
FIRST SUPERVISORY NOTICE

To: **Pallister Credit Union Limited**

Of: **Charlbury Road Community Centre
Charlbury Road
Pallister Park
Middlesbrough
TS3 8NH**

FSA Reference Number: **213731**

Dated: **9 March 2012**

ACTION

1. For the reasons listed below and pursuant to section 45 of the Financial Services and Markets Act 2000 (the “Act”), the FSA has varied the permission granted to Pallister Credit Union Limited (“Pallister”), pursuant to Part IV of the Act (“Pallister’s permission”), by removing its only regulated activity with immediate effect. Accordingly, Pallister’s permission no longer includes the regulated activity of accepting deposits.
2. The FSA has further varied Pallister’s permission pursuant to section 43 of the Act by including the following requirements, namely that Pallister must not:
 - (1) make new loans, or make further advances in relation to, or otherwise vary the terms of, any existing loans;
 - (2) redeem any member’s shares;
 - (3) effect any share to loan transfers;

- (4) repay any deposits; or
 - (5) without the written consent of the FSA, make any payment, or otherwise dispose of, deal with or diminish the value of any of its assets, except to pay expenses incurred in the ordinary course of Pallister's business.
- 3. For the avoidance of doubt, the expenses referred to in paragraph 2(5) do not include gifts, or payments of unusual or significant amounts to Pallister's employees or officers or any persons connected to them.
- 4. The FSA has also varied Pallister's permission by including the following requirements, namely that within 14 days of this First Supervisory Notice Pallister must:
 - (1) advise in writing all members of Pallister that it is no longer permitted by the FSA to carry on accepting deposits and of the other restrictions placed upon it by the FSA; and
 - (2) provide the FSA with a copy of the written advice sent to all members for its regulated activity pursuant to paragraph 4(1) above, together with a list of all members to whom such advice has been sent.

REASONS FOR ACTION

- 5. On the basis of the facts and matters described below, Pallister is failing and will continue to fail to satisfy the threshold conditions set out in Schedule 6 to the Act (the "Threshold Conditions") in that, in the opinion of the FSA, Pallister has failed to maintain positive capital, and presents a risk to consumers by continuing to be permitted to conduct the regulated activity it carries on.
- 6. The FSA considers that Pallister should not be permitted to accept new deposits nor should it make any further loan advances or redeem any membership shares, when it has failed to maintain adequate capital.
- 7. The FSA considers, on the basis of those facts and matters, that it is necessary, in order to protect the interests of consumers, for the action specified above to take immediate effect.

FACTS AND MATTERS RELIED ON

- 8. Pallister is a version 1 credit union. In its Quarterly Return to the FSA for the period ended 31 December 2011, Pallister reported that it had 324 members and 122 juvenile depositors.
- 9. In the most recent audited financial information provided to the FSA, Pallister reported that it had positive capital of £2,442 as at 30 September 2010. Pallister has subsequently reported inaccurate capital figures to the FSA, but based on the level of loan arrears reported in its Quarterly Return for the period ended 31 December 2011, at

that date Pallister had negative capital of £16,102. Pallister appears to have had negative capital since at least 30 June 2011, and has failed to rectify its negative capital position, despite having had a reasonable opportunity to do so.

FAILINGS

10. The regulatory provisions relevant to this First Supervisory Notice are set out in the Annex.
11. From the facts and matters described above the FSA, having regard to its regulatory objectives, has identified that:
 - Pallister is in breach of CRED 8.3.1R, as applied to CREDS 5.3.1R by CREDS TP1, by failing to maintain a positive amount of capital at all times and therefore the amount saved by its members is worth less than they deposited;
 - this failing is material in relation to the regulated activity for which Pallister has permission and it therefore fails to satisfy Principle 4 (Financial prudence) and Threshold Condition 4 (Adequate resources);
 - the risk of loss or other adverse effect on consumers because of Pallister's failings causes the FSA to have serious concerns about Pallister such that the exercise of the FSA's own-initiative powers to vary Pallister's permission with immediate effect is an appropriate response to those concerns; and
 - the variation of Pallister's permission should take immediate effect to address the FSA's serious concern that its level of negative capital is continuing to increase.

PROCEDURAL MATTERS

Decision Maker

12. The decision which gave rise to the obligation to give this First Supervisory Notice was made by the Regulatory Decisions Committee.
13. This First Supervisory Notice is given to Pallister under section 53(4) and in accordance with section 53(5) of the Act, and is being served on Pallister at its principal place of business last notified to the FSA. The following statutory rights are important.

The Tribunal

14. Pallister has the right to refer the matter to which this First Supervisory Notice relates to the Upper Tribunal (the "Tribunal"). The Tax and Chancery Chamber is the part of the Upper Tribunal which, amongst other things, hears references arising from decisions of the FSA. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Pallister has 28 days from the date on which this First Supervisory Notice is given to Pallister to refer the matter to the Tribunal.

15. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by Pallister and filed with a copy of this First Supervisory Notice. The Tribunal's contact details are:

The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (telephone: 020 7612 9700; email: financeandtaxappeals@tribunals.gsi.gov.uk).

16. Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

17. Pallister should note that a copy of the reference notice (Form FTC3) must also be sent to the FSA at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Alexander Banerjea at the FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Representations

18. Pallister has the right to make written and oral representations to the FSA (whether or not it refers this matter to the Tribunal). If Pallister wishes to make written representations it must do so by 12 April 2012 or such later date as may be permitted by the FSA. Written representations should be made to the Regulatory Decisions Committee and sent to Philip Bellars, Regulatory Decisions Committee Professional Support Services. The Regulatory Decisions Committee Professional Support Services' address is: 25 The North Colonnade, Canary Wharf, London E14 5HS. If Pallister wishes to make oral representations, it should inform the FSA of its intention to do so by 20 March 2012. If Pallister does not notify the FSA by 20 March 2012, it will not, other than in exceptional circumstances, be able to make oral representations.

Publicity

19. Pallister should note that section 391 of the Act requires the FSA when the First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter as it considers appropriate.

FSA contacts

20. For more information concerning this matter generally, Pallister should contact Alexander Banerjea at the FSA (direct line: 020 7066 7206 / fax: 020 7066 7207).
21. If Pallister has any questions regarding the procedures of the Regulatory Decisions Committee, it should contact Philip Bellars (direct line: 020 7066 2894).

Andrew Long
Acting Chairman, Regulatory Decisions Committee

ANNEX TO THE FIRST SUPERVISORY NOTICE ISSUED BY THE FINANCIAL SERVICES AUTHORITY TO PALLISTER CREDIT UNION LIMITED ON 9 MARCH 2012

RELEVANT STATUTORY PROVISIONS

1. The FSA's regulatory objectives established in section 2(2) of the Act include the protection of consumers.
2. Section 45 of the Act authorises the FSA to exercise the following powers:
 - (1) to vary an authorised person's permission where it appears to the FSA that such person is failing, or is likely to fail, to satisfy the Threshold Conditions;
 - (2) to vary such a permission by removing a regulated activity from those for which the permission is given; and
 - (3) to include any provision in the permission as varied that could be included if a fresh permission were being given in response to an application under section 40 of the Act, including the imposition pursuant to section 43 of the Act of such requirements as the FSA considers appropriate.
3. Section 43(3) of the Act permits a requirement to extend to activities which are not regulated activities.
4. Section 53(3) of the Act allows such variations to take effect immediately only if the FSA, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the variations to take effect immediately.
5. Paragraph 4(1) of Schedule 6 to the Act sets out Threshold Condition 4, which states:

“The resources of the person concerned must, in the opinion of the Authority, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.”

RELEVANT HANDBOOK PROVISIONS

6. In exercising its power to vary a Part IV permission, the FSA must have regard to relevant provisions in the FSA Handbook of Rules and Guidance (the "Handbook"). The main provisions relevant to the action specified above are set out below.

Relevant Principle

7. Principle 4 (Financial prudence) as set out in the FSA's Principles for Businesses (the "Principles") in the Handbook requires that a firm maintain adequate financial resources.

Relevant Rules and Guidance

8. FSA Rule CRED 8.3.1R (in force until 7 January 2012) in the Credit Unions Sourcebook ("CRED") in the Handbook states:

"A *version 1 credit union* must at all times maintain a positive amount of capital."

9. The guidance in CRED 8.3.3G states that:

"CRED 8.3.1R implements the principle that every pound saved by a depositor with a *credit union* should always be worth at least a pound."

10. The guidance in CRED 8.3.4G states that:

"...bad and doubtful debts must be taken into account in establishing whether a *credit union* is maintaining a positive amount of capital."

11. FSA Rule CREDS 5.3.1R in the Credit Unions New Sourcebook ("CREDS") in the Handbook states:

"A *version 1 credit union* must at all times maintain a capital-to-total assets ratio of at least 3%. [Note: a transitional provision applies to this rule: see CREDS TP1.1.]"

12. CREDS TP1.1 CREDS 5.3.1R R (in force from 8 January 2012) states that:

"CRED 8.3.1 R, as it was in force on 31 December 2011, will apply from the beginning of this transitional period until midnight on 30 September 2012."

13. CREDS 7.5.1R states that:

"A *credit union* must make adequate provision for bad and doubtful debt."

14. CREDS 7.5.2R states that:

"A *credit union* must make specific provision in its accounts for bad and doubtful debts of at least the amounts set out below:

- (1) 35% of the *net liability* to the *credit union* of borrowers where the amount is more than three *months* in arrears; and
- (2) 100% of the *net liability* to the *credit union* of borrowers where the amount is more than 12 *months* in arrears."

15. CREDS 10.1.3G states that the Threshold Conditions must be met on a continuing basis by credit unions and that failure to meet one of the conditions is sufficient grounds for the exercise by the FSA of its powers.

Guidance concerning the relevant Threshold Condition

16. Guidance on Threshold Condition 4 (Adequate Resources) is set out in Chapter 2.4 of the Part of the Handbook entitled Threshold Conditions (“COND”).
17. COND 2.4.1UK reproduces the relevant statutory provision that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.
18. COND 2.4.2G(2) in giving guidance on the interpretation of “adequate resources”, defines the term “adequate” as meaning sufficient in terms of quantity, quality and availability, and “resources” as including all financial resources, non-financial resources and means of managing its resources, capital, provisions against liabilities, holdings of or access to cash and other liquid assets.
19. COND 2.4.4G(3) requires the FSA only to take into account relevant matters which are material in relation to the regulated activities for which the authorised person has permission.

OTHER RELEVANT REGULATORY PROVISIONS

20. The FSA’s policy in relation to the use of its enforcement powers is set out in the Enforcement Guide (“EG”).

The FSA’s policy for exercising the own-initiative power under section 45 of the Act to vary a Part IV permission – EG 8

21. EG 8.1B provides that the FSA will have regard to its regulatory objectives and the range of regulatory tools that are available to it. It will also have regard to:

“(1) the responsibilities of a *firm’s* management to deal with concerns about the *firm* or about the way its business is being or has been run; and

(2) the principle that a restriction imposed on a *firm* should be proportionate to the objectives the FSA is seeking to achieve.”
22. EG 8.5 provides that the circumstances in which the FSA will consider varying a firm’s Part IV permission include those where the FSA has serious concerns about the firm or about the way its business is being or has been conducted.
23. EG 8.5(1)(a) specifies that the circumstances in which the FSA will consider exercising its own-initiative power include where a firm’s financial resources appear to be inadequate for the scale or type of regulated activity it is carrying on.

24. EG 8.6 provides that in urgent cases the FSA may impose a variation of permission so that it takes effect immediately if it reasonably considers it necessary for the variation to take effect immediately, having regard to the ground on which it is exercising its own-initiative power.
25. EG 8.7 states that:
- “The FSA will consider exercising its *own-initiative power* as a matter of urgency where:
- (1) the information available to it indicates serious concerns about the *firm* or its business that need to be addressed immediately; and
 - (2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the *firm* in order to ensure the *firm* addresses these concerns.”
26. EG 8.9 includes among the factors which will determine whether the urgent exercise of the FSA’s own-initiative power is an appropriate response, the extent of any loss or risk of loss or other adverse effect on consumers and the steps the authorised person has taken or is taking to address the issue.
27. EG 8.10 states that:
- “When varying *Part IV permission* at its own-initiative under its section 45 power (or section 47 power), the FSA may include in the *Part IV permission* as varied any *limitation* or restriction which it could have imposed if a fresh *permission* were being given in response to an application under section 40 of the *Act*.”