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**FINAL NOTICE**

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To: **Shettleston and Tollcross Credit Union Limited (“STCU”)**

FSA

Reference

Number: **FRN: 213682**

5 January 2012

**ACTION**

1. The FSA has decided to issue a public censure in relation to the STCU in the terms set out below.
2. STCU agreed to settle at an early stage of the FSA’s investigation.

**SUMMARY OF REASONS**

3. Between May 2006 and March 2007 (the “Relevant Period”) STCU breached Principle 6 (Customers’ Interests) and CRED 10.2.6A(1)(a) (Lending Policy) by making loans to approved persons on its staff, including directors, on more favourable terms than those available to other members of the credit union.
4. A credit union is never permitted to make loans to its directors on more favourable terms than those available to other members of the credit union; and can only offer preferential loan rates to its non-director staff in certain limited circumstances (see paragraph 12 below).

## DEFINITIONS

5. The definitions below are used in this Warning Notice.

“the Act” means the Financial Services and Markets Act 2000

“the CRED” means the Credit Unions Sourcebook

“the FSA” means the Financial Services Authority

“the PRIN” means the FSA’s Principles for Business

“the Procedures” means STCU’s Policy and Procedures Manual

“the registered rules” means a Credit Unions’ policy and procedures as approved by the membership

“the Relevant Period” means the period from May 2006 to March 2007

“STCU” means the Shettleston and Tollcross Credit Union Limited

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber)

“version 1 Credit Union” means a credit union whose Part IV permission includes a requirement (whether for all or for particular purposes) that it must not lend more than £15,000, or such lesser amount as may be specified, in excess of a member's shareholding;

## FACTS AND MATTERS

6. STCU was established as a version 1 credit union in 13 January 1993 to address issues of financial and economic exclusion in the Shettleston and Tollcross areas of Glasgow. STCU aims to “*create thrift among its members by the accumulation of their savings.*” STCU does this by “*creating sources of credit for the benefit of its members by using the members’ savings for their mutual benefit*” and also by “*training its members in wise use of money and in management of financial affairs*”.
7. STCU was authorised by the FSA on 2 July 2002 to accept deposits. STCU is governed by unpaid volunteers from its membership who were approved by that membership as members of the board.
8. In or around April 2006, STCU decided to reduce, or set to nil, the interest rates on nine loans made to approved persons, including seven directors’ loan accounts.
9. This decision was reversed by STCU in March 2007 after learning that such arrangements are not permitted. STCU removed the preferential rates offered to the approved persons but took no action to recover the earnings lost to the credit union as a result of the reduced interest charged.

10. The interest reduction on the loans made to approved persons during the Relevant Period reduced STCU's income during the Relevant Period.
11. At the end of each tax year, credit unions can either retain any profit made for the credit union's purposes or it can elect to have all or some of the profit paid out to its members as a dividend. At the end of the 2006/07 tax year STCU distributed 2% of its profits to members. The reduced interest rate charged to its approved persons had the effect of reducing this dividend paid to members.

## **FAILINGS**

### **CRED 10.2.6A(1)(a) R**

12. CRED 10.2.6A(1)(a) R provides that a credit union must not make a loan to one of its officers or approved persons on more favourable terms than those available to other members of the credit union unless:
  - i. that person is a paid employee (other than a director) of the credit union; and
  - ii. the registered rules of the credit union provide explicitly for the making of loans to paid employees on such terms.
13. STCU breached CRED 10.2.6A(1)(a) R during the Relevant Period in that it made favourable loans to:
  - i. two approved persons who were not directors without being permitted by its Procedures; and
  - ii. seven directors.

### **Principle 6**

14. In view of the above STCU breached Principle 6 of PRIN during the Relevant Period by failing to pay due regard to its customers interests and failing to treat them fairly. In particular, by reducing the interest payments due on the nine approved persons' loan accounts during the Relevant Period, STCU has reduced the dividend payments attributable to members of STCU.

## **SANCTION**

15. The FSA has decided to issue a public censure in relation to STCU.
16. The FSA's policy in relation to the imposition of public censure is set out in Chapter 6 of the Decision Procedures and Penalties Manual ("DEPP"), which forms part of the FSA Handbook. Relevant extracts from DEPP are set out in Annex A.
17. 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 benefit of compliant behaviour (DEPP 6.1.2 G).

18. 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 sets out factors that may be of particular relevance in 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 relevant in determining whether to issue a public censure.
19. The FSA considers that the following factors are particularly relevant in this case.

**Deterrence (DEPP 6.4.2G(1))**

20. A public censure will deter STCU 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 extent to which the breach was deliberate or reckless (DEPP 6.4.2G(3))**

21. The FSA has determined that STCU did not deliberately or recklessly contravene regulatory requirements. STCU failed to appreciate that loans on more favourable terms could not be made to directors. The benefits received as a result are very small and will be repaid.
22. STCU has admitted that it did not consider its own Procedures, PRIN and the rules in CRED when the interest rates on the nine approved persons loan accounts were lowered

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

23. The FSA has determined that STCU did not gain financially as a result of the breach and that any financial gain was limited to the individual approved persons and directors who had the interest payments on their loans reduced or removed. They have agreed to repay their interest reductions in full.

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

24. In deciding upon appropriate disciplinary sanction, the FSA recognises the following factors which mitigate the seriousness of the failings identified in this case:
  - i. STCU has been open and cooperative with the FSA's investigation;
  - ii. STCU has worked with the FSA to ensure early resolution of the matter;
  - iii. STCU has worked with the FSA to establish the total amount of interest reductions (the value of the benefit of the discounted loan rates for each individual and in total was relatively small); and

- iv. the individuals who have financially benefitted as a result of the interest reductions have entered into a repayment agreement with STCU to repay the amount in full by the end of the 2011/2012 tax year.

**Other action taken by the FSA (DEPP 6.4.2G(7))**

- 25. In determining the proper sanction, the FSA has taken into account sanctions imposed by the FSA on other authorised persons for similar behaviour.

**PROCEDURAL MATTERS**

**Decision maker**

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

**Publicity**

- 28. 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.
- 29. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**FSA contacts**

- 30. For more information concerning this matter generally, contact Steve Page at the FSA (direct line: 020 7066 1420 / fax: 020 7066 1421).

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**Tom Spender**

Project Sponsor

## 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 6 which states that "*a firm must pay due regard to the interests of its customers and treat them fairly*".

##### *Credit Union Sourcebook*

- 2.5 The Credit Union Sourcebook applied to credit unions.
- 2.6 CRED 10.2.6A(1)(a) R states that a credit union must not make a loan to one of its officers or approved persons on terms more favourable than those available to other members of the credit union unless that person is a paid employee (other than a director) of the credit union and the registered rules of the credit union provide explicitly for the making of loans to paid employees on such terms.

## **Other relevant regulatory provisions**

- 2.7 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 (“DEPP”)***

- 2.8 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.
- 2.9 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.
- 2.10 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***

- 2.11 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***

- 2.12 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***

- 2.13 The FSA may take into account the degree of cooperation the person showed during the investigation of the breach by the FSA.

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

- 2.14 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.