoovered up under the legislation. Like the witness, I agree that these accounts are like an insurance or the same type of process of families having prize bonds. It is their money and just because a prize bond has not been looked at for 20 or 25 years does not mean the State can Hoover it up and indicate there is no liability. I agree with that. The ownership of such a so-called dormant account is not in question as it is like a share. We can imagine what would happen if the State hoovered up all the share certificates and told people they did not own them any more.

**Ms Selina Gilleece:** In credit union terms they are shares.

**Deputy Peter Mathews:** That should be expressly clarified.

**Chairman:** I am aware of the 15 year rule regarding dormant accounts. Is there any way of providing a “lock step” in the process? In other words, could there be a step taken just before a determination is made that an account is dormant and available for passing on? A person could put a brake on the process in this way.

**Ms Selina Gilleece:** There is a difficulty as there are procedures which credit unions go through with regard to dormant accounts. It is not that we just ignore the money and we go through a procedure of trying to contact members. It is certainly not our experience that there are vast amounts of money sitting in dormant accounts in credit unions. It is our experience that

some members put away a nest egg and wish to leave it there in the event of death.

**Deputy Kieran O'Donnell:** I have a question on financial statements, with the treasurer and manager reporting to the board. Will the witnesses give an example of who prepares the statements in a typical credit union? I presume they are all computerised. Are these management accounts? Are there accruals and prepayments or a set amount of reports? Will the witnesses indicate the procedure as it seems a bit abstract? I want to know about the nuts and bolts, as this is ultimately about finances. Will the witnesses go through a typical month for a manager interacting with the treasurer and going to the board?

**Chairman:** I would appreciate if it was not at too great a length.

**Ms Selina Gilleece:** I will provide a quick synopsis as I am very familiar with how it works. The current common practice in credit unions is that it is the responsibility of the manager to produce the set of accounts. That includes the trial balance, the nominal ledger, all the accruals, prepayments and so on. The manager is generally responsible for maintaining the investment portfolio and all those issues. The treasurer of the credit union oversees that process. The accounts are presented to the board and at the year end, the treasurer presents the accounts to the members.

**Deputy Kieran O'Donnell:** I am more interested in the monthly process.

**Ms Selina Gilleece:** With the monthly accounts, the treasurer would in most instances present the accounts, although the treasurer would not normally prepare the accounts.

**Deputy Kieran O'Donnell:** The manager would meet the treasurer.

**Ms Selina Gilleece:** Yes, or in many cases credit unions have a finance committee. That was mentioned earlier and it might be a good idea.

**Chairman:** I will not permit a detailed scrutiny of the mechanisms because it is unnecessary for the purposes of what we are doing. I am not saying it is not important or interesting.

**Deputy Kieran O'Donnell:** I believe, as an accountant, it is the kernel of the matter.

**Chairman:** It is, of course, vital in the operation of great credit unions.

**Deputy Kieran O'Donnell:** Absolutely.

**Chairman:** It is not vital for our purposes this afternoon. This is a pre-legislative scrutiny of the draft scheme of the credit union Bill 2012.

**Deputy Kieran O'Donnell:** I will not delay the meeting but it is very simple. We want regulation of the system. I want to know, in practical terms, how the operations involve the treasurer. This matter could probably be overcome by a finance committee. The treasurer could chair that committee. Ultimately, we cannot lose sight of the ethos by which credit unions operate. We must find a solution by thinking slightly outside the box.

**Chairman:** I will bring in Mr. Ó Cearbhaill, whom I thank for attending this afternoon and providing his detailed submission. The members have had the opportunity to consider that. I will briefly go through what I see as the key issues but it has been a long day, so if we miss anything, the witness should feel free to elaborate.

There is a welcome for the requirement for the Central Bank to consult the organisation

in making regulations under the scheme. Mr. Ó Cearbhaill goes on to detail certain scenarios where his organisation also wants to be consulted. The precise point is not clear to me.

**Mr. Pádraig Ó Cearbhaill:** In the Bill, as proposed, if regulations are to be changed, the Credit Union Advisory Committee, CUAC must be consulted. Other regulations may be changed under a different Act, such as the Central Bank (Supervision and Enforcement) Bill 2011. We want to ensure that, if regulations are to be changed under that legislation, we will also be consulted in order to keep a certain balance.

**Chairman:** Regarding head 4(1), we spoke earlier about the withdrawal of shares. There is a reference to non-withdrawable shares in the credit union sector. Can Mr. Ó Cearbhaill explain that to us?

**Mr. Pádraig Ó Cearbhaill:** There is a reference to non-withdrawable shares. We have never come across non-withdrawable shares. All shares in credit unions are withdrawable provided there is not a loan outstanding against the shares. We think it is a legacy from the old Friends Provident legislation and we suggest it be deleted. I do not think it means anything.

**Chairman:** Another issue raised by one of the earlier witnesses concerns the term provident and productive purposes. Apparently it is no longer included in the scheme. One of the earlier witnesses from University College Cork, UCC, thought it should be retained. Is that the point Mr. Ó Cearbhaill is making?

**Mr. Pádraig Ó Cearbhaill:** We took the view that it was part of the credit union ethos to include it. We made a suggestion on how it could be reworded. We could include a provision that a credit union can make a loan for provident and productive purposes or other such purposes as the credit union may deem appropriate. We were anxious for the words “provident and productive” to be retained as they reflect the ethos of the credit union.

**Chairman:** On governance, subhead 20(12) requires that directors have a certain level of knowledge, skills and experience. Is that too onerous?

**Mr. Pádraig Ó Cearbhaill:** The point is that certain credit unions do not have the skills sought under the Act. A credit union may be aligned with a factory and the people in the factory may be bakers. Accordingly the members of the board will not have the skills and our suggestion was that, in such circumstances, a director can be taken from outside the common bond and brought in. This is in order to meet the requirements, with which we agree, that directors should have the necessary skills, experience and expertise.

**Chairman:** Does that refer to an industrial credit union rather than a community-based one?

**Mr. Pádraig Ó Cearbhaill:** Yes.

**Chairman:** That is understood. Subhead 20(10) refers to the so-called prohibition. A person may not become a director if the person is a member of the credit union and is in arrears for more than 90 days. Does Mr. Ó Cearbhaill have a difficulty with that?

**Mr. Pádraig Ó Cearbhaill:** This is a technical point that arose in discussion. If the member is in arrears of €1 but is paying €100 per month on an ongoing basis, €1 may arise as arrears on his account. In that case, the sum of €1 is in arrears of more than 90 days. We brought it to the attention of the draughtsman in order to have the matter re-examined.

**Chairman:** The CUAC has been examining this very carefully, line by line, which is very



helpful. Similarly head 20(11) provides that one is supposed to resign if one falls into the prohibited categories. The point is that this should be a deeming provision if the person does not resign.

**Mr. Pádraig Ó Cearbhaill:** Yes, the person should be deemed to have resigned.

**Chairman:** Head 26 concerns a conflict of interest arising from a family relationship.

**Mr. Pádraig Ó Cearbhaill:** It should be highlighted that family relationships could be deemed to represent a conflict of interest. We also made the point that it arises when an officer of the credit union becomes aware of a conflict.

**Chairman:** Is Mr. Ó Cearbhaill saying that it is automatically a conflict of interest when there is a family relationship?

**Mr. Pádraig Ó Cearbhaill:** There may be a conflict without the member knowing and it arises when the person becomes aware of that conflict of interest.

**Chairman:** In head 28, Mr. Ó Cearbhaill queries the failure to provide for credit unions to have a committee that does not contain a majority of directors. Should provision be made in the Bill for committees comprised of at least one director?

**Mr. Pádraig Ó Cearbhaill:** As set out in the Bill, there must be a majority of directors on a sub-committee. We feel that one director on a sub-committee is enough, particularly if one is trying to bring on volunteers and others interested in the credit union. We must also take into account that the number of directors will fall under the provisions of the Bill. One director is sufficient on any sub-committee. That does not preclude having a majority of directors.

**Chairman:** Head 30(2) deals with stabilisation support. What is the position if one has received stabilisation support in the past ten years?

**Mr. Pádraig Ó Cearbhaill:** We took the view that the really relevant fact is the viability of the credit union. A credit union may be in trouble today and it may receive stabilisation support. In nine and a half years' time, under different economic conditions, the credit union could fall into trouble again. For different reasons and with different people involved, to deprive that credit union of stabilisation support is wrong. The deciding factor should be whether the credit union is viable, not whether it received money ten years previously.

**Chairman:** Mr. Ó Cearbhaill believes that, in head 30(7), costs should be tightened up.

**Mr. Pádraig Ó Cearbhaill:** This refers to direct costs.

**Chairman:** Head 31(1) provides that a body known as the stabilisation committee shall examine the implementation by the Central Bank of its own requirements and procedures in respect of the powers in Part 3. Mr. Ó Cearbhaill believes the legislation should ensure the stabilisation committee is given sufficient power to carry out its duty. Is Mr. Ó Cearbhaill afraid the committee does not have sufficient powers?

**Mr. Pádraig Ó Cearbhaill:** We want to be clear in the legislation that, if the stabilisation committee wants to talk to a credit union or any other party, it should have the power to do so and should not be dealing solely with the Central Bank. In other words, both sides of the story will be heard.

**Chairman:** There is an interesting suggestion on restructuring. The submission identifies that no provision has been made in respect of credit unions that wish to share services with other credit unions on a voluntary basis.

**Mr. Pádraig Ó Cearbhaill:** That is the credit union services organisations, CUSO. We want the ReBo board to encourage CUSOs on a voluntary basis. There is nothing in the Bill to support such a situation.

**Chairman:** Regarding Part 4 of the scheme, in respect of amendments to the 1997 Act, the submission draws attention to the restriction on the withdrawal of savings.

**Mr. Pádraig Ó Cearbhaill:** We came to the same conclusion as the lady who spoke earlier. The Department has taken this point on board.

**Chairman:** We also have the point about the fact that there is no definition of member in the definition section of the Act.

The witnesses are in favour of making the credit unions subject to legislation on dormant accounts.

**Mr. Pádraig Ó Cearbhaill:** Our reasons are probably different from those of others who propose this. Many credit unions have very small balances which they carry year in, year out. There is a lot of administration work in carrying these balances. We also took the view that if a credit union was carrying a lot of dormant accounts, there was a risk of fraud. There is no finality. It goes on forever and there are costs involved. If the money is paid into the dormant accounts fund and the member turns up in 20 years' time, he or she can go to the dormant accounts fund to get his or her money back. He or she does not go to the credit union. I have done this myself.

**Deputy Peter Mathews:** That is the best remark of the day.

**Chairman:** We have learned a lot today.

**Ms Selina Gilleece:** Life cover is still an issue. It could be negated if it was transferred out.

**Mr. Pádraig Ó Cearbhaill:** Most of these accounts contain €5 or €6. Making an educated guess, if every account was moved out of the credit unions, it would not affect the overall shares. It would not be more than 1%.

**Chairman:** Is there anything else Mr. Ó Cearbhaill would like to add?

**Mr. Pádraig Ó Cearbhaill:** My committee was set up under statute. Unlike the other representatives, we do not represent anyone. Our function is to advise the Minister and the bank on matters relating to credit unions.

**Chairman:** I do not think I asked Mr. Mulvey if he had anything to add and I want to be fair to everybody. Does he have anything to add which he did not get the chance to state?

**Mr. Joe Mulvey:** I was looking to come in earlier, but I have forgotten what I was going to say.

**Chairman:** That happens.

**Mr. Joe Mulvey:** My two associates spoke and reference was made to the governance of

credit unions and so on. Our presentation today and previously has been about making sure there is governance. That is what we want to see.

**Chairman:** I thank Mr. Johnson, Ms Gilleece and Mr. Ó Cearbhaill for their patience, attention and coming to assist us in this important exercise which has been extremely useful. I have certainly learned an enormous amount, as I am sure have my colleagues, even those who are more expert on these matters. I again thank the representatives for their attendance. By way of clarification, it is not appropriate that submissions are published other than as part our report. That is what we will do. Although I asked for the representatives' authority earlier to publish them, that is not the appropriate thing to do. We will wait until we have everything and then publish everything together.

**Senator Thomas Byrne:** Is it proposed to have a private meeting to discuss the report?

**Chairman:** It is unlikely we will have an opportunity to do that, but we will circulate what we propose to send. We are not making recommendations in the report. This is a pre-legislative exercise to give the various organisations which made submissions an opportunity to elaborate on them and answer questions.

**Senator Thomas Byrne:** We are not making recommendations.

**Chairman:** No because this is a pre-legislative process.

**Senator Thomas Byrne:** I accept that. I was going to make this point until I heard-----

**Chairman:** Before the Senator makes his point, let me be absolutely clear about what it is we are going to do. We are going to publish the submissions, transmit the transcript of our hearings to the Minister and prepare a summary of the issues we have identified as being important.

**Senator Thomas Byrne:** Did we make recommendations on the whistleblower's legislation?

**Chairman:** We did not make recommendations as such. We certainly would have done more than what we will be able to do in this instance because we had more time; in fact, we had a couple of months in which to do so. In this case, we have about ten days or two weeks available to us.

The joint committee adjourned at 5.25 p.m. until 2 p.m. on Thursday, 27 September 2012.