
FINAL NOTICE

To: **Mr Richard Charles Nichols (“Mr Nichols”)**

Individual Reference Number: **RCN01028**

Date: **6 February 2020**

1. ACTION

1.1. For the reasons given in this notice, the PRA hereby:

- (1) issues a statement of Mr Nichols’ misconduct (a “public censure”) pursuant to section 66 of the Financial Services and Markets Act 2000 (“the Act”), for breaching Statements of Principle 1 and 6. Mr Nichols satisfied the PRA that payment of a financial penalty would cause him serious financial hardship. Were it not for Mr Nichols’ financial circumstances, the PRA would have imposed a financial penalty of £20,000;¹ and
- (2) makes an order prohibiting Mr Nichols from performing any function in relation to any regulated activity carried on by any authorised or exempt person, or exempt professional firm, pursuant to section 56 of the Act.

1.2. The public censure will be issued on 6 February 2020 and will take the form of this Final Notice which will be published on the Bank of England’s website. The Prohibition Order takes effect from 6 February 2020.

2. SUMMARY OF THE GROUNDS FOR ACTION

2.1. On the basis of the facts and matters described below, the PRA considers that Mr Nichols breached Statement of Principle 1 during the period 14 July 2014 to 13 November 2014 (“the SoP1 Relevant Period”) and Statement of Principle 6 during the period 8 October 2012 to 2 March 2015 (“the Relevant Period”) while performing the CF1 (director) function at Enterprise the Business Credit Union Ltd (“EBCU”). In particular, the PRA considers that he:

- (1) acted recklessly as to the truth and accuracy of information he provided to

¹ The Prudential Regulation Authority’s approach to enforcement: statutory statements of policy and procedure August 2018 – Appendix 4 - Statement of the PRA’s settlement decision-making procedure and policy for the determination and amount of penalties and the period of suspensions or restrictions in settled cases: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/statement-of-policy/2018/the-pras-approach-to-enforcement-statutory-statements-of-policy-and-procedure-update.pdf>.

EBCU's auditors ("the auditors") and the PRA regarding EBCU's financial position;

- (2) failed to perform the CF1 (director) function at EBCU with due skill, care and diligence; and
- (3) demonstrated a lack of integrity (by virtue of his acting recklessly as described in (1)) and a lack of competence and capability such that he is not a fit and proper person to hold a PRA controlled function.

Background

EBCU

- 2.2. EBCU was a credit union authorised by the PRA and regulated by the FCA for conduct matters and by the PRA for prudential matters. It operated as a not-for-profit mutual society offering its members loans and savings accounts. During the Relevant Period, EBCU had one employee and between three and five directors (including a chair) formally appointed to its board. EBCU's business was based in Bournemouth, but it is now in liquidation. Upon entering administration in May 2015, EBCU had almost 1,900 members and held over £7 million of members' savings.
- 2.3. Towards the end of 2012, EBCU entered into arrangements with Mr Grimsdale and with Company A (a community interests company, also based in Bournemouth, of which Mr Nichols was a director) regarding the operation of its business. Pursuant to these arrangements, EBCU extended the common bond of its members (membership of the Federation of Small Businesses) to include membership of Company A; appointed one of Company A's directors, Mr Richard Nichols ("Mr Nichols") as a director; outsourced the day-to-day administration of its business to Company A (including all administration, payment of expenses, all banking, all transferring of funds, issuing of loans and all collection of loan repayments); appointed Mr Grimsdale and another individual ("Individual A") to its Lending Committee, alongside a director of EBCU; and delegated authority to operate EBCU's online banking to Mr Grimsdale and Individual A and its telephone banking solely to Mr Grimsdale.

Mr Nichols' role at EBCU

- 2.4. On 8 October 2012, Mr Nichols was approved by the FSA to perform the CF1

(director) function at EBCU, which he held throughout the Relevant Period, until his resignation was registered by the PRA on 2 March 2015. (Mr Nichols tendered his resignation to the EBCU Board on 17 February 2015.)

- 2.5. On 9 December 2012, the EBCU Board appointed Mr Nichols to the role of Secretary. His responsibilities in this role included maintaining EBCU's website, circulating information to the EBCU Board (including papers and minutes), communicating with regulators and the auditors, the implementation of anti-money laundering procedures and handling complaints. Mr Nichols' role as director and Secretary of EBCU was voluntary and was not remunerated.
- 2.6. Under the senior managers regime, the PRA expects senior managers (known as 'approved persons' during the Relevant Period) to understand their own regulatory responsibilities as well as their authorised firm's regulatory requirements. The role of a senior manager at a credit union (now the SMF8 function²) is one of fundamental importance, integral to the firm's safety and soundness. The PRA expects an SMF8 in the proper performance of their role to, among other things, take an active role in ensuring that the credit union complies with the requirements of the regulatory regime.
- 2.7. Directors of a credit union are expected to be aware of the financial position of the credit union. This requires that directors keep themselves fully informed of the firm's finances. The careful and prudent management of a firm's financial resources is paramount to its safety and soundness.

Conflict of interest

- 2.8. Throughout the Relevant Period, Mr Nichols was a director of both EBCU and Company A and so had a duty to act in the interests of both companies. As a paid employee and shareholder, he also had a financial interest in Company A, which derived the vast majority of its income from the fees it charged EBCU under the outsourcing arrangement.
- 2.9. Mr Nichols told the PRA that he declared a potential conflict of interest to the EBCU Board and that he was not involved in intercompany transactions, did not access EBCU bank accounts and did not participate in EBCU Board decisions where he was conflicted.
- 2.10. However, there are no records in EBCU's files of Mr Nichols explicitly bringing his conflict to the attention of the EBCU Board in connection with any matter before

² Since 7 March 2018

the EBCU Board or of his abstaining from any EBCU Board decisions relating to Company A (including, for example, the EBCU Board decision to approve the terms of the outsourcing agreement with Company A). None of the other EBCU Board members recall Mr Nichols ever taking such steps.

- 2.11. Where senior managers have interests that conflict with their duties to the authorised firm, the PRA expects them to put in place appropriate measures to mitigate the risks arising from those conflicts of interest. In respect of company Directors, this expectation is in keeping with the duties owed by the Director under the Companies Act 2006. Where a senior manager at a credit union fails to mitigate the risks arising from a conflict of interest, this may result in the senior manager acting in a way that is contrary to the best interests of the credit union.

Oversight of Company A's operations

- 2.12. A large proportion of EBCU's business involved the issuing of unsecured loans. Branches of Company A would promote EBCU's loans to their customer base. Under the outsourcing arrangement with EBCU, Company A was involved with every stage of EBCU's loan business – from assessing and approving loan applications to processing loans, through to paying out the loan from EBCU's bank account.
- 2.13. In 2012, EBCU was identified as a potential credit union partner for Company A, and a new board of directors at EBCU was recruited. Mr Grimsdale was not appointed as a director of EBCU. In practice, Mr Grimsdale performed the day-to-day operation of EBCU's business. Regarding EBCU's loans business, Mr Grimsdale was significantly involved at every stage of the process.
- 2.14. In particular, Mr Grimsdale developed the application approvals process and (as part of the Lending Committee along with Individual A and a director) decided whether or not loan applications should be approved; led the administration team at Company A that prepared and processed loan documentation; made payments from EBCU to Company A in order to pay out loans; recorded and monitored EBCU's loan activity via Company A's accounting software ("Curtains"); and provided the EBCU Board with reports on EBCU's loans business.
- 2.15. In addition to these functions, Mr Grimsdale, as a director of Company A, EBCU's outsourced service provider:
- (1) through his establishment and control of the accounting software Curtains,

was involved in maintaining EBCU's accounting records and preparing information for EBCU's auditors ("the auditors") in order for them to prepare EBCU's audited accounts; and

- (2) was involved in monitoring and reporting to the EBCU Board on EBCU's loan business and general financial position, including by preparing reports for others.

2.16. Furthermore, Mr Grimsdale had control of EBCU's bank accounts and unilaterally took decisions which were significant for its financial position. Specifically, he unilaterally paid out EBCU loans in contravention of the PRA's requirement on EBCU not to issue new loans (the "PRA Requirement", see below). He also paid Company A's fees on materially higher terms than those the EBCU Board had previously agreed to.

2.17. The PRA expects senior managers to take an active role in ensuring the safety and soundness of authorised firms. They have an individual and collective responsibility in this regard. This includes giving appropriate consideration to the risks arising from delegating activities (whether by outsourcing functions to unauthorised firms or by delegation of roles to non-approved individuals) and ensuring appropriate oversight and control of those delegated activities.

2.18. In the circumstances, the PRA would have expected Mr Nichols, as a director of EBCU to have:

- (1) adequately informed himself about, and maintained an appropriate level of understanding of, EBCU's business, including but not limited to EBCU's financial position and its loans business;
- (2) adequately supervised and monitored the activities of Company A in relation to the administration of EBCU's business, particularly the processing and payment of EBCU loans and the operation of EBCU's online bank account; and
- (3) adequately considered the risks associated with: (i) the outsourcing arrangement with Company A, and (ii) the delegation of key roles to Mr Grimsdale who was a non-approved person; and to have mitigated these risks by putting appropriate controls in place.

Company A's fees

The Contract

- 2.19. In early 2013, the EBCU Board decided that the outsourcing arrangement with Company A should be formalised. Mr Grimsdale and another individual subsequently prepared a contract which the EBCU Board approved. Representatives of EBCU and Company A signed the contract, dated 10 March 2013, with Mr Grimsdale signing on behalf of Company A ("Version 1 of the contract"). The terms of Version 1 of the contract provided that Company A's fees on EBCU loans were calculated at *"50% of ALL interest received – paid 3 monthly in arrears – based on interest actually received – not anticipated"*.
- 2.20. However, following EBCU entering into administration, Mr Grimsdale provided to the Liquidators of EBCU a second version of the contract with revised terms ("Version 2 of the contract"), purportedly agreed by EBCU. This provided that Company A's fees regarding EBCU loans were to be calculated at *"Loan interest - 50%+VAT on the total interest on all loans created for EBCU. This is invoiced monthly for the total interest due per loan and is paid monthly in arrears"*., The terms of Version 2 of the contract, compared to those of Version 1 of the contract which provided for payments based on interest actually received, were financially less favourable to EBCU but financially more advantageous to Company A.
- 2.21. The members of the EBCU Board (with the exception of Mr Nichols) all dispute the validity of Version 2 of the contract, asserting that they were not aware of its existence and did not discuss or approve the change to Company A's fees based on loan interest payments in Version 2. They assert that they would never have agreed to EBCU paying fees to Company A on interest it was yet to receive, as this would not have been commercially viable. Mr Nichols disputes these assertions, alleging that some Board members must have been aware of Version 2 of the contract as commissions would have been paid onwards to the Company A branch they were connected with, and that he remembers other Board members commenting on the costliness of the terms of Version 2 of the contract.
- 2.22. The PRA has found that the evidence supports the position put forward by the other directors of the EBCU Board. In particular:
- (1) There is no record of any change in the basis of Company A's fees on loans being discussed or agreed by the EBCU Board in minutes of board meetings or in the emails between its members.
 - (2) There are various references to charging fees on ISAs, but these references to ISAs show a position in flux, and there is no evidence of the basis of these fees being set in a contract approved by the EBCU Board.

- (3) Financial forecasts for EBCU that were submitted to the EBCU Board and to the PRA throughout the Relevant Period were based on the terms of Version 1 of the contract.
- (4) On 17 July 2014, Mr Grimsdale emailed Version 1 of the contract – not Version 2 of the contract – to Mr Nichols, to be provided to the auditors in response to its queries when preparing EBCU’s audited accounts.
- (5) The PRA has identified from the evidence that the first instance of the existence of Version 2 of the contract is when Mr Grimsdale provided a copy to the Liquidators in August 2015 in response to its questioning of the payments he had made from EBCU to Company A.

Inaccurate information to EBCU’s auditors and the PRA

- 2.23. Whilst Mr Nichols stated to the PRA that he had no involvement in any of the financial aspects of EBCU, providing information to the auditors was part of the role he performed as EBCU’s Secretary.
- 2.24. In July 2014, the auditors raised queries regarding fees paid/payable to Company A, in order to finalise EBCU’s audited accounts. For this purpose, Mr Grimsdale provided Mr Nichols with a copy of Version 1 of the contract on 17 July 2014, which Mr Nichols duly provided to the auditors. Mr Grimsdale did not provide EBCU or the auditors with a copy of Version 2 of the contract or with copies of the invoices he had created only a few days before. In addition, Mr Nichols made statements to the auditors regarding fees to Company A. Mr Grimsdale knew the figures that the auditors were relying on were inaccurate (since they related to invoices he himself had created) but he did not take any steps to correct them. For his part, Mr Nichols asserts that he did not check the version of the contract and that he should have provided Version 2 of the contract to the auditors as this was the version he maintains was in force.
- 2.25. During July and August 2014, Mr Nichols provided further information to the auditors (and to the PRA) that understated fees paid/payable to Company A for the provision of the services outsourced to them by EBCU. EBCU’s audited accounts were inaccurate as a result, understating the fees paid/payable to Company A for that accounting period by £117,663.45.
- 2.26. On 13 November 2014, a letter purportedly from Mr Nichols on behalf of EBCU was sent to the PRA together with EBCU profit and loss and cashflow forecasts. The forecasts set out that no fees had been paid or were expected to be paid to Company A in the 12 months to March 2015. In fact, Company A had already invoiced EBCU £310,508 in fees and went on to invoice EBCU over £500,000 in

further fees for the period April 2014 to March 2015, and EBCU had already paid £51,262 (including £13,000 that day) and went on to pay a further £257,293 for the period October 2014 to September 2015.

- 2.27. Mr Nichols asserts that he did not write the letter of 13 November 2014. An EBCU employee emailed a copy to him at the time of sending to the PRA but Mr Nichols maintains that he did not review it at the time or the accuracy of either the information in it or in the attachments to it.
- 2.28. By way of explanation, Mr Nichols stated to the PRA:
- (1) *"Forwarding the information does not mean that I either understand or confirm the correctness of that information";* and
 - (2) *"Just because a document may have been sent from my email address it does not mean that I had anything to do with the preparation of either the document or the content of the email to which it was attached."*
- 2.29. The PRA expects senior managers to ensure that they provide truthful and accurate information on behalf of their authorised firm and, where that information is produced by another person, to verify its accuracy before sending. This is particularly important where senior managers know that the information will be relied on by the recipient.

The PRA Requirement on EBCU not to issue new loans

- 2.30. As EBCU's business grew, the level of capital the PRA required it to hold increased (as a percentage of assets). During the course of 2014, the PRA raised concerns regarding EBCU's business; in particular regarding EBCU's deteriorating capital position which the PRA considered posed a risk to EBCU's safety and soundness.
- 2.31. EBCU voluntarily applied to the PRA to restrict its activities and the PRA accordingly imposed a voluntary requirement on EBCU under section 55M of the Act, with effect from 24 December 2014 ("the PRA Requirement"). The terms of the PRA Requirement included that EBCU must not make any new loans or make further loan advances in relation to, or otherwise vary the terms of, existing loans. Mr Nichols was aware of, and understood, the terms of the PRA Requirement and that it had been imposed to safeguard EBCU's safety and soundness in light of its failure to meet its capital requirements.
- 2.32. Following the imposition of a PRA Requirement, the PRA expects senior

managers to take steps to ensure that their authorised firm complies with regulatory requirements. Where the PRA imposes a requirement on an authorised firm, the PRA expects senior managers to take steps to monitor the firm's compliance with the requirement, and to implement appropriate systems and controls to mitigate the risk that it is breached.

- 2.33. However, between 24 December 2014 and 14 May 2015 Mr Grimsdale paid out £642,502.93 from EBCU's bank account relating to 176 loans, which meant EBCU breached the PRA Requirement repeatedly. With the exception of 10 to 15 loans that it appears were approved by the EBCU Board in January 2015, Mr Grimsdale concealed the full extent of EBCU loans he had paid out in contravention of the PRA Requirement.
- 2.34. On 14 May 2015, EBCU entered administration and it entered liquidation on 17 August 2015.

Director disqualification

- 2.35. On 3 April 2017, Mr Nichols agreed a disqualification undertaking with the Secretary of State preventing him from directly or indirectly becoming involved in the promotion, formation or management of a company for nine years (commencing 24 April 2017) without the permission of the Court. This was on the grounds that Mr Nichols:
- (1) failed to ensure that the rest of the EBCU Board either agreed, or were even aware of, Version 2 of the contract;
 - (2) by failing to include the monies charged by and paid out to Company A in EBCU's accounts, failed to ensure that EBCU filed accurate accounting information to the PRA; and
 - (3) failed to ensure that EBCU complied with the PRA Requirement.

3. BREACHES AND FAILURES

Statement of Principle 1

- 3.1. During the SoP1 Relevant Period, the PRA considers Mr Nichols breached Statement of Principle 1 by failing to act with integrity when performing the CF1 (director) function at EBCU. This is in respect of recklessness as opposed to dishonesty. In particular, he:

- (1) acted recklessly as to the truth and accuracy of information he provided to EBCU's auditors regarding: (i) EBCU's contractual arrangement with Company A, and (ii) the fees paid and payable from EBCU to Company A; and
 - (2) acted recklessly as to the truth and accuracy of information he provided to the PRA concerning EBCU's financial position.
- 3.2. By failing to review the information, Mr Nichols deliberately closed his mind to the risk that the information was not accurate, when he knew that the auditors would rely on this information to prepare EBCU's audited accounts and the PRA would rely on this information to assess EBCU's financial position to inform its supervisory approach for the firm.
- 3.3. Mr Nichols knew that the fees payable to Company A for its services under the outsourcing arrangement were EBCU's biggest cost and that the fees on EBCU loans invoiced by Mr Grimsdale (on behalf of Company A) and paid (on behalf of EBCU) were materially higher than those the EBCU Board had agreed to under Version 1 of the contract. The level of those fees was critical to EBCU's financial position and the accuracy of its accounts. Despite maintaining that Version 2 of the contract was in force, Mr Nichols was reckless as to the truth and accuracy of information he provided to the auditors and the PRA on which he knew they would rely.

Statement of Principle 6

- 3.4. The PRA considers that Mr Nichols breached Statement of Principle 6 during the Relevant Period by failing to exercise due skill, care and diligence in managing the business of EBCU for which he was responsible as CF1 (director).
- 3.5. Mr Nichols failed to appropriately manage the conflicts between his competing duties and interests as a director of both EBCU and Company A. Instead, Mr Nichols sought to rely on the existence of conflicts as justification for the passive approach he took towards his responsibilities at EBCU as a CF1 (director).
- 3.6. Mr Nichols also:
- (1) failed adequately to inform himself about, and did not maintain an appropriate level of understanding of, EBCU's business, in particular its financial position and loans business, the administration of which was outsourced to Company A;
 - (2) failed to supervise and monitor adequately the activities of Company A in

respect of EBCU's loans business, including those of Mr Grimsdale (to whom the processing and payment of EBCU loans had in effect been delegated, as well as sole control of EBCU's bank account). Mr Nichols, as an employee of Company A, was in the best position of any of the EBCU directors to monitor the activities of Company A and Mr Grimsdale;

- (3) failed to consider the risks associated with: (i) the outsourcing arrangement with Company A, and (ii) the delegation of key roles to Mr Grimsdale (a non-approved person), and put appropriate mitigation in place. He in fact placed total reliance on Mr Grimsdale; and
- (4) failed to monitor adequately EBCU's compliance with the PRA Requirement, despite his proximity to Mr Grimsdale as a director of Company A.

Fitness and propriety

- 3.7. The PRA also considers that Mr Nichols' conduct has fallen short of the minimum regulatory standards such that he is not a fit and proper person for the purposes of section 56 of the Act, on the grounds of a lack of integrity and a lack of competence and capability.
- 3.8. Mr Nichols acted recklessly regarding the truth and accuracy of information concerning EBCU's financial position that he provided to the auditors and the PRA, when he knew this information would be relied on by the respective recipients. This conduct demonstrates a lack of integrity.
- 3.9. Mr Nichols also failed to manage and mitigate the conflict between his interests at EBCU and Company A, did not bring to the attention of the EBCU Board or the auditors Version 2 of the contract which he asserts (contrary to the rest of the EBCU Board) was in force, failed to monitor and supervise the activities of Company A and Mr Grimsdale under the outsourcing arrangement (despite him being in a unique position do so given his role at Company A) and failed to ensure that EBCU complied with the PRA Requirement. This conduct demonstrates a lack of competence and capability.
- 3.10. More detailed information on the facts and matters relied on by the PRA in its decision-making process regarding Mr Nichols can be found in Annex A.

4. REASONS WHY THE PRA HAS TAKEN ACTION

- 4.1. The PRA is responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers and major investment firms. The PRA's

general objective is to promote the safety and soundness of those firms.

- 4.2. Credit unions typically provide financial services in specific local areas or to particular groups within society. In doing this they perform an important social role, including in the provision of financial services to vulnerable or marginalised individuals who may otherwise have difficulty accessing financial services.
- 4.3. Credit unions are typically much smaller than many of the deposit takers supervised by the PRA. The PRA ensures that they are supervised in a manner proportionate to their size and activity, promoting their safety and soundness.
- 4.4. Like other deposit takers, credit unions generally undertake maturity transformation and are levered (i.e. have debt in their capital structure), leaving them inherently vulnerable to a loss of confidence. This underlies the objective to promote their safety and soundness, so that they are financially sound, and run in a prudent manner.
- 4.5. The imposition of a public censure and a prohibition order on Mr Nichols supports that objective. The PRA considers Mr Nichols' failures undermined the safety and soundness of EBCU and are significantly serious such that, were it not for Mr Nichols' financial circumstances, a financial penalty would be appropriate. In the circumstances, the PRA considers that the imposition of a public censure is appropriate. Moreover, Mr Nichols conduct demonstrates that he does not meet the standards of fitness and propriety required to hold a position in an authorised firm, in that he lacks integrity and competence and capability, such that the imposition of a prohibition under s. 56 of the Act is justified.
- 4.6. By acting recklessly as to the truth of the information he shared with EBCU's auditors and with the PRA, and by not bringing Version 2 of the contract to the attention of EBCU's Board and its auditors, Mr Nichols created a prudential risk for EBCU and meant that EBCU's audited accounts and financial position as reported to the PRA were inaccurate. This resulted in EBCU's financial position appearing to EBCU's auditors and to the PRA to be stronger than it in fact was.
- 4.7. Mr Nichols' failure appropriately to manage the conflict of interest between his interests at Company A and EBCU demonstrates that he did not adequately understand his regulatory responsibilities as a CF1 (director). This meant that EBCU was at risk of him acting for the benefit of Company A, to the detriment of EBCU and its safety and soundness.

- 4.8. In failing to exercise due skill, care and diligence in identifying the risks associated with EBCU's business, including the risks associated with Company A's performance of the critical functions outsourced to it, Mr Nichols exposed the credit union to the risk of its finances being imprudently managed, as well as to the risk that such imprudent management would fail to be detected. This contributed to EBCU breaching the PRA Requirement, and, ultimately, to EBCU being placed into administration and, subsequently, liquidation - the largest PRA-authorized credit union to fail at the time and by a considerable margin. Following the failure of the firm, the FSCS paid out over £7 million to EBCU's members of which they have recovered just under £3 million.
- 4.9. Mr Nichols' lack of understanding of the risks arising from the outsourcing arrangement meant that he placed total reliance on Mr Grimsdale (a non-approved person) to undertake all activities involving EBCU's finances for which he was responsible as a director of EBCU.

5. SANCTION

- 5.1. Taking into account the facts and matters in Annex A and the relevant factors set out in the PRA's Penalty Policy, the PRA considers that Mr Nichols' breach of Statements of Principle 1 and 6 warrants the imposition of a financial penalty of £20,000. However, as Mr Nichols has satisfied the PRA that any penalty imposed by the PRA would cause him serious financial hardship, this amount has been reduced to nil. The PRA has therefore imposed a public censure.
- 5.2. Further, the imposition of a prohibition order supports the PRA's general objective. The PRA considers that Mr Nichols is not a fit and proper person due to a lack of integrity and a lack of competence and capability, and that he poses a risk to the safety and soundness of firms.
- 5.3. The PRA's action delivers the message that individuals who pose a risk to the PRA's general objective may be subject to enforcement action, notwithstanding the category of authorised firm in which they work or worked, or the fact that the firm has ceased operating.
- 5.4. The PRA's action emphasises the importance of senior managers understanding and fulfilling their regulatory responsibilities in the performance of controlled functions (under the approved persons regime during the Relevant Period, now under the senior managers regime), which cannot be absolved by outsourcing or delegation.

6. ANNEXES/APPENDICES AND PROCEDURAL MATTERS

- 6.1. The full particulars of the facts and matters relied on by the PRA in its decision-making process regarding Mr Nichols can be found in **Annex A**. Mr Nichols' misconduct and failings are detailed in **Annex B** and the basis for the public censure and prohibition order the PRA has imposed is set out in **Annex C**. The procedural matters set out in **Annex D** are important.
- 6.2. **Appendix 1** sets out the definitions used in the Notice and **Appendix 2** sets out the relevant statutory, regulatory and policy provisions.

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Miles Bake

Head of Legal, Enforcement and Litigation Division,
for and on behalf of the PRA

ANNEX A - FACTS AND MATTERS RELIED UPON

1. BACKGROUND

The relevant entities

EBCU

- 1.1. EBCU was a credit union - a not-for-profit mutual society owned by its members. It was incorporated (and registered on the Mutuels Public Register) in 1996 and regulated by the Registry of Friendly Societies and then from 2002 by the FSA. From 2013, EBCU was authorised by the PRA and regulated by the FCA for conduct matters and by the PRA for prudential matters. EBCU is no longer authorised by the PRA and it is currently in liquidation.
- 1.2. During the Relevant Period, EBCU was based in Bournemouth and offered financial products to its members, including savings accounts and loans. At the end of the Relevant Period, it had about 1,900 members and held over £7 million of members' savings. The common bond of EBCU's members was that they were also members of the Federation of Small Businesses and/or Company A, a community interest company (i.e. a business existing to benefit the community).
- 1.3. On 14 May 2015, EBCU entered administration and it entered liquidation on 17 August 2015.

Company A

- 1.4. Company A was incorporated on 24 August 2012 and is also located in Bournemouth. During the Relevant Period, Company A offered its members a range of products and services through its network of "branches" (separate companies who referred clients to Company A) – including loans from EBCU. As set out further below, Company A performed the day-to-day administration of EBCU's business on an outsourced basis. Company A has not at any point been an authorised firm.

DEAC

- 1.5. DEAC was an advice centre (and not-for-profit company) that supported people in the Poole and Dorset areas who wished to apply for grants from government and local councils to put towards energy-saving and heating products, such as boilers. DEAC became, in effect, a branch of Company A and its clients were the main source for EBCU's loans business. It was dissolved on 8 March 2016.

Mr Nichols' background

Previous experience

- 1.6. Mr Nichols began his career as a farmer. From 1990 to 1996, he worked as a self-employed financial adviser in respect of life and pensions sales. Mr Nichols then worked in IT, marketing and sales for companies outside of the financial services industry, including at a social enterprise from 2009. He has also held a number of directorships.

Formation of Company A

- 1.7. In 2012, Mr Nichols and other individuals (Mr Grimsdale and Individual B) sought a partnership with a credit union in order to bid for investment from the Department for Work & Pensions' Credit Union Expansion Project (CUEP). This was a government initiative to invest in credit unions to modernise and grow the industry, helping more people on low incomes. Mr Grimsdale and the other individuals identified EBCU as a potential partner and he, Mr Nichols and Individual B approached individuals regarding the CUEP proposition (with Mr Grimsdale approaching DEAC's directors, Ms Gillian Birkett and Mr Phil Neale, to support his business idea and join a new EBCU Board).
- 1.8. In August 2012, Mr Nichols formed Company A, which was established to provide a centralised administration and technology platform to support companies providing services for adults and children with disabilities throughout the UK. Mr Nichols was Company A's founding director, appointed as General Secretary with responsibility for IT, marketing & sales. Since November 2012, Mr Grimsdale has been a director and shareholder of Company A, and employed as its Operations Director. Mr Grimsdale is now its Missions Director. During the Relevant Period, Mr Grimsdale was responsible for all operations at Company A, including systems and controls, administration of services to members, account management and banking.

Establishment of a new EBCU Board

- 1.9. In October 2012 and November 2012 respectively, Mr Nichols and Individual B were approved by the FSA to perform the CF1 director function at EBCU and were appointed to the EBCU Board. Mr Nichols subsequently applied, on behalf of EBCU, for Ms Birkett and Mr Neale and a third individual to perform the CF1 director function at EBCU. No application was submitted for Mr Grimsdale, who remained a non-approved person throughout the Relevant Period.

1.10. In December 2012, the FSA approved the applications and the newly approved individuals were appointed to the EBCU Board as directors. Mr Nichols and the other CF1 (directors) of EBCU were not remunerated for their roles as directors.

EBCU's arrangements with Mr Grimsdale and Company A

1.11. Towards the end of 2012, EBCU entered into arrangements with Mr Grimsdale and with Company A, regarding the operation of its business. Pursuant to these arrangements, EBCU:

- (1) extended the common bond of its members to include membership of Company A;
- (2) as set out above, appointed Mr Nichols (a director of Company A) as a director of the EBCU Board and obtained approval from the FSA for him to perform the CF1 director function;
- (3) outsourced the day-to-day administration of its business to Company A;
- (4) appointed Mr Grimsdale and Individual A to its Lending Committee (as set out at paragraph 4.1 below); and
- (5) authorised Mr Grimsdale and Individual A as users of EBCU's online banking, and solely Mr Grimsdale as the user of its telephone banking.

1.12. Under the above arrangements, EBCU's products (personal and business loans, as well as savings accounts) were available to members of Company A and to clients of its branches (provided that they were, or became, members of Company A - and thus within the common bond of EBCU).

1.13. The largest source of applications for EBCU loans was via Ms Birkett's and Mr Neale's company, DEAC (operating, in effect, as a branch of Company A); accounting for approximately 80% of EBCU's loans business. These were applications for loans to pay for the provision and installation of new boilers, called "Your Greener Loans."

1.14. EBCU shared office space with Company A and operated with one employee, and a board of three to five directors (including a chairperson). Under the above

arrangements, Company A performed all administration, payment of expenses, issuing of loans and collection of loan repayments.

- 1.15. As set out in more detail in section 6 below, this arrangement was subsequently formalised in a contract under which Company A charged a fee for each EBCU member, as well as introductory fees on EBCU products.

2. ROLE AND RESPONSIBILITIES AT EBCU

- 2.1. Throughout the Relevant Period, Mr Nichols' role on the EBCU Board was that of a CF1 director, i.e. part of EBCU's executive management body.
- 2.2. At the first meeting of the newly appointed EBCU Board in December 2012, Mr Nichols was appointed to the role of Secretary, which Mr Nichols accepted. In this role, Mr Nichols was primarily responsible for maintaining EBCU's website, circulating information to the EBCU Board (including papers and minutes), communicating with regulators and the auditors, and for complaints and anti-money laundering procedures.
- 2.3. The EBCU Board convened once a month in person. Typically, the meetings would consist of a number of reports (e.g. from the Chair, Vice Chair, the Secretary, and Company A personnel), following which there would be discussions and decisions taken. The reports given at board meetings typically consisted of a summary of EBCU's loans business (including the value of new loans, total loans and bad debts), a summary of developments at Company A's branches, and EBCU's financial position and accounts.
- 2.4. Mr Nichols attended EBCU Board meetings regularly and provided what was described as a Secretary's report. This usually comprised of a summary of developments in respect of membership of EBCU, and any updates concerning Company A. Mr Grimsdale often attended EBCU Board meetings. He was an active participant at EBCU Board meetings, raising matters for discussion, providing advice (including in respect of regulatory compliance) and delivering reports on EBCU's loans business (including the value of new loans, total loans and bad debts). He also provided the EBCU Board with updates and reports on his monitoring of EBCU's financial position and accounts.
- 2.5. Mr Nichols stated in his written representations that he relied on Mr Grimsdale and Individual A to tell him what he needed to do as Secretary and also similarly relied on the EBCU Board seeking professional advice. He stated he did not understand "financial matters" and asserted that information he provided to the

auditors and to the PRA on behalf of EBCU was drafted by others (in most instances, Mr Grimsdale) and he simply forwarded it on, generally without him reviewing it.

- 2.6. Mr Nichols held the CF1 (director) function at EBCU until 2 March 2015, when he resigned from the EBCU Board and his approval was withdrawn.

3. CONFLICT OF INTEREST

- 3.1. Throughout the Relevant Period, Mr Nichols was a director of both EBCU and Company A and so had a duty to act in the interests of both companies. As a director and employee of Company A, Mr Nichols received a salary from Company A (which, in turn, derived its income from EBCU under the outsourcing arrangement), and as a shareholder could potentially receive dividends from it. Mr Nichols' obligations to, and financial interests in, Company A therefore created a potential conflict with his duties to act in the best interests of EBCU.
- 3.2. Mr Nichols (and Mr Grimsdale) attended the EBCU board meeting at the end of 2012 at which the EBCU Board took the decision to outsource administration of its business to Company A. There is no indication in the minutes of that meeting that Mr Nichols abstained from participating in that decision.
- 3.3. In early 2013, the EBCU Board discussed potential conflicts of interest that could arise between directors' external interests on the one hand, and their obligations towards EBCU on the other. Mr Nichols told the PRA that he recognised his interests in Company A created a potential conflict and he declared this to the EBCU Board at the time.
- 3.4. In his written representations to the PRA, Mr Nichols explains that he was not involved in any intercompany financial transactions, did not access bank accounts or pay Company A's invoices. He also maintains that he did not participate in decisions or activities at EBCU Board meetings where he believed himself to be conflicted.
- 3.5. However, Mr Nichols is recorded as attending and participating in the EBCU Board Meeting on 27 March 2013 at which Version 1 of the contract was agreed by the EBCU Board. There is no record in the minutes that Mr Nichols declared a conflict of interest and recused himself or abstained from participating in the EBCU Board's discussions or decision in connection with Version 1 of the contract. During interviews with the PRA, none of the other EBCU Board members or attendees recalled Mr Nichols taking such steps on this occasion or

any other occasion, and the PRA did not identify any records of him doing so. In fact, Mr Nichols would often attend EBCU Board meetings with Mr Grimsdale representing Company A's interests.

4. OVERSIGHT OF COMPANY A'S OPERATIONS

- 4.1. The EBCU Board had no involvement in the approval of EBCU loans. Company A's branches received loan applications from members and submitted these to Mr Grimsdale's team at Company A for processing. The EBCU Board appointed Mr Grimsdale and Individual A as permanent members of the Lending Committee, with the third position to be filled by one of EBCU's directors. Mr Nichols never performed this role.
- 4.2. The Lending Committee applied defined credit scoring criteria in order to determine whether or not a loan application should be approved. Applications that did not meet the required score were then referred to a third member of the Lending Committee (a director of the EBCU Board), although such instances were rare. EBCU's Board had no involvement in loan approvals.
- 4.3. Once a member or members of the Lending Committee had approved a loan application, Mr Grimsdale's team at Company A arranged for the relevant loan documentation and processing. The Lending Policy set out a prescriptive process, based on a points score and the Lending Committee Terms of Reference specified who was to take the decisions.
- 4.4. Mr Grimsdale transferred the loan amount from EBCU's bank account to the borrower (or, in the case of Your Greener Loans, to the fitter/installer).
- 4.5. Mr Grimsdale introduced the accounting software Curtains to Company A to record and monitor the level of EBCU's loans business. Mr Grimsdale and a small number of his team had access to Curtains. Neither Mr Nichols nor EBCU's other directors had access to it in practice and were therefore reliant on Mr Grimsdale to provide information on EBCU's loans business, including by way of update reports from Mr Grimsdale at EBCU Board meetings.
- 4.6. Mr Grimsdale operated EBCU's bank accounts and unilaterally took decisions which were significant for its financial position, making unilateral decisions about the prioritisation of payments at a time when EBCU's capital position was deteriorating – including paying out EBCU loans after the PRA Requirement was imposed and paying Company A's invoices that he had himself raised.

- 4.7. Although Mr Nichols was a named signatory on EBCU's bank account, he did not exercise control or oversight over the account. EBCU having delegated access to EBCU's online banking to Mr Grimsdale and Individual A, Mr Nichols did not monitor payments being made into or out of EBCU's bank account. Mr Nichols did not request, receive, or review any bank statements in respect of EBCU's bank account, other than those that were occasionally provided directly by Mr Grimsdale at EBCU Board meetings.
- 4.8. Indeed, an independent report sent on 22 October 2014 on EBCU's governance and controls identified the composition of the EBCU Board as a key business risk, in large part due to the situation of conflict Mr Nichols was in as both a director of EBCU and a controlling influence at Company A. The report recommended a replacement be found for Mr Nichols on the EBCU Board. The report further identified a key dependency and a high level of vulnerability relating to Mr Grimsdale as an "IT super-user" risk in respect of EBCU's reliance on him- in particular, as the prime source of knowledge of the Curtains system, and having sole control of certain key IT processes including BACS payments and credits. The report was considered by the EBCU Board, including Mr Nichols, but no action was taken at the time to address the risks identified in the report.

5. FEES PAYABLE TO COMPANY A

Version 1 of the contract

- 5.1. At its meeting on 25 January 2013, the EBCU Board decided that the outsourcing arrangement with Company A should be set out in a contract and it allocated this as an action for Mr Grimsdale and Individual A.
- 5.2. On 13 March 2013, Mr Grimsdale emailed a draft of Version 1 of the contract to the EBCU Board, confirming that he (on behalf of Company A) and Individual A (on behalf of EBCU) had prepared it. In his email, Mr Grimsdale stated, "This reflects the basis of the agreement as understood" and requested comments ahead of signing at the next EBCU Board meeting.
- 5.3. The draft of Version 1 of the contract, dated 10 March 2013 but stated to be effective from 1 October 2012, referred to an existing arrangement (commencing "before August 2012") whereby EBCU outsourced to Company A the operation, creation and carrying out of "ALL functions for Administration in all areas of the operation of the Credit Union". It set out the fees payable in respect of each active member. It also set out "introductory fees" payable by EBCU to Company A in respect of interest received on loans issued and fees

received for managed accounts.

- 5.4. Regarding loan interest, the draft of Version 1 of the contract provided that the introductory fee payable was *"50% of ALL interest received - paid 3 monthly in arrears - based upon interest actually received – not anticipated."*
- 5.5. At its meeting of 22 March 2013, the EBCU Board agreed to the terms of Version 1 of the contract, with three-monthly reviews. Version 1 of the contract was signed by an EBCU Board member on behalf of EBCU and by Mr Grimsdale on behalf of Company A. This appears to have been soon after the EBCU Board meeting, although the exact date is uncertain.

Version 2 of the contract

- 5.6. Mr Nichols asserts that, in or around June 2014, EBCU and Company A agreed Version 2 of the contract – a replacement of Version 1 of the contract with revised introductory fees. The earliest record of Version 2 of the contract that the PRA has identified is 17 August 2015, when Mr Grimsdale emailed a scanned copy of it to the Liquidators in response to its questions regarding payments he had made from EBCU to Company A. Version 2 of the contract is also dated 10 March 2013 with effect from 1 October 2012, as per Version 1 of the contract, and has the same signatories.

Revised terms

- 5.7. As well as adding fees for savings accounts (on new savings introduced and savings retained annually), Version 2 of the contract provided that the introductory fee payable on loan interest was *"50%+VAT on the total interest on all loans created for EBCU. This is invoiced monthly for the total interest due per loan and is paid monthly in arrears."*
- 5.8. The change to the introductory fee on loan interest is significant. Under the terms of Version 2 of the contract, EBCU would have been required to pay Company A 50% plus VAT (i.e. 60%) of all interest due over the lifetime of a loan whether or not EBCU had received that interest. As above, Version 1 of the contract by comparison specifically made clear that the fee would not be payable on interest EBCU was yet to receive; rather, only on interest that EBCU had actually received. The terms of Version 2 of the contract, compared to those of Version 1 of the contract, were therefore unfavourable to EBCU but financially advantageous to Company A, in which Mr Nichols had financial interests.

The EBCU Board's awareness of the Version 2 of the contract

- 5.9. The EBCU Board's members (except Mr Nichols – also a director of Company A) assert that they were not aware of the existence of Version 2 of the contract and never discussed or approved any change to the basis of Company A's fees. They assert that they would never have agreed to EBCU paying fees on interest it was yet to receive, as this was not commercially viable for EBCU.
- 5.10. EBCU's signatory recalls only signing one version of the contract, which they understood to be Version 1 of the contract that was discussed and approved by the EBCU Board in March 2013.
- 5.11. In his written evidence to the PRA, Mr Nichols maintains that Version 2 of the contract must be the correct version because, unlike Version 1 of the contract, it includes a fee payable in respect of ISAs, a percentage of which Company A paid on to Branch A and other branches.
- 5.12. The PRA does not accept Mr Nichols' assertions in this regard, which are not supported by the available evidence. For the reasons set out below, the PRA considers that the EBCU Board did not approve Version 2 of the contract and was not aware of its terms:
- (1) Unlike Version 1 of the contract, there is no reference whatsoever in the minutes of EBCU Board meetings or emails between EBCU Board members regarding Version 2 of the contract or a change to the basis of Company A's fees in respect of loans. There are various references to charging fees on ISAs.
 - (2) By way of email dated 5 November 2013, Mr Grimsdale provided financial forecasts to the EBCU Board which included an expenditure item, "[Company A] Fees 50% of Int Received on Loans." Mr Grimsdale accepted at interview that this referred to fees due under Version 1 of the contract (i.e. on interest received, not anticipated).
 - (3) By way of email dated 17 July 2014, Mr Grimsdale provided Mr Nichols with a copy of Version 1 of the contract which Mr Nichols then forwarded on to the auditors, noting that it had been updated to include payment for introduction of savings. No reference was made to the fees on loan interest having been amended. Mr Nichols' explanation is that this version of the contract must have been provided by Mr Grimsdale in error, and that Mr Nichols did not himself verify which version it was before sending it to the auditors.

- (4) By way of email dated 5 December 2014, Individual A provided further financial forecasts to the EBCU Board, copying in Mr Grimsdale. These included the same expenditure item as referred to at point (2) above (i.e. "50% of Int Received on Loans"), therefore indicating that fees continued to be calculated under the terms of Version 1 of the contract at this time (i.e. interest received, not anticipated).
- (5) EBCU's sole employee (who worked in Company A's offices) - when searching for a copy of the contractual agreement between EBCU and Company A at the Liquidators request - stated in an email to Mr Grimsdale dated 1 May 2015 that they could only locate Version 1 of the contract and questioned whether there was a subsequent version referencing fees on savings.
- (6) On 17 August 2015, Mr Grimsdale provided the Liquidators with a copy of Version 2 of the contract when they challenged payments he had made from EBCU to Company A. This is the first instance the PRA has found of the existence of Version 2 of the contract.

Inaccurate information to the auditors and the PRA

- 5.13. Mr Nichols asserts that he does not know how many versions the contract went through, as he has not involved in drawing it up and was not a signatory to it. All the invoices raised by Mr Grimsdale for Company A's fees on loan interest, totalling £633,117.70 excluding VAT, were based on materially different terms to those of Version 1 of the contract. Mr Grimsdale paid these invoices without the EBCU Board's approval, in particular, of the terms which, the PRA concludes on the evidence, the EBCU Board was unaware.
- 5.14. This resulted in:
 - (1) EBCU being invoiced and paying fees to Company A on the basis of interest due to EBCU on all loans created, whether or not that interest was subsequently received and including interest which would not be received following loan default; and
 - (2) Company A receiving accelerated payment of fees in respect of interest which would only be payable in the future.
- 5.15. The difference between the fees due at the time under Version 1 of the contract and the funds transferred from EBCU to Company A was substantial. The Liquidators of EBCU set out in their letter of 21 September 2015 an overpayment

of £539,774 (including VAT) based on their interpretation of Version 2.

Inaccurate information to the auditors

- 5.16. Mr Nichols stated: "*I would not have studied the EBCU 2013 and 2014 accounts in any detail at all... I have no financial skills and knowledge and relied on others to ensure they are correct.*" However, it is plain from the evidence before the PRA that he in fact played a prominent role in communicating with and providing financial information to the auditors.
- 5.17. In July 2014, the auditors were preparing EBCU's audited accounts. At the time, Mr Grimsdale had already created Company A's invoices dated 7 April 2014 and 10 July 2014 for fees totalling £231,402.07.
- 5.18. On 14 July 2014, the auditors sought clarification of fees paid/payable to Company A. Mr Nichols responded by way of email dated 17 July 2014 (as above, attaching Version 1 of the contract, rather than Version 2 of the contract) and stating Company A's fees to March 2014 totalled approximately £160,000. This was inaccurate since Mr Grimsdale had in fact raised Company A's invoices dated 7 April 2014 and 10 July 2014 (i.e. the latter only a week earlier) for fees totalling £231,402.07 (including VAT).
- 5.19. Mr Nichols provided further information to the auditors during July and August 2014 that also understated fees paid/payable to Company A. Mr Nichols stated that he relied on Mr Grimsdale to verify the accuracy of information he provided to the auditors. EBCU's audited accounts were inaccurate as a result, understating the fees paid/payable to Company A by £117,663.45.
- 5.20. Mr Nichols circulated drafts of EBCU's 2013 and 2014 accounts to the EBCU Board. He also assured EBCU's chair in an email of 18 September 2014 that "*the figures are 100% accurate,*" when this was not the case.
- 5.21. Whilst Mr Nichols was not involved in raising invoices at Company A or paying them at EBCU, his assertions that he had no involvement in any of the financial aspects of EBCU are contrary to the evidence set out above. Mr Nichols' explanation is that any correspondence he provided to the auditors was sent in his capacity as Secretary, and he was merely a point of contact rather than the person responsible for the accuracy of the information sent, which he did not verify. In his written statement to the PRA, Mr Nichols asserted:

(1) "*Forwarding the information does not mean that I either understand or*

confirm the correctness of that information”; and

(2) *“Just because a document may have been sent from my email address it does not mean that I had anything to do with the preparation of either the document or the content of the email to which it was attached.”*

5.22. When Mr Nichols sent the information referred to above to the auditors, he did so as a director of EBCU and he gave no suggestion that he had not written the emails or reviewed the accuracy of attachments. Mr Nichols knew the significance of the information he provided to EBCU’s auditors and that it would be relied on by the auditors. The fact that he did not check the accuracy of the information he provided demonstrates his reckless misconduct.

Inaccurate information to the PRA

5.23. Mr Nichols also provided the (inaccurate) draft accounts to the PRA by way of email dated 3 August 2014, in which he stated, *“I meant to say that you will see from the draft financials for the period to March 2014 that we have completely transformed the Credit Union from the position in Sept 2013, making a profit and building the reserves required to move forward. Not bad for just 6 months.”* He made similar assertions in his email to the PRA of 18 September 2014.

5.24. On 13 November 2014, a representative of EBCU emailed the EBCU Board a copy of an (unsigned) letter of the same date from Mr Nichols (for EBCU) to the PRA, together with attached EBCU profit and loss and cashflow forecasts. The EBCU representative stated that the letter had been posted to the PRA. The letter set out the steps EBCU was taking to rectify its capital deficit by March 2015 and referred to attached cash flow forecast, noting: *“The Credit Union is currently running ahead of target and is already achieving figures of March 2015.”* However, the information provided to the PRA was not correct:

(1) The profit and loss forecast set out EBCU’s forecast for April 2014 to March 2015, including the expenditure entry: *“[Company A] Fees + Interest £0.”* Company A had in fact already invoiced £310,508 in fees in that period and went on to invoice over £500,000 further fees.

(2) The cash flow projection set out EBCU’s forecast from October 2014 to September 2015, including the expenditure entry: *“[Company A] Fees 50% of Int Received on Loans”* with £0 recorded for each month. However, EBCU had already paid £38,262 in fees to Company A in October 2014 and another £13,000 that day (i.e. 13 November 2014), and went on to pay a further £257,293.

- 5.25. Mr Nichols asserts that he did not write the 13 November 2014 letter to the PRA. He did not review the accuracy of the information it contained.

6. THE PRA REQUIREMENT NOT TO ISSUE NEW LOANS

Imposition of the PRA Requirement

- 6.1. As EBCU's business grew, the level of capital the PRA required it to hold increased (as a percentage of assets). On 8 December 2014, the PRA met with EBCU (including Mr Nichols) to discuss its concerns regarding EBCU's deteriorating capital position; EBCU's failure to meet its capital requirements posed a risk to EBCU's safety and soundness.
- 6.2. In its letter to EBCU dated 12 December 2014, the PRA invited EBCU to submit a voluntary application to the PRA to impose a requirement on EBCU not to, among other things, issue any new loans, or make further advances in relation to, or otherwise vary the terms of, existing loans.
- 6.3. Mr Nichols requested a further meeting with members of the PRA's Supervision Division, which he attended on behalf of EBCU on 16 December 2014. During this meeting, Mr Nichols informed the PRA that there were EBCU loans that had been agreed but not yet paid out. The PRA responded that it would not be prudent for EBCU to pay out such loans given its capital deficit and to do so could be considered negligent. Mr Nichols also informed the PRA of "managed accounts" provided to EBCU's members into which members received benefit payments and wages and from which bills were paid. The PRA invited EBCU to consider the PRA's letter of 12 December 2014 and reply with its own proposals (including the status of the managed accounts).
- 6.4. On 17 December 2014, the EBCU Board, including Mr Nichols, met to discuss the PRA's proposal. The EBCU Board decided to confirm to the PRA that EBCU would fully comply with the proposed requirement, but requested that its scope be amended so as to allow EBCU to continue to process its managed accounts (for members who rely on their accounts for managing their benefit payments and bill payments, for example). EBCU confirmed this in its subsequent letter to the PRA on 18 December 2014.
- 6.5. Accordingly, on 24 December 2014 the PRA imposed the PRA Requirement on EBCU under section 55M of the Act with immediate effect. The terms of the PRA Requirement were as follows:

With the exception of being able to continue to operate the managed accounts:

1. *EBCU must not engage in its regulated activity of accepting deposits.*
2. *EBCU must not:*
 - (i) *make new loans, or make further loan advances in relation to, or otherwise vary the terms of, any existing loans;*
 - (ii) *redeem any members' shares;*
 - (iii) *repay any deposits;*
 - (iv) *effect any share to loan transfers; or*
 - (iv) *without the written consent of the PRA, make any payment, or otherwise dispose of, deal with or diminish the value of any of its assets, except the payment of expenses incurred in the ordinary course of EBCU business (by payment from any of its bank accounts or otherwise).*

Mr Nichols' role in EBCU's contravention of the PRA Requirement

The EBCU Board's instructions

- 6.6. On or around 6 January 2015, the EBCU Board held a meeting to discuss the PRA Requirement. (Mr Nichols' recollection is that Company A held a meeting around this time to which the EBCU Board were invited and which they attended.) Mr Nichols attended the meeting. –Ms Birkett and Mr Neale assert that Mr Grimsdale was present, and stated that he wanted to pay out a small number of loans (10 to 15) where approval had been given and the work either had been done or was imminent (e.g. a contract agreed with the boiler installer in respect of Your Greener Loans). They state that the EBCU Board agreed to this small volume of loans being paid out after the PRA Requirement on an exceptional basis. Some of the EBCU Board members recall Mr Nichols stating that EBCU did not need to inform the PRA of these payments, although Mr Nichols denies this.
- 6.7. In his written representations to the PRA, Mr Nichols maintains that he had understood the PRA Requirement's exception in respect of "managed accounts" meant that "approved" loans (i.e. the application for which the Lending Committee had approved) prior to the date of the PRA Requirement amounted to "existing loans" and could therefore be paid out after the imposition of the PRA Requirement.
- 6.8. The PRA does not accept this. In light of the matters set out above, namely the two meetings with the PRA, at which Mr Nichols was present, the records of the meetings on 16 December 2014 and 17 December 2014 and the wording of EBCU's letter of 18 December 2014 and the wording of the PRA Requirement

itself, Mr Nichols' position is not sustainable.

Payment of loans after the PRA Requirement

- 6.9. In any event, Mr Grimsdale in fact proceeded to pay out a significant volume of loans where no contractual commitment had arisen. This included 60 loans which the Lending Committee did not approve until after the PRA Requirement was imposed. For 39 of these, Company A did not receive the loan application until after the PRA Requirement was imposed.
- 6.10. In total, after the imposition of the PRA Requirement, Mr Grimsdale paid out £642,502.93 in respect of 176 EBCU loans. More than £100,000 of this related to EBCU loans for which Company A did not receive an application until after the imposition of the PRA Requirement.
- 6.11. Mr Nichols denies any knowledge of the payment of these loans in breach of the PRA Requirement. He states that the decisions to pay these loans were taken by the Lending Committee, to which he was not privy. He maintains that all the members of the Lending Committee knew the terms of the PRA Requirement.
- 6.12. In his written representations, Mr Nichols admits that he did not monitor/supervise Company A in his role as a director of EBCU on the grounds that this would have been a "potential conflict of interest". Whilst he states that he did "*monitor the position*" regarding payment of "existing loans" by "*reviewing the physical pile of applications from contactors,*" he also states that he did not receive any information after the PRA Requirement regarding loans other than information that might have been provided at EBCU Board meetings.
- 6.13. In Mr Nichols' written representations, he has confirmed that he cannot recall any conversation at any stage within EBCU or Company A regarding reviewing the governance of loan approvals (by the Lending Committee) or payment of loans (by Mr Grimsdale) to ensure EBCU did not breach the PRA Requirement. He nonetheless recognises that this was a "critical risk."

7. DIRECTOR DISQUALIFICATION

- 7.1. On 3 April 2017, Mr Nichols agreed a disqualification undertaking with the Secretary of State preventing him from directly or indirectly becoming involved in the promotion, formation or management of a company for nine years (commencing 24 April 2017) without the permission of the Court. This was on the grounds that Mr Nichols:

- (1) failed to ensure that the rest of the EBCU Board either agreed, or were even aware of, Version 2 of the contract;
- (2) by failing to include the monies charged by and paid out to Company A in EBCU's accounts, failed to ensure that EBCU filed accurate accounting information to the PRA; and
- (3) failed to ensure that EBCU complied with the PRA Requirement.

ANNEX B - BREACHES AND FAILINGS

1. BREACHES AND FAILINGS

1.1. As a result of the facts and matters set out in Annex A, the PRA considers that:

- (1) Mr Nichols breached Statements of Principle 1 and 6 during the Relevant Period in the performance of his CF1 (director) function at EBCU; and
- (2) Mr Nichols' conduct has fallen short of the minimum regulatory standards such that he is not a fit and proper person for the purposes of section 56 of the Act, on the grounds of a lack of integrity and competence and capability.

Statement of Principle 1 – acting with integrity

1.2. During the SoP1 Relevant Period, Statement of Principle 1 provided:

An approved person performing an accountable function must act with integrity in carrying out his accountable function.

1.3. While performing the CF1 (director) function at EBCU during the SoP1 Relevant Period, Mr Nichols:

- (1) acted recklessly as to the truth and accuracy of information he provided to the auditors regarding: (i) EBCU's contractual arrangement with Company A, and (ii) the fees paid and payable from EBCU to Company A. By failing to review the information, Mr Nichols deliberately closed his mind to the risk that the information was not accurate, when he knew that the auditors would rely on this information to prepare EBCU's audited accounts; and
- (2) acted recklessly as to the truth and accuracy of information he provided to the PRA concerning EBCU's financial position. By failing to review the information, Mr Nichols deliberately closed his mind to the risk that the information was not accurate, when he knew that the PRA would rely on this information to assess EBCU's financial position to inform its supervisory approach for the firm.

1.4. As a director of EBCU, and given his role at Company A, the PRA would have expected Mr Nichols to have been in a position to obtain and provide accurate information regarding the fees paid/payable from EBCU to Company A – and at the very least to check the veracity of information he was providing. As a director of Company A, Mr Nichols was also in a position to check the entries in

Company A's audited accounts, from which it would have been apparent that the information he provided to the auditors concerning fees paid/payable to Centres was incorrect.

- 1.5. Mr Nichols knew that the fees payable to Company A for its services under the outsourcing arrangement were EBCU's biggest cost and that the fees on EBCU loans invoiced by Mr Grimsdale (on behalf of Company A) and paid (on behalf of EBCU) were materially higher than those the EBCU Board had agreed to under Version 1 of the contract. The level of those fees was critical to EBCU's financial position and the accuracy of its accounts. Despite maintaining that Version 2 of the contract was in force, Mr Nichols was reckless as to the truth and accuracy of information he provided to the auditors and the PRA on which he knew they would rely.
- 1.6. His actions therefore created a prudential risk for EBCU and meant that EBCU's audited accounts and financial position as reported to the PRA were inaccurate, understating the fees paid/payable to Company A by £117,663.45. This resulted in EBCU's financial position appearing to both the auditors and the PRA to be stronger than it in fact was.

Statement of Principle 6 – due skill, care and diligence

- 1.7. During the Relevant Period, Statement of Principle 6 provided:

An approved person performing a significant influence [from 1 April 2013, "accountable"] function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled [from 1 April 2013, accountable] function.

- 1.8. Mr Nichols breached Statement of Principle 6 as follows:

Conflict of interest

- 1.9. Mr Nichols operated with a conflict of interest between his functions at EBCU and those in Company A. Mr Nichols recognised the potential conflicts between his competing duties and interests as a director of both EBCU and Company A. The PRA considers that he failed to manage adequately this conflict of interest. This put EBCU at risk of him acting for the benefit of Company A, to the detriment of EBCU and its safety and soundness.
- 1.10. The existence of potential conflicts of interest between Mr Nichols' roles at EBCU

and Company A did not mean that he could neglect the duties he owed EBCU as its director, including in connection with the risks arising from the outsourcing of EBCU's operations to Company A.

Inadequate understanding of EBCU's loans business

- 1.11. Mr Nichols failed to keep himself adequately informed about, and maintain an appropriate level of understanding of, EBCU's loans business. He did not consider it his responsibility as a CF1 (director) of EBCU to keep abreast of EBCU's lending activity. This failing was further compounded by his incorrect belief that it would be a conflict of interest for him to do so, and he therefore adopted a passive approach to his CF1 (director) responsibilities. In particular, Mr Nichols made no use of his authority over EBCU's bank account, or of his role at Company A, to inform himself of the level of EBCU's lending, either before or after the imposition of the PRA Requirement. Mr Nichols failed to address the risks arising from his personal lack of understanding of EBCU's loan business.

Inadequate supervision of Company A's activities

- 1.12. As a director of Company A, Mr Nichols was uniquely placed among EBCU's directors to supervise and monitor Company A's activities in administering, processing and paying loans on behalf of EBCU. However, he failed to do so; seeking to justify this position on the basis that he was allegedly prevented from doing so by his conflict of interest. This is obviously plainly wrong. Mr Nichols also failed to scrutinise or verify the reports he received from Company A in his capacity as a director of EBCU. He did not take any steps to establish and implement appropriate systems and controls to ensure effective oversight of Company A's activities. He considered those in Company A to whom the business had been outsourced to be more skilled and experienced than himself, and accordingly disregarded their activities entirely and neglected his duty to monitor their performance of the delegated activities.

Risks arising from delegation

- 1.13. Mr Nichols failed to consider the risks associated with: (i) the outsourcing arrangement with Company A, and (ii) the delegation of key roles to Mr Grimsdale at Company A who was a non-approved person.
- 1.14. These failures in relation to risk management suggest that Mr Nichols did not exercise due care and consideration before agreeing to delegate a large part of EBCU's business to Company A. This exposed the credit union to the risk of its finances being imprudently managed, as well as to the risk that such imprudent

management would fail to be detected.

Adherence to the PRA Requirement

- 1.15. As outlined in Annex A, Mr Nichols adopted an unreasonable interpretation of the PRA Requirement – which required EBCU not to issue new loans or advances on existing loans – in a way that would have permitted the payment of all loans for which the application had been approved before the PRA Requirement was imposed. In any event, a large proportion of loans paid out after the PRA Requirement were in respect of loans for which an application had not been approved, or even received before the PRA Requirement.
- 1.16. Mr Nichols failed to monitor adequately EBCU’s compliance with the PRA Requirement. He failed to recognise that the responsibility to comply with the PRA Requirement was EBCU’s, not Company A’s or the Lending Committee’s, and that as a CF1 (director) of EBCU he had a regulatory responsibility in ensuring that it did so.
- 1.17. While the PRA Requirement was in place Mr Nichols did not use the means available to him to monitor and control Company A’s activities in order to ensure its activities did not put EBCU in breach of the PRA Requirement or to report to the EBCU Board where it did so.
 - (1) In his position as an authorised signatory on the EBCU bank account, Mr Nichols was in a position to monitor the account and also to restrict the access of Company A staff to it. He did not monitor the account (which would have confirmed that Company A was paying out unauthorised loans in contravention of the PRA Requirement) nor did he restrict Company A’s access to the account.
 - (2) As a director of Company A working with Mr Grimsdale, Mr Nichols was also in a unique position to monitor Company A’s activities regarding EBCU’s loans business, including the payment of loans after the PRA Requirement. Despite being the only EBCU director in this position, Mr Nichols took no steps to do so.
- 1.18. The PRA considers these failings to be particularly serious because they contributed to EBCU breaching the PRA Requirement, and by a substantial degree. The PRA takes very seriously contraventions of its requirements under section 55M of the Act. Mr Nichols knew that the PRA had imposed the PRA Requirement to safeguard EBCU’s safety and soundness in light of its failure to

meet its capital requirements. He also knew that the PRA Requirement prevented EBCU from making loans.

- 1.19. In issuing loans after the PRA Requirement, Mr Grimsdale reduced EBCU's liquid resources, therefore creating a significant prudential risk to EBCU's safety and soundness and increasing the potential shortfall in members' savings to be funded by the FSCS in the event that EBCU failed. These risks crystallised - Mr Nichols' failure to monitor compliance with the PRA Requirement ultimately contributed to EBCU being placed into administration and, subsequently, liquidation. The FSCS paid out over £7 million to EBCU's members of which it has recovered just under £3 million.

Section 56 – not a fit and proper person

- 1.20. Under section 56 of the Act, the PRA may make a prohibition order if it appears to it that an individual is not a fit and proper person to perform functions in relation to regulated activity carried on by a PRA-authorized person or by an exempt person in relation to a PRA-regulated activity.

- 1.21. The PRA considers that Mr Nichols is not a fit and proper person because his conduct has demonstrated a lack of integrity (by virtue of his acting recklessly, as described in 1.21 below) and a lack of competence and capability.

- 1.22. Mr Nichols acted recklessly regarding the truth and accuracy of information regarding EBCU's financial position that he provided to the auditors and the PRA, when he knew this information would be relied on by the respective recipients. This conduct demonstrates a lack of integrity.

- 1.23. As set out above, Mr Nichols also failed:

- (1) to manage and mitigate the conflict between his interests at EBCU and Company A;
- (2) to monitor and supervise the activities of Company A and Mr Grimsdale under the outsourcing arrangement (despite him being in a strong position to do so given his role at Company A); and
- (3) to ensure that EBCU complied with the PRA Requirement.

This conduct demonstrates a lack of competence and capability.

- 1.24. On 3 April 2017, Mr Nichols agreed a disqualification undertaking with the Secretary of State (commencing 24 April 2017) preventing him from directly or

indirectly becoming involved in the promotion, formation or management of a company for nine years without the permission of the Court. Notwithstanding this, the PRA considers Mr Nichols poses a risk to the safety and soundness of firms due to his lack of fitness and propriety.

- 1.25. Mr Nichols is still an employee of Company A, which, as an introducer appointed representative of two authorised persons, is an exempt person and can introduce customers to those firms and give out certain kinds of marketing material.

Not fit and proper

- 1.26. As a result of Mr Nichols' conduct demonstrating a lack of integrity and lack of competence and capability, the PRA considers that he is not a fit and proper person to perform any function in relation to a regulated activity carried on by an authorised or exempt person.

ANNEX C - SANCTION

1. FINANCIAL PENALTY

- 1.1. The PRA's policy for imposing a financial penalty is set out in the PRA Penalty Policy. The PRA applies a five-step framework to determine the appropriate level of financial penalty, as set out at paragraphs 12 to 36 of the PRA Penalty Policy.
- 1.2. The PRA considered whether to calculate separate penalties in respect of Mr Nichols' breaches of Statements of Principles 1 and 6. However, as the failings underpinning the misconduct in relation to both breaches are linked, the PRA concluded that a single penalty calculation is appropriate.

Step 1: disgorgement

- 1.3. Pursuant to paragraph 17 of the PRA Penalty Policy, at Step 1 the PRA seeks to deprive an individual of any economic benefits derived from or attributable to the breach of its requirements, where practicable to ascertain and quantify them.
- 1.4. Mr Nichols was not remunerated as a director of EBCU, but received income from his position at Company A (which in turn received the majority of its income from EBCU). However, it does not appear to the PRA that Mr Nichols received income from Company A that was directly attributable to his breaches. It therefore appears that Mr Nichols derived no direct personal economic gain, nor avoided any personal economic loss, from the breaches.
- 1.5. Therefore the Step 1 figure is **£0**.

Step 2: seriousness of the breach

- 1.6. Pursuant to paragraph 18 of the PRA Penalty Policy, at Step 2 the PRA determines a starting point figure for a punitive penalty having regard to the seriousness of the breach by the relevant individual, including any threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives. Pursuant to paragraph 20 of the PRA Penalty Policy, the PRA will ordinarily determine a figure at Step 2 based on the individual's annual income. "Annual income" means the gross amount of all benefits, including any deferred benefits, received by the individual from the employment in connection with which the breach of the PRA's requirements occurred. The PRA ordinarily calculates an individual's annual income during the tax year preceding the date when the breach ended ("relevant income").

- 1.7. The Relevant Period ended on 2 March 2015 and so the relevant tax year here is 2013-2014. Mr Nichols' total gross income from Company A for the tax year 2013-2014 was £12,556.00. This was in respect of his role as Director at Company A. The PRA considers that Mr Nichols' annual income for tax year 2013-2014 is an appropriate starting point in the circumstances.
- 1.8. Therefore, the starting point for the penalty is **£12,556.00**.

Step 2 Factors

- 1.9. Pursuant to paragraph 20(d) of the PRA penalty policy, in determining the seriousness of the breach, the PRA will apply an appropriate percentage rate to the individual's relevant income to produce a figure at Step 2 that properly reflects the nature, extent scale and gravity of the breach. The PRA considers the percentage rate of Mr Nichols' relevant income should be 40% because:
- (1) as a CF1 (director) of EBCU, Mr Nichols held an important position on the EBCU Board with regards to ensuring the firm's safety and soundness;
 - (2) Mr Nichols' breaches created a risk to the safety and soundness of EBCU. In particular, he failed to adequately manage and mitigate his conflict of interest; maintain an appropriate level of understanding of EBCU's loans business; supervise and monitor Company A's activities; consider the risks arising from the outsourcing arrangement with Company A and delegation of key roles to Mr Grimsdale; and monitor EBCU's compliance with the PRA Requirement. As a director and employee of Company A, Mr Nichols was in a better position than the other directors of EBCU to oversee and monitor its activities of Company A and those of Mr Grimsdale but he failed to do so. These failures undermined EBCU's safety and soundness as they contributed to EBCU breaching the PRA Requirement (imposed to safeguard EBCU's safety and soundness in light of its failure to meet its capital requirements) by a substantial degree. This ultimately contributed to EBCU being placed into administration and, subsequently, liquidation. Following the failure of the firm, the FSCS paid out over £7 million to EBCU's members of which it has recovered just under £3 million;
 - (3) Mr Nichols' breached Statement of Principle 1 by failing to act with integrity in that he acted recklessly;
 - (4) Mr Nichols' misconduct demonstrates that he lacks fitness and propriety;
 - (5) Mr Nichols' breach of Statement of Principle 6 occurred from October 2012

to March 2015, a period of two-and-a-half years;

- (6) Mr Nichols has previous experience in the financial services industry dating back to over 20 years ago;
 - (7) Mr Nichols in his written representations did not demonstrate any or sufficient insight into his failings;
 - (8) Mr Nichols was a volunteer director. He did not receive any remuneration directly from EBCU. He received his remuneration from Company A, which in turn received the majority of its income from EBCU;
 - (9) On 3 April 2017, Mr Nichols agreed a disqualification undertaking with the Secretary of State (although in his written representations to the PRA he appears to dispute the need for such a disqualification) preventing him from directly or indirectly becoming involved in the promotion, formation or management of a company for nine years (commencing on 24 April 2017) without the permission of the Court. This disqualification order resulted from Mr Nichols' performance of his role as a Director at EBCU.
- 1.10. The PRA considers that the imposition of a financial penalty on Mr Nichols for breaching Statements of Principle 1 and 6 is an appropriate and effective regulatory response to the misconduct in question.
- 1.11. The Step 2 figure is therefore **£5,022.40**.

Step 3: mitigating, aggravating and other relevant factors

- 1.12. Pursuant to paragraph 24 of the PRA Penalty Policy, the PRA may increase or decrease the starting point figure for a punitive penalty determined at Step 2 (excluding any amount to be disgorged pursuant to Step 1, which is not applicable in this instance) to take account of any factors which may aggravate or mitigate the breach, or other factors which may be relevant to the breach or the appropriate level of penalty in respect of it. The factors that may aggravate or mitigate the breach include those set out at paragraphs 25 and 26 of the PRA Penalty Policy.
- 1.13. The PRA considers that the following factors are relevant:
- (1) In respect of a number of key issues, the PRA does not accept Mr Nichols' assertions and found them to be contradictory to or unsupported by the available evidence; and

(2) Mr Nichols has no previous disciplinary record in respect of the PRA's regulatory requirements.

1.14. The PRA remains of the view that the Step 2 figure is appropriate and proportionate in the circumstances. Therefore it has not made any adjustment to the figure.

1.15. The Step 3 figure is therefore **£5,022.40**.

Step 4: adjustment for deterrence

1.16. Pursuant to paragraph 27 of the PRA Penalty Policy, if the PRA considers the penalty determined following Steps 2 and 3 is insufficient to effectively deter the person that committed the breach and others who are subject to the PRA's regulatory requirements from committing similar or other breaches, it may increase the penalty at Step 4 by making an appropriate deterrence adjustment to it.

1.17. The PRA considers that the Step 3 figure of £5,000 is insufficient to effectively deter others from committing the similar or other breaches and considers that an adjustment for deterrence is appropriate in this instance by a factor of 4. The PRA considers that this will send a clear message to directors of credit unions (SMF8 holders) and the regulated community more widely as to the high standards of regulatory behaviour required under the senior managers regime (previously, the approved persons regime).

1.18. The Step 4 figure is therefore $4 \times £5,022.40 =$ **£20,089.60**.

Step 5: application of any applicable reductions for early settlement or serious financial hardship

1.19. Pursuant to paragraph 30 of the PRA Penalty Policy, where the individual on whom a penalty is to be imposed claims that payment of the penalty will cause them serious financial hardship, the PRA may reduce the penalty. Taking into account Mr Nichols' financial position and all the circumstances, the PRA considers that it is appropriate to reduce the financial penalty to nil and to impose a public censure. Were it not for Mr Nichols' financial circumstances, the PRA would have imposed a financial penalty of £20,000 (rounded down from £20,089.60).

1.20. Pursuant to paragraph 29 of the PRA Penalty Policy, the PRA and the individual on whom a penalty is to be imposed may seek to agree the amount of the

financial penalty and any other settlement terms. The PRA Settlement Policy³ provides that the amount of the penalty which might otherwise have been payable may, subject to the stage at which a binding settlement agreement is reached, be reduced. Paragraph 26 of the PRA Settlement Policy provides that, where the PRA proposes to impose a financial penalty under the Act and a proposed settlement agreement is negotiated by the parties, approved by the PRA's settlement decision makers and concluded, the person concerned will be entitled to a reduction in the amount of the financial penalty (as set out at paragraph 28 of the PRA Settlement Policy).

- 1.21. As the PRA is not imposing a financial penalty on Mr Nichols due the matters set out in paragraph 1.19 above, a settlement discount is not relevant.

Conclusion – public censure

- 1.22. The PRA would have imposed a financial penalty of **£20,000** on Mr Nichols for breaching Statements of Principle 1 and 6. However, taking into account Mr Nichols' relevant financial circumstances, the PRA has issued a public statement that Mr Nichols has breached Statements of Principle 1 and 6. The PRA considers that by taking this action, Mr Nichols and others will be effectively deterred from engaging in similar behaviour in the future.

³ PRA's approach to enforcement: statutory statements of policy and procedure October 2019 - Statement of the PRA's settlement decision-making procedure and policy for the determination of the amount of penalties and the period of suspensions or restrictions in settled cases

ANNEX D - PROCEDURAL MATTERS

1. DECISION MAKER

- 1.1. The settlement decision makers made the decision which gave rise to the obligation to give this Notice.
- 1.2. This Notice is given under and in accordance with section 390 of the Act. The following statutory rights are important.

2. PUBLICITY

- 2.1. Sections 391(4), 391(6A) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the PRA must publish such information about the matter to which this Notice relates as the PRA considers appropriate. The information may be published in such manner as the PRA considers appropriate. However, the PRA may not publish information if such publication would, in the opinion of the PRA, be unfair to the person with respect to whom the action was taken, prejudicial to the safety and soundness of PRA-authorized persons or prejudicial to securing an appropriate degree of protection to policyholders.

3. PRA CONTACTS

- 3.1. For more information concerning this matter generally, contact John Cheesman of the Enforcement & Litigation Division, Legal Directorate of the Bank of England (direct line: 020 3461 7866, john.cheesman@bankofengland.co.uk).

APPENDIX 1

DEFINITIONS

1. THE DEFINITIONS BELOW ARE USED IN THIS NOTICE:

- 1.1. "the Act" means the Financial Services and Markets Act;
- 1.2. "the auditors" means EBCU's auditors during the Relevant Period;
- 1.3. "Branch A" means a branch of Company A whose two directors were also directors of EBCU.
- 1.4. "Company A" means a UK community interests company based in Bournemouth to whom EBCU outsourced the administration of its business;
- 1.5. "Curtains" means the accounting software used by Company A;
- 1.6. "EBCU" means Enterprise the Business Credit Union Ltd (in liquidation), a UK credit union based in Bournemouth;
- 1.7. "the EBCU Board" means EBCU's board of directors;
- 1.8. "the FCA" means the Financial Conduct Authority;
- 1.9. "the FSA" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;
- 1.10. "FSCS" means the Financial Services Compensation Scheme;
- 1.11. "Individual A" means the individual who was a permanent member of EBCU's Lending Committee with Mr Grimsdale;
- 1.12. "Individual B" means an individual who became a director of EBCU;
- 1.13. "Mr Grimsdale" means Mr Mike Grimsdale;
- 1.14. "Notice" means this final notice;
- 1.15. "the PRA" means the Prudential Regulation Authority;
- 1.16. "the PRA Penalty Policy" means 'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure January 2016 – Appendix 2 – Statement of the PRA's policy on the imposition and amount of

financial penalties under the Act’;

- 1.17. “the PRA Requirement” means the voluntary requirement imposed by the PRA on EBCU on 24 December 2014 under section 55M of the Act;
- 1.18. “the PRA Settlement Policy” means ‘The Prudential Regulation Authority’s approach to enforcement: statutory statements of policy and procedure January 2016 – Appendix 4 - Statement of the PRA’s settlement decision-making procedure and policy for the determination and amount of penalties and the period of suspensions or restrictions in settled cases’;
- 1.19. “public censure” means a statement of a person’s misconduct published by the PRA pursuant to section 66(3)(b) of the Act;
- 1.20. “the Relevant Period” means 8 October 2012 to 2 March 2015;
- 1.21. “the SoP1 Relevant Period” means 14 July 2014 to 13 November 2014;
- 1.22. “Statement of Principle” means a principle included in the FSA’s and (after 1 April 2013) the PRA’s Statements of Principle for Approved Persons;
- 1.23. “the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber);
- 1.24. “UK” means the United Kingdom;
- 1.25. “VAT” means value added tax.

APPENDIX 2

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

The PRA's objectives

- 1.1. The PRA has a general objective, set out in section 2B(2) of the Act, to promote the safety and soundness of PRA-authorized persons. Section 2B(3) of the Act provides that the PRA's general objective is to be advanced primarily by:
- (a) seeking to ensure that the business of PRA-authorized persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system; and
 - (b) seeking to minimise the adverse effect that the failure of a PRA-authorized person could be expected to have on the stability of the UK financial system.

Section 66 – Disciplinary powers

- 1.2. Section 66 of the Act provides that the PRA may take action against a person if it appears to the PRA that they are guilty of misconduct and the PRA is satisfied that it is appropriate in all the circumstances to take action against them.
- 1.3. During the Relevant Period, section 66(2A) of the Act provided that, for the purposes of action by the PRA, a person is guilty of misconduct if, while an approved person in respect of the performance of a significant-influence function in relation to the carrying on by a PRA-authorized person of a regulated activity:
- (a) the person has failed to comply with a statement of principle issued by the PRA under section 64, or
 - (b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person:
 - (i) by or under this Act, or
 - (ii) by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

Section 56 – not a fit and proper person

- 1.4. Section 56 of the Act provides that the PRA may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function, if it appears to the PRA that that individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a PRA-authorized person or a person who is an exempt person in relation to a PRA-regulated activity carried on by the person. Such an order may relate to a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities.

2. RELEVANT REGULATORY PROVISIONS

The Fit and Proper Test

- 2.1. When considering whether a person is fit and proper under section 56 of the Act, the PRA may take account of any matter which it would be entitled to consider under section 60 of the Act when an application for approval is made. In deciding on an application for approval, section 61 of the Act permits the PRA to consider whether the candidate has the qualifications, training, competence and personal characteristics required by the general rules made by the PRA in relation to performing the functions of the kind to which the application relates. The PRA has provided further guidance on the fit and proper standard in the PRA Rulebook. Under FIT 2.2, personal characteristics include the individual's reputation and integrity.

Statement of Principle 1

- 2.2. The FSA's (and from 1 April 2013, the PRA's) Statement of Principle 1 was issued under section 64 of the Act. During the SoP1 Relevant Period, it stated that an approved person performing an accountable function must act with integrity in carrying out his accountable function.

Statement of Principle 6

- 2.3. The FSA's (and from 1 April 2013, the PRA's) Statement of Principle 6 was issued under section 64 of the Act. During the Relevant Period, it stated that an approved person performing a significant influence function [from 1 April 2013, "accountable" function] must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function [from 1 April 2013, "accountable" function].

PRA Approach to Enforcement

- 2.4. The PRA's policy on the imposition and amount of financial penalties and making prohibition orders is set out in *The Prudential Regulatory Authority's approach to enforcement: statutory statements of policy and procedure, April 2013* (as updated in October 2019). This sets out the PRA's approach to exercising its main enforcement powers under the Act.
- 2.5. The PRA's approach to the imposition of penalties is outlined in the PRA Penalty Policy at Annex 2. This states that the PRA may, in addition to imposing a penalty, make a prohibition order under section 56 of the Act and that such action would reflect the PRA's assessment of the individual's fitness to perform a regulated activity or suitability for a particular role.
- 2.6. The PRA's approach to the imposition of public censures is outlined in the PRA Penalty Policy at Annex 2. This states that where a person has breached the PRA's regulatory requirements, the PRA may publish a statement of that person's misconduct (a public censure) where it considers it appropriate to do so. The enforcement policy document sets out a number of considerations to which the PRA may have regard in deciding whether it is appropriate to issue a public censure.
- 2.7. The PRA's approach to settlement is outlined in the PRA Settlement Policy at Annex 4.