Financial Services Authority

FINAL NOTICE

To:	**Pollok Credit Union Limited ("PCU")**
FSA Reference Number:	FRN: 213798
Address:	Unit 13 Silverburn Shopping Centre 763 Barrhead Road Glasgow G53 6QR
Date:	**22 March 2012**

ACTION

1. For the reasons given in this notice, the FSA hereby issues a public censure in relation to PCU in the terms set out below.

2. PCU agreed to settle at an early stage of the FSA's investigation.

SUMMARY OF REASONS

3. During the period 1 April 2008 to 31 August 2011 (the "Relevant Period"), PCU breached Principle 2 (Skill, care and diligence) because:

i. it made a series of loans to a non-member in breach of its Procedures which stipulate that PCU can only make loans to its members; and

ii. the aggregate value of the series of loans to that non-member exceeded the individual large exposure limit of 25% of the credit union's capital, in breach of the Credit Union Sourcebook ("CRED") 10.4.2 R (see paragraph 15 below).

DEFINITIONS

4. The definitions below are used in this Final Notice.

"the Act" means the Financial Services and Markets Act 2000

"the FSA" means the Financial Services Authority

"Principles" means the FSA's Principles for Businesses

"Procedures" means PCU's Policy and Procedures Manual

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber)

FACTS AND MATTERS

5. PCU was established as a version 1 credit union in 1993 to address issues of financial and economic exclusion in the Pollok area of Glasgow. PCU deals with the most vulnerable members of the community and aims to offer its members savings products, basic banking facilities, low cost loans and budgeting advice with a view to "*lifting people from debt and/or assisting them into employment*".

6. PCU was authorised by the FSA on 2 July 2002 to accept deposits. PCU is governed by unpaid volunteers from its membership who were approved by that membership as members of the board.

7. In 2005, PCU set up a community led trust ("the Trust") whose aims are to promote community interests in Pollok. During the Relevant Period, the Trust was responsible for the management of a local post office and a day-care centre.

PCU's Procedures

8. PCU's Procedures state that:

i. loans cannot be made to non-members; and

ii. a company cannot be a member of PCU.

9. Further, PCU's Procedures stipulate that the maximum amount that can be loaned to a member is dependent upon the amount of capital held by the credit union and will be determined by CRED.

Loans to the Trust

10. Between April 2008 and September 2009, PCU issued a series of loans to the Trust totalling £284,479. PCU made the loans to the Trust on an exceptional basis because

the post office and day-care centre were both in financial difficulties and in danger of closing down and as such had the aim of benefitting the local community.

11. PCU therefore failed to follow its own Procedures because the Trust was not a member of PCU (indeed, as a company, it could not be a member).

12. During the accounting year October 2008 to September 2009, PCU's capital was £187,228. This meant that, even if PCU had been entitled to lend to the Trust, the maximum that it would have been allowed to lend in accounting year 2008/2009 would have been £46,822 (i.e. 25% of £187,288). However the total value of loans made to the Trust during this period was £165,825 which amounted to over 88% of PCU's capital. This large exposure to the Trust remained until the loan was repaid in full on 31 August 2011.

13. The FSA accepts that the loans were made with good intentions and to serve the community, such that jobs and any nursery provision were retained. However, the overall size and concentration of the loans placed PCU in a dangerous and exposed financial position and any associated financial failure would have been to the detriment of the community as a whole.

FAILINGS

14. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

CRED 10.4.2 R

15. CRED 10.4.2 R provides that an individual large exposure must not exceed 25% of the credit union's capital. PCU breached CRED 10.4.2 R in the Relevant Period through its loans to the Trust which in total exceeded 25% of PCU's capital.

Principle 2

16. In view of the above, PCU breached Principle 2 during the Relevant Period by failing to conduct its business with due skill care and diligence. By lending the Trust £284,479, PCU allowed its members to be exposed to an excessive risk of financial loss.

SANCTION

17. The FSA has decided to issue a public censure in relation to PCU.

18. The FSA's policy in relation to the imposition of a public censure is set out in Chapter 6 of the Final Procedure and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. Relevant extracts from DEPP are set out in Annex A.

19. The principal purpose of issuing a public censure is to promote high standards of regulatory conduct by deterring authorised firms who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2 G).

20. The FSA will consider the full circumstances of each case when determining whether it is appropriate to issue a public censure rather than impose a financial penalty. DEPP 6.4.2 G sets out as guidance, a non-exhaustive list of factors that may be of relevance in determining whether to issue a public censure.

21. The FSA considers that the following factors are particularly relevant in this case.

Deterrence (DEPP 6.4.2G(1))

22. A public censure will deter PCU from further breaches of regulatory rules and Principles. In addition, it will promote high standards of regulatory conduct by deterring other firms from committing similar breaches and demonstrating generally the benefit of compliant behaviour.

The amount of benefit gained as a result of the breach (DEPP 6.4.2G(2))

23. The FSA has determined that PCU did not gain any financial benefit as a result of the breach and recognises that the loan issued to the Trust was for the benefit of the local community.

The extent to which the breach was deliberate or reckless (DEPP 6.4.2G(3))

24. The FSA has determined that PCU did not deliberately or recklessly contravene regulatory requirements.

Conduct following the breach (DEPP 6.2.4G(5))

25. In deciding upon the appropriate disciplinary sanction, the FSA recognises the following factors which mitigate the seriousness of the failings identified in this case:

    i. PCU accepts that it did not consider either its own Procedures or the rules in CRED, when issuing the loans to the Trust;

    ii. PCU has been open and co-operative with the FSA's investigation; and

    iii. PCU worked with the FSA to ensure early resolution of the matter, took steps to rectify the position of the outstanding loan and, as at 31 August 2011, PCU had recouped the entire loan from the Trust.

Other action taken by the FSA (DEPP 6.2.4G(7))

26. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other authorised persons for similar behaviour. This was considered alongside the principal purpose for which the FSA imposes sanctions, namely to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

PROCEDURAL MATTERS

Decision maker

27. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers.

28. This Final Notice is given under, and in accordance with, section 390 of the Act.

Publicity

29. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

30. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

31. For more information concerning this matter generally, contact Kate Tuckley (direct line: 020 7066 7086 /fax: 020 7066 7087) of the Enforcement and Financial Crime Division at the FSA.

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Tom Spender
Head of Department
FSA Enforcement and Financial Crime Division

ANNEX A

RELEVANT STATUTORY PROVISIONS, REGULATORY REQUIREMENTS AND GUIDANCE

1. Statutory provisions

1.1 The FSA's regulatory objectives are set out in section 2(2) of the Act and include market confidence, public awareness, the protection of consumers and the reduction of financial crime.

1.2 Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting consumers.

1.3 The FSA has the power, pursuant to section 205 of the Act, to issue a public censure where it considers an authorised person has contravened a requirement imposed on him by or under the Act.

2. Relevant Handbook provisions

2.1 In exercising its power to issue a public censure, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance (the "FSA Handbook"). The main provisions relevant to the action specified above are set out below.

Principles for Businesses

2.2 Under the FSA's rule-making powers as referred to above, the FSA has published in the FSA Handbook the Principles for Businesses ("Principles") which apply either in whole, or in part, to all authorised persons.

2.3 The Principles are a general statement of the fundamental obligations of firms under the regulatory system and reflect the FSA's regulatory objectives. A firm may be liable to disciplinary sanction where it is in breach of the Principles.

2.4 The Principle relevant to this matter is Principle 2 which states that "*a firm must conduct its business with due skill, care and diligence*".

Credit Union Sourcebook

2.5 The Credit Union Sourcebook applied to credit unions.

2.6 CRED 10.4.1 R defines an individual large exposure as an individual net liability to a credit union which is at least £7,500 and also at least 10% of the value of a credit union's total capital.

2.7 CRED 10.4.2 R states that a credit union must not make an individual large exposure that exceeds 25% of the credit unions' capital.

Other relevant regulatory provisions

2.8 In exercising its power to issue a public censure, the FSA must also have regard to relevant regulatory provisions and guidance. The guidance that the FSA considers relevant to this case is set out below.

Final Procedure and Penalties Manual ("DEPP")

2.9 The FSA's policy in relation to the issue of public censures is set out in Chapter 6 of DEPP, which forms part of the FSA Handbook. The principal purpose of issuing a public censure is to promote high standards of regulatory conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour.

2.10 DEPP 6.4.1(1)G provides that the FSA will consider all the relevant circumstances of a case when deciding whether to impose a penalty or issue a public censure.

2.11 DEPP 6.4.2G sets out a non-exhaustive list of factors that may be relevant to determining whether it is appropriate to issue a public censure. The following factors are relevant to this case.

Deterrence: DEPP 6.4.2(1)G

2.12 When determining whether to issue a public censure, the FSA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

The seriousness of the breach in question: DEPP 6.4.2(3)G

2.13 The FSA will consider the seriousness of the breach in relation to the nature of the rule, requirement or provision breached, which can include considerations such as the duration and frequency of the breach, whether the breach revealed serious or systemic weaknesses in the person's procedures or of the management systems or internal controls relating to all or part of a person's business and the loss or risk of loss caused to consumers, investors or other market users.

Conduct following the breach: DEPP 6.4.2(5)G

2.14 The FSA may take into account the degree of co-operation the person showed during the investigation of the breach by the FSA.

Previous action taken by the FSA: DEPP 6.4.2(7)G

2.15 The FSA seeks to apply a consistent approach to determining the appropriate level of penalty. The FSA may take into account previous decisions made in relation to similar misconduct.