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**FINAL NOTICE**

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To: **Reverend Carmel Jones**

Address: **15 Oldridge Road  
Balham  
London  
SW12 8PL**

FSA  
Reference  
Number: **IRN: CEJ01023**

Date: **8 November 2012**

**ACTION**

1. For the reasons given in this notice, the FSA hereby:
  - i. publishes a statement of the misconduct of Reverend Carmel Jones (“Reverend Jones”) in the form of this notice; and
  - ii. makes an order prohibiting Reverend Jones from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm. This public statement and order take effect from 12 November 2012.
2. The circumstances of this case merit a financial penalty. Were it not for Reverend Jones’ current financial circumstances and verifiable evidence that the imposition of such a penalty would result in serious financial hardship, the FSA would have imposed a financial penalty of £60,000. Instead, taking into account all the circumstances, the FSA proposes to publish a statement of Reverend Jones’ misconduct.

3. Reverend Jones agreed to settle at an early stage of the FSA's investigation.

## **SUMMARY OF REASONS**

4. The Pentecostal Credit Union ("TPCU") is a credit union based in Balham, London. It has approximately 1,600 members, who share the common bond of being members of the Pentecostal Church.
5. During the period from 3 May 2007 to 4 July 2011 (the "Relevant Period"), Reverend Jones breached Statement of Principle 1 of the FSA's Statements of Principle because he failed to act with integrity in that:
  - i. despite clear correspondence from the FSA explaining that this was not acceptable, he permitted TPCU, a firm of which he was a CF1 director, to make a series of loans totaling approximately £1.2 million which purported to be loans to individuals but where the money was in fact advanced to a corporate entity practising the Pentecostal faith (the "Church Organisation"); and
  - ii. in so doing, he breached a number of TPCU's policies and procedures and put members' savings at risk.

## **DEFINITIONS**

6. The definitions below are used in this Final Notice.
  - i. "the Act" means the Financial Services and Markets Act 2000;
  - ii. "the Church Organisation" means the corporate entity practising the Pentecostal faith and which was the beneficiary of loans made by TPCU;
  - iii. "CRED" means the Credit Unions sourcebook as part of the Financial Services Authority main handbook;
  - iv. "DEPP" means the Decision Procedure and Penalties Manual as part of the Financial Services Authority main handbook;
  - v. "the FSA" means the Financial Services Authority;
  - vi. "the FSA Handbook" means the FSA Handbook of rules and guidance;
  - vii. "Procedures" means TPCU's Procedures Manual;
  - viii. "Loan Policies" means TPCU's Loan Policy in force since 2003 and the amended Loan Policy in force from 2008;
  - ix. "Relevant Period" means the period from 3 May 2007 to 4 July 2011;
  - x. "Reverend Jones" means Reverend Carmel Jones;

- xi. “Statements of Principle” means the FSA’s Statements of Principle and Code of Practice for Approved Persons;
- xii. “the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber); and
- xiii. “TPCU” means The Pentecostal Credit Union.

## FACTS AND MATTERS

### Background

- 7. TPCU is a version 2 credit union established in 1980 and has been authorised by the FSA since 2002, prior to which it was regulated by the Registry of Friendly Societies. TPCU was established to operate as an ethical financial co-operative, with its membership sharing the common bond of the Pentecostal faith. TPCU is largely governed by unpaid volunteers from its membership some of whom are also members of the board.
- 8. Reverend Jones was the founder of TPCU. He was the Chairman of TPCU, and latterly a director during the Relevant Period.
- 9. In 1994, TPCU started making loans to the Church Organisation via individual members of the Church Organisation. Some of these individuals were pre-existing members of TPCU, and others had new accounts opened by TPCU in their name solely for the purposes of obtaining loans for the Church Organisation. The structuring of the loans in this way appears to be contrary to section 11(1) of The Credit Unions Act 1979. Reverend Jones was responsible for establishing this scheme of lending. This continued after 2002, when TPCU became authorised by the FSA. The purpose of these loans was to assist the Church Organisation to buy property and to repair existing properties. At this time, the individuals involved were indemnified by the Church Organisation in respect of repayment of the loans.
- 10. In 2003, following a routine assessment visit by the FSA to TPCU, the FSA wrote to the board of directors of TPCU with a risk mitigation programme which stated that the loans in question were *‘ultra vires which creates a risk that the loans may not be legally enforceable creating a potential financial loss to the members of the credit union’*. Under the heading ‘Action’, the FSA noted: *‘The credit union to stop issuing church loans as of immediate effect ... The credit union to propose how it intends to regularise existing church loans’*. As a result, the loans were regularised by TPCU and repaid.
- 11. On 20 February 2006, Reverend Jones wrote to the FSA enclosing a note of proposals to enable loans to be made to members of TPCU (who were by definition individuals) which could then, at the wish of that member, be used for the benefit of the Church Organisation. TPCU stated: *‘If the loan is made to the member and to no one else, there can be no objection by the FSA’*. In respect of the *‘problem ... as to securing repayment of the loan’*, TPCU set out two proposed solutions, involving either insurance indemnity or the establishment of a corporate entity of which individuals would be shareholders. TPCU stated that *‘of course, either proposal would, in practice, be monitored by the FSA’*.

12. The FSA responded to Reverend Jones on 17 March 2006, stating that both of these suggestions were unlawful and that TPCU's suggestions were '*artificial devices designed to circumvent the restrictions placed by Parliament on the activities of credit unions and reflected in CRED*'. This was a reference to the guidance in CRED 10.2.11 G, which at that time (and up to January 2012) provided that: '*(1) a credit union may only make loans to: (a) its members who are natural persons qualifying in accordance with section 1(2) of the Credit Unions Act 1979; (b) other credit unions; (2) A credit union may make a loan to a member for a business purpose. However, this does not mean that a credit union may make a loan to a member who merely intends to transmit that loan to another body that will actually carry out the purpose. A credit union should not make loans to members who are acting together to achieve an aggregate loan that exceeds the limits in CRED 10.3.*'
13. The FSA went on to consider, in its March 2006 letter, in any event, '*how far the two suggestions would provide security to safeguard the assets ... Let us assume that the church or company fails to pay. TPCU looks to the borrowing members for repayments as it is bound to do. In order to protect those members the original loan agreements will have needed to include some sort of clause to the effect that the individuals are under no obligation to repay the loan personally and that TPCU has either to look to the insurance company or wind up the company to recover its money. (We note that it is suggested that members would not have such protection and that they may even provide extra security; we doubt that this would be realistic or in their interests...) ... If the borrowing members were not protected the TPCU would be chasing a large number of its members for payment, with uncertain prospects of success. If the borrowing members were protected against personal liability, the TPCU (and its members generally) would still be left out of pocket ... Whether or not the members have personal protection, we consider there to be a risk of substantial asset loss*'.
14. This was the last correspondence on this matter between the FSA and Reverend Jones and/or TPCU until the events described below came to light.

### **Loans to the Church Organisation**

15. In May 2007, despite this correspondence, TPCU again started making loans to the Church Organisation in the names of the credit union's individual members. Under the arrangement, the Church Organisation supplied the names of individuals to Reverend Jones in whose names the loan documentation should be completed. In some cases, the individual involved signed the loan application form. However, in three cases, the individuals involved did not sign the loan application forms and TPCU has been unable to demonstrate that all of the individuals were aware that loans had been granted in their names. In all cases, the loaned money was not paid to the individual member but was instead paid by cheque addressed directly to the Church Organisation, to an officer of the Church Organisation or by bank transfer to a firm of solicitors on behalf of the Church Organisation. At this time, the individuals involved were not indemnified by the Church Organisation.
16. Reverend Jones established the arrangement with the Church Organisation. He approved and signed 14 of the 20 loans in question. In 12 cases, he signed cheques for the loan money, none of which were made out to the individual purportedly taking

out the loan. The remaining loan application forms were signed and counter-signed by other directors on Reverend Jones' instruction. Reverend Jones delegated much of the responsibility for arranging the loans (including explaining liabilities to the individuals, arranging for the individuals to sign the loan application forms, submitting their applications and generally arranging the loans) to an individual who was not a member of the TPCU board and was not an approved person at TPCU. Reverend Jones did not supervise or monitor this individual's activities in relation to the loans, and did not obtain any written confirmation that the individuals involved were aware of any liabilities associated with the loans.

17. During the Relevant Period, TPCU, at Reverend Jones' direction, made at least 20 loans in the names of 15 individual members that were in fact paid to the Church Organisation. These loans totalled £1.2 million and varied in amount from £7,500 to £87,500.
18. In making these loans, TPCU appears to have breached the legislation governing credit unions' lending in that, in all cases, the money was not paid to the individual in whose name the loan was made but was instead paid to the Church Organisation.
19. TPCU considered the Church Organisation to be responsible for the loan repayments, and the Church Organisation initially made repayments on the loans. However, the relationship between TPCU and the Church Organisation broke down at the end of 2009, and the loan repayments stopped. The estimated amount outstanding on these loans is at least £670,000, which is over half of the £1.2 million loaned.

#### **TPCU's Procedures**

20. TPCU's loan policy documents that applied in all or part of the Relevant Period included the following requirements:
  - i. *'a member can apply to the Credit Union for a Loan after saving regularly for an unbroken period of at least 2-4 months prior'* (this was amended in 2008 to read *'a member can apply to the Credit Union for a Loan after saving regularly'*); and
  - ii. *'the Loan Officer must arrange for the applicant to see any two directors to approve all loans of £5,000 or above'* (this was amended in 2008 to refer to loans of £5,001 and above).
21. TPCU's Procedures Manual operated in tandem with the loan policies. The section on granting loans stated that:
  - i. *'the application form should be supported by:*
    - (a) *recent wage slips or other income confirmation; and*
    - (b) *domestic utility bills and rent/mortgage statements;*
  - ii. *after reviewing the completed form, the loan applicant should sign and date both the form itself and the promissory note on the reverse;*



- iii. for one loan, the loan repayments were £1,000 per month higher than the member's stated monthly income; and
- iv. for one loan, the cheque for the loan amount was dated four days before the loan application was made.

## **FAILINGS**

- 25. Reverend Jones breached Statement of Principle 1 of the FSA's Statements of Principle during the Relevant Period by failing to act with integrity in carrying out his controlled function at TPCU. Despite clear correspondence from the FSA indicating that this was not acceptable, he deliberately allowed TPCU to make loans purportedly to individuals but which were in fact paid to a Church Organisation, and did not follow TPCU's own procedures or put in place appropriate loan documentation and security. By doing so, Reverend Jones caused TPCU's members to be exposed to an excessive risk of financial loss.
- 26. Reverend Jones' conduct fell short of the standards required by the FSA's fit and proper test for approved persons in terms of integrity. He is therefore not a fit and proper person.

## **SANCTION**

### **Public censure**

- 27. The FSA's policy on the imposition of a public censure is set out in Chapter 6 of DEPP, which forms part of the FSA Handbook. On 6 March 2010, the FSA adopted a new penalty-setting regime. As all of Reverend Jones' misconduct took place before the adoption of the new regime, the FSA has considered this case under the regime which applied before 6 March 2010, and all references to DEPP are to the version that was in force up to 5 March 2010. The FSA has also had regard to Chapter 7 of its Enforcement Guide and to the FSA Enforcement Manual which was in force for part of the relevant period.
- 28. 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. A public censure is a tool that the FSA may employ to help it achieve its regulatory objectives.
- 29. The FSA will consider all relevant circumstances of each case when determining whether it is appropriate to issue a public censure. DEPP 6.4.2 G sets out guidance as to the non-exhaustive criteria for determining whether to impose a public censure rather than a financial penalty. The FSA considers that the following factors are particularly relevant in this case.

### Deterrence (DEPP 6.4.2 G(1))

- 30. The FSA considers that a public censure will demonstrate to Reverend Jones and others the seriousness with which the FSA regards such behaviour.

Profit gained or loss avoided (DEPP 6.4.2 G(2))

31. The FSA has taken into account the fact that Reverend Jones did not gain any financial benefit or avoid any loss as a consequence of his misconduct and that he was volunteering at TPCU in order to make a contribution to society.

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

32. Reverend Jones' misconduct was serious and resulted in potential loss to the individuals involved and to members of TPCU more generally.

Conduct following the breach (DEPP 6.4.2 G(5))

33. The FSA has taken into account the facts that Reverend Jones voluntarily relinquished his position as CF1 director of TPCU on 12 March 2012 and has co-operated fully with the FSA's investigation. Reverend Jones has also apologised for his actions.

Previous action taken by the FSA (DEPP 6.5.2 G(7))

34. The FSA has taken into account sanctions imposed by the FSA on other approved persons for similar behaviour. This was considered alongside the deterrent purpose for which the FSA imposes sanctions.

The impact on the person concerned (DEPP 6.4.2 G(8))

35. The FSA views Reverend Jones' misconduct as very serious and would have imposed a financial penalty of £60,000. However, the FSA has taken into account that imposing a financial penalty on Reverend Jones would cause him serious financial hardship. Reverend Jones is a disabled pensioner with limited income. In the circumstances, the FSA considers it appropriate in this case to issue a public censure rather than impose a financial penalty.

**Prohibition order**

36. Reverend Jones has demonstrated a lack of integrity and is therefore not a fit and proper person to perform regulated activities. The FSA has therefore made an order in the form of this notice prohibiting Reverend Jones from performing any function in relation to any regulated activities carried on by any authorised or exempt persons, or exempt professional firm, pursuant to section 56 of the Act.

**PROCEDURAL MATTERS**

**Decision maker**

37. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.
38. This Final Notice is given under, and in accordance with, section 390 of the Act.



## **Publicity**

39. 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 Reverend Jones or prejudicial to the interests of consumers.
40. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

## **FSA contacts**

41. For more information concerning this matter generally, contact Kate Tuckley (direct line: 020 7066 7086 / email: [kate.tuckley@fsa.gov.uk](mailto:kate.tuckley@fsa.gov.uk)) of the Enforcement and Financial Crime Division of the FSA.

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**Bill Sillett**

**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 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 impose a financial penalty, the FSA must have regard to relevant provisions in the FSA Handbook of rules and guidance. 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 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 1 which states that '*a firm must conduct its business with integrity.*'

##### **Credit Unions Sourcebook**

- 2.5 The Credit Unions Sourcebook ("CRED") applied to credit unions until 7 January 2012, after which it was replaced by the Credit Unions New Sourcebook.
- 2.6 CRED 10.2.11 G(1) provides that a credit union may only make loans to its members who are natural persons qualifying in accordance with section 1(2) of the Credit Unions Act 1979, or other credit unions.
- 2.7 CRED 10.2.11 G(2) provides that a credit union may make a loan to a member for a business purpose. However, this does not mean that a credit union may make a loan to a member who merely intends to transmit that loan to another body that will actually carry out the purpose. A credit union should not make loans to members who are acting together to achieve an aggregate loan that exceeds the limits in CRED 10.3.

### **3. Other relevant regulatory provisions**

#### **FSA policy on issuing public censures**

- 3.1 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.

#### **Decision Procedure and Penalties Manual**

- 3.2 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 FSA has also had regard to the provisions of the Enforcement Manual, which were in force for the early part of the Relevant Period, up until 28 August 2007. The extracts from DEPP reflect the provisions as they were in effect between 28 August 2007 and 5 March 2010.
- 3.3 The principal purpose of issuing a public censure is to promote high standards of regulatory conduct by deterring committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour (DEPP 6.1.2G).
- 3.4 DEPP 6.4.1 G provides that the FSA will consider all the relevant circumstances of a case when deciding whether to impose a financial penalty or issue a public censure.
- 3.5 DEPP 6.4.2 G sets out a non-exhaustive list of factors that may be relevant to determining whether it is appropriate to issue a public censure rather than impose a financial penalty. The following factors are relevant to this case:
- 3.5.1 Whether or not deterrence may be effectively achieved by issuing a public censure (DEPP 6.4.2 G(1)).
  - 3.5.2 If the person has made a profit or avoided a loss as a result of the breach, this may be a factor in favour of a financial penalty, on the basis that a person should not be permitted to benefit from its breach (DEPP 6.4.2 G(2)).
  - 3.5.3 If the breach is more serious in nature or degree, this may be a factor in favour of a financial penalty, on the basis that the sanction should reflect the seriousness of the breach; other things being equal, the more serious the breach, the more likely the FSA is to impose a financial penalty (DEPP 6.4.2 G(3)).
  - 3.5.4 If the person has admitted the breach and provides full and immediate co-operation to the FSA, and takes steps to ensure that those who have suffered loss due to the breach are fully compensated for those losses, this may be a factor in favour of a public censure, rather than a financial penalty, depending upon the nature and seriousness of the breach (DEPP 6.4.2 G(5)).
  - 3.5.5 The FSA's approach in similar previous cases: the FSA will seek to achieve a consistent approach to its decisions on whether to impose a financial penalty or issue a public censure (DEPP 6.4.2 G(7)).

3.5.6 The impact on the person concerned. However, it would only be in an exceptional case that the FSA would be prepared to agree to issue a public censure rather than impose a financial penalty if a financial penalty would otherwise be the appropriate sanction (DEPP 6.4.2 G(8)).