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## FINAL NOTICE

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To: **The Pentecostal Credit Union Limited**

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

FSA  
Reference  
Number: **FRN:213242**

Date: **8 November 2012**

### ACTION

1. For the reasons given in this notice, the FSA hereby issues a public censure to The Pentecostal Credit Union Limited ("TPCU") in the form of this notice in the terms set out below. This public censure takes effect from 12 November 2012.
2. The severity of TPCU's failings warrants a financial penalty. However, the FSA has taken into account the fact that TPCU is a credit union and that any financial penalty imposed on it would impact on all of its members. While the FSA has previously imposed penalties on other types of mutual society, the FSA considered that different considerations apply to credit unions, as they are institutions created purely for the benefit of the community and are not generally large financial institutions. While it may in some cases nevertheless be appropriate to impose a financial penalty on a credit union, the FSA took account of the fact that TPCU has voluntarily replaced its entire management at the FSA's request.

3. The FSA therefore considers this to be an exceptional case where, notwithstanding the seriousness of the breaches, a public censure should be imposed rather than a financial penalty.
4. TPCU agreed to settle at an early stage of the FSA's investigation.
5. In addition to the action taken against TPCU, the FSA has also issued a Final Notice against Reverend Carmel Jones, a director at TPCU who was largely responsible for TPCU's failings.

## **SUMMARY OF REASONS**

6. 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.
7. During the period from 3 May 2007 to 4 July 2011 (the "Relevant Period"), TPCU breached Principle 1 (integrity) of the FSA's Principles for Businesses in that:
  - i. it made 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, it breached a number of its own policies and procedures, and put individuals' and members' assets at risk.
8. TPCU accepted the FSA's findings and admitted its failings in respect of these loans. In addition it made extensive voluntary variations to its permissions, replaced its board of directors and took steps to completely renew its systems and controls.

## **DEFINITIONS**

9. 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. "Principles" means the FSA's Principles for Businesses;

- viii. “Procedures” means TPCU’s Procedures Manual;
- ix. “Loan Policies” means TPCU’s Loan Policy in force since 2003 and the amended Loan Policy in force from 2008;
- x. “Relevant Period” means the period from 3 May 2007 to 4 July 2011;
- xi. “TPCU” means The Pentecostal Credit Union; and
- xii. “the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

## FACTS AND MATTERS

### Background

10. 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.
11. In 1994, TPCU started making loans to the Church Organisation via individual members of the Church Organisation. Some of the 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. 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.
12. 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.
13. On 20 February 2006, TPCU 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.’*

14. The FSA responded 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.'*
15. The FSA went on to consider, in its March 2006 letter, *'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 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, 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.'*
16. This was the last correspondence on this matter between the FSA and TPCU until the events described below came to light.

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

17. 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 TPCU 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 members 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.
18. TPCU 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. TPCU 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.

19. During the Relevant Period, TPCU 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.
20. 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.
21. 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 lent.

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

22. 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).
23. 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. *all loan applications should be reviewed and approved by the credit committee prior to the issue of a cheque;*
  - iv. *at least two credit committee members should sign the application form as evidence of committee approval; and*

- v. *all loans in excess of £4,000 must be secured.*'
24. The loan application form included a section requiring the candidate to explain the purpose for which the loan was required.
25. TPCU breached its own loan policies and procedures in that:
- i. for eight loans, TPCU was unable to provide evidence of a membership application form, or evidence that the member had agreed to become a member of the credit union;
  - ii. for a further two loans, the member had neither been saving regularly, nor for an unbroken period of 2 to 4 months prior to taking out the loan;
  - iii. for at least nine loans, the member did not meet with two directors where the loans were over £5,000 and TPCU did not carry out any checks to ensure that the members were aware of their liability to repay the loan;
  - iv. for all 20 loans, the application form was not supported by income information, utility bills or rent/mortgage statements and so the members' ability to repay the loan was not properly considered;
  - v. three loan applications were not signed by the member making the loan application and at least one individual was in fact unaware that a loan had been taken out in their name;
  - vi. for one loan, the loan application form was not signed by any member of TPCU;
  - vii. for at least 14 loans, valid security for loans over £4,000 was not obtained; and
  - viii. for all 20 of the loans, TPCU has been unable to show that these were considered and approved by its credit committee.
26. In addition, there were serious failures with regard to the administration of the loans and systems and controls at TPCU in that:
- i. for each of the 20 loans, the loan applicant was not provided with any documentation regarding the loan, nor were they provided with full terms and conditions;
  - ii. for 13 loans, the "purpose" section of the loan application form was not completed;
  - 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

27. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
28. TPCU breached Principle 1 of the Principles for Businesses during the Relevant Period by failing to conduct its business with integrity. Despite clear correspondence from the FSA indicating that this was not acceptable, it deliberately made loans that purported to be made to individuals but which were in fact paid to a corporate entity, and did not follow its own procedures or put in place appropriate loan documentation and security. By doing so, TPCU allowed its members to be exposed to an excessive risk of financial loss.

## SANCTION

29. The FSA hereby issues a public censure in relation to TPCU in the form of this notice.
30. The FSA's policy on the issuing 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 Chapter 7 of its Enforcement Guide and to the FSA Enforcement Manual which was in force for part of the relevant period.
31. 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.
32. 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 guidance as to non-exhaustive criteria for determining whether to impose a financial penalty or a public censure. The FSA considered that the following factors are particularly relevant in this case.

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

33. The FSA considered that a public censure will demonstrate to TPCU and others the seriousness with which the FSA regards such behaviour.

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

34. Although TPCU stood to receive significant sums in interest on the loans, the FSA considered that this was not the motivation for the activity. TPCU did not in fact gain any financial benefit or avoid any loss as a consequence of the misconduct since the Church Organisation defaulted on the loans.

### Seriousness of the breach (DEPP 6.4.2 G(3))

35. The FSA considered that TPCU's misconduct was serious and resulted in a risk of loss to the individuals involved and to members of TPCU more generally. TPCU

deliberately circumvented CRED guidance and failed to follow internal procedures with no apparent consideration of the consequences of the activity.

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

36. The FSA has taken into account the facts that TPCU undertook a Skilled Person's report in relation to the matters set out in this notice and more generally, has voluntarily varied its permissions, put in place new management at the FSA's request, is completely reviewing its systems and controls and has co-operated fully with the FSA's investigation.

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

37. The FSA has taken into account sanctions imposed by the FSA on other authorised 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))

38. The FSA has taken into account the fact that TPCU is a credit union, staffed largely by volunteers, which performs a useful and beneficial role to society by providing financial services to typically disadvantaged members of society. The FSA has also taken into account the fact that any financial penalty imposed on TPCU would impact on the members of the credit union. The FSA therefore considers this to be an exceptional case where, notwithstanding the seriousness of the breaches, a public censure should be imposed rather than a financial penalty.

## **PROCEDURAL MATTERS**

### **Decision maker**

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

### **Publicity**

41. 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 TPCU or prejudicial to the interests of consumers.
42. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.



### **FSA contacts**

43. 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)).