



FINAL NOTICE

To: **Mr Michael Graeme Grimsdale**

Date: **6 February 2020**

1. ACTION

- 1.1. For the reasons given in this notice, the PRA hereby makes an order prohibiting Mr Grimsdale 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. The Prohibition Order takes effect from 6 February 2020.
- 1.2. In taking this action, the PRA has had regard to representations submitted on behalf of Mr Grimsdale.

2. SUMMARY OF THE GROUNDS FOR ACTION

- 2.1. The PRA has taken this action as a result of Mr Grimsdale's conduct in relation to Enterprise the Business Credit Union Limited (now in liquidation) ("EBCU") during the period 9 December 2012 to 14 May 2015 ("the Relevant Period"). In particular, the PRA considers that he:
 - (1) exploited his involvement with EBCU to invoice and pay improperly fees from which he potentially stood to gain, while failing to disclose to the EBCU Board the terms on which he based those fees. Those terms were significantly more advantageous to a company of which Mr Grimsdale was a director ("Company A") than the terms to which the EBCU Board had agreed. It has not been practicable, however, to ascertain and quantify the economic benefit Mr Grimsdale may have personally derived from his misconduct; and
 - (2) after 24 December 2014, paid out £642,502.93 from EBCU's bank account relating to 176 loans, which meant EBCU breached a PRA Requirement repeatedly, while concealing his actions from the EBCU Board.
- 2.2. Mr Grimsdale's actions exposed EBCU to significant prudential risks and

contributed to its failure.

- 2.3. Defined terms used in this Warning Notice are set out in Appendix 1.

Background

- 2.4. Mr Grimsdale has over 30 years' experience of working in positions in or connected to the financial services industry. In particular, Mr Grimsdale was previously the CEO of another credit union ("Company B").
- 2.5. 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.
- 2.6. 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 Grimsdale 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 Grimsdale's involvement in EBCU's business

- 2.7. From November 2012, and throughout the relevant period, Mr Grimsdale was a director, employee and shareholder of Company A, performing the role of Operations Director. Mr Grimsdale is still an employee and shareholder of Company A, and has recently become its Mission Director.
- 2.8. 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.

- 2.9. 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.
- 2.10. 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.
- 2.11. 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 Requirement. He also paid Company A's fees on materially higher terms than those the EBCU Board had previously agreed to.

Company A's fees

The Contract

- 2.12. 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"*.

- 2.13. 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*". Mr Grimsdale maintains that this was in force from mid-2014. 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.
- 2.14. The members of the EBCU Board (except Mr Nichols, also then a director of Company A) 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 was not commercially viable. The PRA has found that the evidence supports this position. 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.

- 2.15. Mr Grimsdale knew that he was the EBCU Board's only source of information about loans, interest and fees. From July 2014, Mr Grimsdale created invoices for Company A for fees on interest, including retrospectively from October 2012. These were not based on the terms of Version 1 of the contract (fees payable on the basis of interest received): they were based on 50% + VAT of the total interest due for the duration of the loan, not the interest actually received. Mr Grimsdale knew that the EBCU Board had approved the terms of Version 1 and not the basis on which he was invoicing the fees.
- 2.16. Mr Grimsdale filed these invoices at Company A and made payment on behalf of EBCU, without the knowledge or approval of the EBCU Board. In particular, Mr Grimsdale did not disclose to the EBCU Board the terms on which the fees were calculated and payments taken.
- 2.17. This resulted in:
- (1) EBCU being invoiced by 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 and fees in respect of interest which would never be received following loan default.
- 2.18. The difference between the fees due at the time under Version 1 of the contract and the funds Mr Grimsdale 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 of the contract.

Inaccurate information to EBCU's auditors

- 2.19. Mr Grimsdale assisted in preparing EBCU's response to the auditors' 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.

The PRA Requirement on EBCU not to issue new loans

- 2.20. 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.
- 2.21. 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 Grimsdale was aware of, and understood, the terms of the PRA Requirement.
- 2.22. 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.
- 2.23. On 14 May 2015, EBCU entered administration and it entered liquidation on 17 August 2015.

3. BREACHES AND FAILINGS

Section 56 – not a fit and proper person

- 3.1. The PRA considers that Mr Grimsdale is not a fit and proper person because his conduct has demonstrated a lack of integrity and, in certain respects, dishonesty.
- 3.2. Mr Grimsdale was in a position of responsibility including as a director of EBCU's outsourced service provider - Company A, a signatory on EBCU's bank account and a member of its Lending Committee.

Payment of fees to Company A

- 3.3. Mr Grimsdale did not disclose to the EBCU Board and the auditors the terms on which he was invoicing (on behalf of Company A) and paying (on behalf of EBCU)

Company A's fees. Mr Grimsdale operated under terms materially different to terms in Version 1 of the contract when he must have known that the EBCU Board (except Mr Nichols, also a director of Company A) was not aware of those terms and had not approved them. Mr Grimsdale also failed to correct figures relied upon by the auditors regarding fees paid/payable to Company A which Mr Grimsdale knew were incorrect in light of the invoices he himself had created and paid. Version 2 of the contract did not come to light until Mr Grimsdale provided it to the Liquidators in August 2015 when they questioned the payments he had made to Company A.

- 3.4. Mr Grimsdale 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 under the invoices he raised were materially higher, with payment due materially sooner, than those the EBCU Board had agreed to under Version 1 of the contract. The level of those fees was therefore critical to EBCU's financial position and the accuracy of its accounts.
- 3.5. Mr Grimsdale's conduct in both invoicing (on behalf of Company A) and paying (on behalf of EBCU) Company A's fees on materially different terms to those approved was an abuse of the position of responsibility he had in relation to the financial affairs of EBCU, including over the operation of EBCU's online bank account. These invoices included Company A's fees on EBCU loans that he had issued after the PRA Requirement.
- 3.6. Mr Grimsdale acted dishonestly by operating under materially different terms to those of Version 1 of the contract to calculate Company A's fees to EBCU without disclosing this to the EBCU Board and the auditors.

Issuing loans after the PRA Requirement

- 3.7. The PRA Requirement on EBCU not to issue loans would have reduced the level of introductory fees that Company A received on interest paid on EBCU loans. In deliberate disregard of the PRA Requirement, Mr Grimsdale abused the responsibility and control he had in respect of EBCU's online bank account by issuing 176 EBCU loans totalling £642,502.93. He concealed those loan payments from the EBCU Board (with the exception of a small number of loans that the EBCU Board appears to have approved). Mr Grimsdale did so despite knowing both 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.
- 3.8. Mr Grimsdale acted dishonestly in issuing loans after the PRA Requirement while

concealing this activity from the EBCU Board.

Conflict of interest

- 3.9. Mr Grimsdale operated with a conflict of interest between his roles at EBCU and those in Company A. Decisions that Mr Grimsdale influenced or took for EBCU had a direct effect on the amount paid by EBCU to Company A (of which Mr Grimsdale was a director, employee and shareholder). The PRA considers that Mr Grimsdale failed to manage adequately this conflict of interest.

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.

Section 56 – not a fit and proper person

- 4.5. It is integral to the safety and soundness of credit unions that they are run by individuals who are fit and proper to do so, having regard to their size and functions. This includes where credit unions outsource functions.
- 4.6. Taking appropriate action where individuals involved in running credit unions are not fit and proper helps to maintain confidence in credit unions and the financial system.
- 4.7. Mr Grimsdale was not carrying out a controlled function in respect of EBCU, but

was in a position of responsibility; including as a director of EBCU's outsourced service provider – Company A, a signatory on its bank account and a member of its Lending Committee.

- 4.8. The breaches and failings set out in this Notice created prudential risks for EBCU, threatened its safety and soundness and involved contraventions of PRA requirements under section 55M of the Act. The PRA considers Mr Grimsdale's making of loans after the imposition of the PRA Requirement to be particularly serious because it was deliberate, concealed and caused EBCU to breach the PRA Requirement, repeatedly and by a substantial degree.
- 4.9. Mr Grimsdale 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 accepting deposits. Issuing loans at this time reduced EBCU's liquid resources, creating a significant prudential risk to its safety and soundness and, in the event that EBCU failed, the Financial Services and Compensation Scheme ("FSCS") would have to pay out EBCU's members.
- 4.10. Mr Grimsdale's actions ultimately contributed 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 EBCU, the FSCS paid out over £7 million to EBCU's members of which it has recovered just under £3 million.

5. SANCTION

Prohibition

- 5.1. The PRA considers that Mr Grimsdale is not a fit and proper person due to a lack of integrity and, in certain respects, dishonesty, and that he poses a risk to its general objective that warrants the imposition of an order prohibiting him 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. The PRA's action is a protective measure.

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 Grimsdale can be found in **Annex A**. Mr Grimsdale's misconduct and failings are detailed in **Annex B**. The procedural matters set out

in **Annex C** are important. **Annex D** outlines representations made on behalf of Mr Grimsdale to the Warning Notice given in this matter, and the PRA's conclusions.

6.2. **Appendix 1** sets out the definitions used in this Notice and **Appendix 2** sets out the relevant statutory, regulatory and policy provisions.

Sir William Blair, Anne Heal, Edward Sparrow

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Enforcement Decision Making Committee,
for and on behalf of the PRA

ANNEX A - FACTS AND MATTERS RELIED UPON

A1. BACKGROUND

The relevant entities

EBCU

- A1.1. EBCU was a credit union - a not-for-profit mutual society owned by its members. It was incorporated (and registered on the Mutuals Public Register) in 1996 and regulated by the Registry of Friendly Societies and then from 2002 by the FSA. Since 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.
- A1.2. 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).
- A1.3. On 14 May 2015, EBCU entered administration and it entered liquidation on 17 August 2015.

Company A

- A1.4. 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.
- A1.5. From 3 August 2016, Company A has been an introducer appointed representative of an independent finance broker for secured loans. From 13 February 2017, Company A has also been an introducer appointed representative of a mortgage, loan and insurance network. As an introducer appointed representative of these authorised persons, Company A can introduce clients to those firms and give out certain kinds of marketing material.

DEAC

- A1.6. 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 Grimsdale - background and role in forming the EBCU Board

Financial services experience

- A1.7. Mr Grimsdale has over 30 years of experience working in positions in, or related to, financial services. This includes 25 years' lending experience in positions at banks. He also advised the board of a credit union (Company B) and subsequently managed it as Chief Executive Officer (CEO) for three years.

Formation of Company A

- A1.8. In 2012, Mr Grimsdale and other individuals (Mr Nichols 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).
- A1.9. 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. He 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

- A1.10. 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, Mr Neale and a third individual to also perform the CF1 director function at EBCU. No application was submitted for Mr Grimsdale, who was not an approved person during the Relevant Period.

A1.11. In December 2012, the FSA approved the applications. The existing members of the EBCU Board (other than Mr Nichols and Individual B) resigned, and the newly approved individuals were appointed to the EBCU Board as directors. They were not remunerated for their role as directors.

EBCU's arrangements with Mr Grimsdale and with Company A

A1.12. 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 A 2.9 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 (as set out at paragraph A 2.13 below).

A1.13. 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).

A1.14. 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."

- A1.15. 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.
- A1.16. As set out in more detail in section A3 below, the outsourcing arrangement with Company A 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.

A2. MR GRIMSDALE'S INVOLVEMENT IN EBCU'S BUSINESS

Involvement in EBCU's corporate governance

- A2.1. As set out above, Mr Grimsdale became a director of Company A and, with others, identified EBCU as its credit union partner. In effect, the members of the EBCU Board were replaced in 2012 – first with Mr Nichols and Individual B; and then with individuals approached by those directors and, in some cases, by Mr Grimsdale.
- A2.2. On 9 December 2012, EBCU's five newly appointed directors attended their first board meeting and positions at EBCU were elected. Mr Grimsdale was present at this EBCU Board meeting but was not appointed as a director.
- A2.3. The EBCU Board relied on Mr Grimsdale to perform the day-to-day administration of EBCU. Moreover, since the members of this newly-appointed EBCU Board (all unpaid volunteers) had no previous experience of running a credit union or any other authorised person, they were substantially reliant on Mr Grimsdale's credit union experience and lending expertise.
- A2.4. Mr Grimsdale stated during interview that he acted as an "adviser" to EBCU. Members of the EBCU Board stated during interview that they relied on that advice.
- A2.5. 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.

- A2.6. In addition, Mr Grimsdale determined, documented, implemented and oversaw EBCU's Procedures Manual and Policy Manual including the processes and procedures for EBCU's loans business. Various policies were approved by EBCU's Board. Mr Grimsdale also took part in formulating EBCU's Business Plan, for approval by EBCU's Board, which set out EBCU's strategy for growing its business together with Company A.
- A2.7. Certain of EBCU's directors even considered Mr Grimsdale acted as a director of EBCU during the Relevant Period in light of his influence over, and role in respect of, EBCU's business, describing him as: having "total financial control of EBCU" and having "an active and controlling interest at the meetings."

The administration of EBCU's loans business

- A2.8. As Operations Director at Company A, Mr Grimsdale led the day-to-day operation of EBCU's business and led its Operations team that carried out the administration of EBCU's loans business.

Member of the Lending Committee

- A2.9. At the 9 December 2012 Board meeting, the EBCU Board agreed to the establishment of the Lending Committee, appointing Mr Grimsdale and Individual A as permanent members, with the third position allocated to one of EBCU's directors. As a member of EBCU's Lending Committee, Mr Grimsdale had the authority to approve personal loan applications for up to £5,000 that satisfied the credit scoring criteria (devised by him and Individual A), but he could only approve loan applications above this amount or business loans with the agreement of another member of the Lending Committee. In practice, however, the vast majority of the Lending Committee's decisions were made by Mr Grimsdale and/or Individual A.
- A2.10. Company A's 'branches' received loan applications from members and submitted these to Mr Grimsdale's team at Company A for processing. Mr Grimsdale, as a member of EBCU's 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.

Processing and payment of loans

- A2.11. 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.
- A2.12. Mr Grimsdale transferred the loan amount from EBCU's bank account to the borrower (or, in the case of Your Greener Loans, to the installer).

Mr Grimsdale's role in relation to EBCU's systems, processes, bank account and audited accounts

- A2.13. The minutes of the 9 December 2012 EBCU Board meeting also record Mr Grimsdale raising an item concerning the move of EBCU's bank account from its current bank to another bank ("Bank A"). On the same day, an application was signed on behalf of EBCU to open a bank account with Bank A; listing four of EBCU's newly appointed directors as signatories, and Mr Grimsdale and Individual A as the only internet banking users. Mr Grimsdale was listed as the "key contact" (to whom all communications and online statements would be sent) and was also the only telephone banking user.
- A2.14. In practice, Mr Grimsdale operated and controlled EBCU's bank account through internet banking with full autonomy. This included deciding to pay out EBCU loans to members after the PRA Requirement had been imposed, and paying Company A's invoices he created for its outsourcing services – in both instances, without the full knowledge or approval of the EBCU Board (as set out further in sections A3 and A4 below).
- A2.15. 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 number of his team had access to Curtains. EBCU's directors did not have access to it in practice and were therefore reliant on Mr Grimsdale to provide any information on EBCU's loans business, including by way of update reports at Board meetings, and to monitor EBCU's financial position.
- A2.16. Mr Grimsdale was significantly involved in EBCU's liaison with the auditors by preparing the information they required concerning EBCU's finances in order for

them to prepare EBCU's audited accounts. In practice, Mr Grimsdale was the only individual in a position to provide this information, given his access to EBCU's online banking, bank statements and Curtains.

- A2.17. Indeed, an independent report sent on 22 October 2014 on EBCU's governance and controls 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 such as BACS payments and credits.
- A2.18. 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.

A3. FEES PAYABLE TO COMPANY A

Version 1 of the contract

- A3.1. 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.
- A3.2. 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.
- A3.3. 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.
- A3.4. Regarding loan interest, the draft of Version 1 of the contract provided the

introductory fee payable was *"50% of ALL interest received - paid 3 monthly in arrears - based upon interest actually received – not anticipated."*

- A3.5. 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

- A3.6. Mr Grimsdale does not dispute that EBCU and Company A agreed Version 1 of the contract. However, he asserts that, in or around mid-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

- A3.7. 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."*
- A3.8. 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 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 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 Grimsdale had business and financial interests.

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

- A3.9. 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.
- A3.10. 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.
- A3.11. At interview with the PRA, Mr Grimsdale denied drafting Version 2 of the contract or seeing a copy of it at the time - despite accepting that it bears his signature on behalf of Company A. Mr Grimsdale could not recall when Version 2 of the contract was agreed or by whom. He asserted that he first saw a copy of it when EBCU had entered administration. Nevertheless, Mr Grimsdale maintains that he was aware of the terms of Version 2 of the contract, that the EBCU Board was aware of and had agreed to them, and that he legitimately operated under them.
- A3.12. The PRA does not accept Mr Grimsdale's assertions at interview, and repeated in representations made on his behalf, which are not supported by the available evidence. For the reasons set out below, the PRA concludes 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 accepts 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 Grimsdale's explanation is that he provided Version 1 of the contract to Mr Nichols (for sending on to the auditors) in error, and that Version 2 of the contract was in fact in force by this time.

- (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). Mr Grimsdale asserts that the forecasts were incorrectly based on Version 1 of the contract and that Version 2 of the contract was in fact in force. However, he did not correct or challenge these forecasts, or otherwise make the EBCU Board aware that he was operating under the terms of Version 2 of the contract (or any terms other than Version 1).
- (5) EBCU's sole employee (who worked with Mr Grimsdale 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.

Payment of fees from EBCU to Company A

Invoices

- A3.13. Mr Grimsdale asserts that Version 1 of the contract continued to operate until sometime in or around mid-2014, at which point it was superseded by Version 2 of the contract. However when invoices were prepared by Mr Grimsdale in mid-2014, they included loan interest fees relating to the period October 2012 to mid-2014, so were not based on Version 1 of the contract. All the invoices created 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.

A3.14. 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.

A3.15. 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

A3.16. 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.

A3.17. 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 being only a week earlier) for fees totalling £231,402.07 (including VAT). 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.

A3.18. However, Mr Grimsdale did not take any steps to provide the auditors with a copy of Version 2 of the contract or the invoices, or to correct figures regarding Company A's fees that he knew to be inaccurate. EBCU's audited accounts were inaccurate as a result, understating the fees paid/payable to Company A by £117,663.45.

A4. THE PRA REQUIREMENT NOT TO ISSUE NEW LOANS

Imposition of the PRA Requirement

- A4.1. 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 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.
- A4.2. 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, make any new loans, or make further advances in relation to, or otherwise vary the terms of, existing loans.
- A4.3. On 17 December 2014, the EBCU Board met to discuss the PRA's proposal. Mr Grimsdale attended this meeting. The EBCU Board decided to confirm to the PRA that EBCU would fully comply with the proposed requirement, but request 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.
- A4.4. 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).*

- A4.5. Mr Grimsdale told the PRA in interview that he was aware of the PRA Requirement, including its start date and its terms.

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

Lending Committee approval of loan applications

- A4.6. Mr Grimsdale told the PRA in interview that he and the EBCU Board anticipated that within a couple of months EBCU would receive an injection of capital and the PRA would then lift the PRA Requirement. Accordingly, Company A continued to receive applications for EBCU loans after the PRA Requirement was imposed, and members of the Lending Committee, including Mr Grimsdale, continued to approve those applications.
- A4.7. Mr Grimsdale informed Mr Neale that applications for Your Greener Loans were still being approved despite the PRA Requirement because there was a two to three month delay before a contractual commitment would be made for the boiler installation and the loan becoming payable. However, members of the Lending Committee did not restrict approval of loan applications to those for Your Greener Loans. They continued to approve applications for personal loans and business loans, which would become payable after a much shorter time period.

The EBCU Board's instructions

- A4.8. On or around 6 January 2015, the EBCU Board held a meeting to discuss the PRA Requirement. Ms Birkett and Mr Neale assert that Mr Grimsdale was present and that he 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.
- A4.9. Mr Grimsdale told the PRA in interview that he could not recall this EBCU Board meeting, and denied ever making this statement. He asserted that he was instructed by one of EBCU's directors to pay out loans in respect of which a contractual commitment had already arisen. There is evidence that the Board authorised a small volume of exceptions. This did not justify either the scale of the lending Mr Grimsdale made or his breach of a PRA Requirement.

Payment of loans after the PRA Requirement

- A4.10. 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 in respect of which members of the Lending Committee did not approve the loan

application 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.

- A4.11. 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. As set out at paragraph A3.13 above, Mr Grimsdale created Company A invoices for introductory fees on these loans and made payment on behalf of EBCU.
- A4.12. Mr Grimsdale was unable to explain to the PRA why he paid out these loans when he was aware of the PRA Requirement not to do so, or why they included payment of loans falling outside the scope of the instructions he asserts he received from the EBCU Board. While Mr Grimsdale has stated that the EBCU Board could have removed his authority to operate EBCU's bank accounts in order to prevent payments being made, this in no way explains or excuses his actions.
- A4.13. When questioned by EBCU Board members or EBCU's employee about loans issued after the imposition of the PRA Requirement, Mr Grimsdale either did not respond or provided inaccurate and misleading responses, thereby concealing his actions. In particular:
- (1) When Mr Grimsdale informed the EBCU Board in January 2015 that Your Greener Loans were being approved by the Lending Committee - to be ready to be paid out once the PRA Requirement was lifted – he was in fact paying out all types of loans, in contravention of the PRA Requirement.
 - (2) He did not respond to an EBCU Board member's email of 19 February 2015 seeking confirmation that Company A was not paying out loans or allowing contractual commitments to arise.

In response to an email from EBCU on 22 April 2015 querying the number of loans paid after the PRA Requirement was imposed, Mr Grimsdale estimated this to be seven in respect of Your Greener Loans for emergency boilers. The correct number was in fact 176 in respect of a variety of loans (including bike loans, business loans and a loan for a wedding), all of which Mr Grimsdale paid out. Mr Grimsdale accepted during interview that he had access to (and control over) EBCU's loan files and records, the accounting software Curtains and EBCU's bank accounts in order to check how many loans had been paid out at that time, but was unable to explain his email.

ANNEX B - BREACHES AND FAILINGS

B1. FAILINGS

B1.1. As a result of the facts and matters set out in Annex A, the PRA considers that Mr Grimsdale's conduct has fallen short of minimum regulatory standards such that he is not a fit and proper person for the purposes of section 56 of the Act.

Section 56 – not a fit and proper person

B1.2. 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.

B1.3. The PRA considers that Mr Grimsdale is not a fit and proper person because he acted without integrity and, in certain respects, dishonestly.

B1.4. A person acts dishonestly where their conduct would be considered dishonest by the ordinary standards of reasonable and honest people in light of what the person knew or believed about the facts at the time.

Payment of fees to Company A

B1.5. While Mr Grimsdale asserted to the PRA at interview and in subsequent representations that he had a genuine belief that the EBCU Board was aware of and had approved Version 2 of the contract, the PRA concludes on the evidence that Mr Grimsdale must have known that the EBCU Board had not approved Version 2 of the contract. The PRA has not identified any references to it in materials from the Relevant Period; all EBCU financial forecasts during the Relevant Period (including those produced by Mr Grimsdale) were based on the terms of Version 1 of the contract; and the EBCU Board members (except for Mr Nichols) maintain that they were not aware of Version 2 of the contract and would not have approved its terms as these were commercially unviable for EBCU.

B1.6. Furthermore, while there are contemporaneous records about charging fees on ISAs, there are no contemporaneous records of any proposal to amend the basis of fees on loans.

B1.7. Version 2 of the contract did not come to light until Mr Grimsdale provided it to the Liquidators on 17 August 2015 in response to questions they raised concerning payments he had made from EBCU to Company A.

- B1.8. Mr Grimsdale acted dishonestly by operating under materially different terms to those of those of Version 1 of the contract to calculate Company A's fees to EBCU without disclosing this to the EBCU Board and the auditors.
- B1.9. Mr Grimsdale 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 that he invoiced (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. Mr Grimsdale's actions therefore created a prudential risk for EBCU and meant that EBCU's audited accounts were inaccurate, understating the fees paid/payable to Company A by £117,663.45.
- B1.10. When Mr Grimsdale both invoiced (on behalf of Company A) and made payment on behalf of EBCU's payment of Company A's fees in this way this was an abuse of the responsibilities he had in respect of EBCU's financial affairs. These included Company A's fees on EBCU loans that he had issued after the PRA Requirement.
- B1.11. 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.
- B1.12. By operating under the materially different terms to those approved by the EBCU Board, Mr Grimsdale established unsustainable running costs for EBCU, creating prudential risks to its safety and soundness.

Issuing loans after the PRA Requirement

- B1.13. Mr Grimsdale confirmed to the PRA at interview that, at the time the PRA Requirement was imposed, he knew about it and understood its terms meant that EBCU could not issue any new loans (or accept deposits). Whilst Mr Grimsdale has asserted that a director of EBCU instructed him to pay out - as exceptions - loans that had already been agreed, the PRA does not accept these assertions, which are inconsistent with the available evidence, including his own previous

statements made to the Insolvency Service. The PRA concludes on the evidence that Mr Grimsdale did not have a genuine belief that EBCU had instructed him to continue to issue loans (other than 10 to 15 agreed exceptions) or that doing so would be in accordance with the PRA Requirement.

- B1.14. The PRA Requirement on EBCU not to issue loans would have affected the level of introductory fees that Company A received on interest paid on EBCU loans. In deliberate disregard of the PRA Requirement, Mr Grimsdale abused his control of EBCU's online bank account by issuing 176 EBCU loans totalling £642,502.93. He concealed those loan payments from the EBCU Board – he does not appear to have reported to the EBCU Board on EBCU's loan activity after the PRA Requirement was imposed and provided a false assurance that loans were being approved but not issued in response to Mr Neale raising concerns about EBCU's compliance with the PRA Requirement.
- B1.15. The PRA considers this conduct to be particularly serious because it caused EBCU to breach the PRA Requirement, and by a substantial degree. The PRA takes very seriously contraventions of its requirements under section 55M of the Act. Mr Grimsdale 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.
- B1.16. Mr Grimsdale acted dishonestly in issuing loans after the PRA Requirement while concealing this activity from the EBCU Board. In doing so, he 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 Grimsdale's actions 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.

Conflict of interest

- B1.17. Mr Grimsdale operated with a conflict of interest between his functions at EBCU and those in Company A. Decisions that Mr Grimsdale influenced or took for EBCU had a direct effect on the amount paid by EBCU to Company A, of which Mr Grimsdale was a director, employee and shareholder. The PRA considers that Mr Grimsdale failed to manage adequately this conflict of interest.

B1.18. Moreover, this involved Mr Grimsdale taking unilateral decisions in relation to EBCU's financial affairs, 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. These were significant decisions relevant to EBCU's financial soundness and regulatory compliance, rather than mere administrative acts or managerial decisions, and Mr Grimsdale acted against the interests of EBCU.

Not fit and proper

B1.19. As a result of Mr Grimsdale's conduct demonstrating a lack of integrity and, in certain respects, dishonesty, 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 - PROCEDURAL MATTERS

C1. DECISION MAKER

- C1.1. The Enforcement Decision Making Committee made the decision which gave rise to the obligation to give this Notice.
- C1.2. This Notice is given under and in accordance with section 390 of the Act. The following statutory rights are important.

C2. REPRESENTATIONS

- C2.1. Annex D contains a brief summary of representations made by Mr Grimsdale and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the PRA has taken account of all the representations made by Mr Grimsdale, whether or not set out in Annex D.

C3. PUBLICITY

- C3.1. 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 it 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 you or prejudicial to the safety and soundness of PRA-authorised persons or detrimental to the stability of the UK financial system.
- C3.2. The PRA intends to publish such information about the matter to which this Notice relates as it considers appropriate.

C4. PRA CONTACTS

- C4.1. For more information concerning this matter generally, contact John Cheesman at the PRA (direct line: 020 3461 7866, john.cheesman@bankofengland.co.uk).

ANNEX D – REPRESENTATIONS AND CONCLUSIONS

An outline of Mr Grimsdale’s representations (in italics), and the PRA’s conclusions in respect of them so far as relevant to those allegations the PRA has found to be proved are set out below.

D1. Fitness and propriety/Prohibition Order

D1.1. *Mr Grimsdale submits that the PRA is assessing Mr Grimsdale against supervisory statements not yet in force. It would be wrong to do this.*

D1.2. **PRA Conclusions:** The PRA Investigation Team has confirmed that it referred to the PRA’s Supervisory Statement SS28/15 in its submissions purely to provide relevant context on how the PRA assesses fitness and propriety when considering applications for approval, not to assess Mr Grimsdale’s conduct against.

D2. Conflict of interest

D2.1. *Mr Grimsdale accepts that there was an issue that he was operations director for Company A, but he was clear he was only present at EBCU Board meetings on behalf of Company A to report and to seek instructions. He did all he could to manage the issue: he was not a director, and did not act as one; it was never the intention for Mr Grimsdale to run, or manage or influence the running of the credit union. In the January 2013 EBCU Board Minutes, it is recorded “MG pointed out that: All transactions have to be governed and controlled by the Board and operational administration.”. Mr Grimsdale notes that the question of potential conflicts of interest were raised at the March 2013 EBCU Board.*

D2.2. *With regard to the bank account, Mr Grimsdale did not have exclusive access, albeit he did conduct the majority of the transactions. Mr Grimsdale thought he was merely carrying out the instructions of the EBCU Board in relation to payments.*

D2.3. **PRA Conclusions:** Mr Grimsdale failed to manage conflicts of interests appropriately. Mr Grimsdale exploited the arrangement with EBCU, and the responsibilities he held, to increase improperly Company A’s revenue, from which he potentially stood to gain: abusing his control of EBCU’s bank account to pay fees to Company A in respect of invoices he created on terms significantly more advantageous to Company A, and loans after the PRA Requirement came into force, on which fees could be charged by Company A, putting EBCU in breach of

the PRA Requirement.

D3. Fees allegation

D3.1. *Mr Grimsdale asserts that the EBCU/Company A contract was amended such that Version 2 was in place and Company A was entitled to charge fees on ISAs and on loans created. Contrary to PRA's Submissions, there is evidence going both ways in relation to the contract versions and the PRA gives a pessimistic and incorrect picture. Mr Grimsdale's arguments are credible. Mr Grimsdale denies dishonesty and genuinely believed that Version 2 of the contract was correct.*

D3.2. *Version 1 of the contract was agreed in March 2013, and signed at some point after. Version 2 of the contract is amended in two paragraphs, relating to fees on loans, where the method of calculation changes, and ISAs, which were not mentioned in Version 1.*

D3.3. *The key amendment between Version 1 and Version 2 of the contract was the introduction of the 1% fee for ISAs. Board meetings track the development of the advertisement and issuance of ISAs, from January 2013. The launch of ISAs was recorded in February 2013, and grew rapidly to June 2013, then, by August 2013 halted.*

D3.4. *On 5 November 2013, Mr Grimsdale provided Year Financial Projections and Business plan to the EBCU Board, and updated figures in spreadsheets on 26 November 2013. The spreadsheets were produced by Individual A. These do not include ISAs, but do include a blank line "Fee paid to Deposit Introducers – 1%". This indicates ISAs were being considered at around this time and fees were in a state of flux, not yet recorded in a formal contract. EBCU Board minutes for November 2013 show Company A membership fees were also being considered. ISAs were being advertised again by June 2014. On 2 June 2014, an EBCU director wrote to Mr Grimsdale, copying EBCU's sole employee, mentioning that the EBCU Board had approved additions to the ISA range, referring to commission being set at 1% of the amount deposited and setting out a 75/25 commission split on ISAs between the introducing branch and Company A. The EBCU Board resolved to cease ISAs formally in November 2014. This is a strong evidence that Mr Grimsdale had a direction from a director of EBCU that commission was to be charged on ISAs.*

D3.5. *DEAC was in receipt of commission for the introduction of ISAs to EBCU. This was*

received via Company A. An EBCU director (and director of DEAC) would have been involved in agreeing Version 2 of the contract and would have known Company A was charging for ISA creation. ISA payments are consistent with Version 2 of the contract. There was a discussion of Company A commission at the November 2013 EBCU Board meeting. Charging VAT was a point of dispute, but appears resolved by September 2014, where an email evidences DEAC being paid commission by Company A on ISAs and with VAT. This is consistent with Version 2 of the contract.

D3.6. *Mr Nichols wrote by email to the auditor on 17 July 2014 attaching the signed agreement and stating "This was updated (as recorded in the board minutes) to include payment for introduction of savings (ISA's and LCB's)". Version 1 of the contract was attached, but both Mr Nichols and Mr Grimsdale state this was attached accidentally, and that Version 2 of the contract was agreed with the Board in around mid-2014.*

D3.7. *The EBCU/Company A contract, and the Company A/DEAC contract are related, which indicates the EBCU/Company A contract was amended in September 2014.*

D3.8. *Mr Grimsdale notes that the May, June and August 2014 minutes are missing.*

D3.9. *Mr Grimsdale submits that in practice, invoices were not raised until many months after loans were created, so EBCU would already have received interest for a significant period of the loan, and was not significantly out of pocket by this charging structure.*

D3.10. *The claim that the EBCU Board did not approve Version 2 of the contract and was not aware of the terms has not been proven on the balance of probabilities.*

D3.11. **PRA Conclusions:** The decision for the PRA is whether Mr Grimsdale is a fit and proper person to perform any function in relation to the carrying on of regulated activities by an authorised or an exempt person, and the issues are whether there was a contractual basis for transfers of funds that he made from EBCU to Company A, and whether he concealed the level of transfers being made.

D3.12. Mr Grimsdale has noted that the question of fees on ISAs was in a state of flux. The evidence that there were discussions commission charged on ISAs does not indicate that the EBCU Board approved a change to the way fees on loans were to be calculated. There is no evidence that the Board was aware of the terms of

Version 2 of the contract.

- D3.13. Mr Grimsdale's assertion that Version 2 of the contract existed by 17 July 2014 is not consistent with the alternative suggestion that Version 2 of the contract was put in place in September 2014, when a question about VAT on ISAs having been resolved.
- D3.14. The evidence that Mr Grimsdale puts forward in relation to ISAs indicates a level of agreement between those who would benefit from the payment by EBCU of commission, but no evidence that the EBCU Board agreed Version 2 of the contract.
- D3.15. It is notable that Mr Grimsdale has been able to provide additional detail with regard to fees on ISAs, in contrast to the position on loan fees.
- D3.16. Mr Grimsdale's representations do not address the issue of the misleading information given to the auditors and the Board which concealed the level of payments that Mr Grimsdale was taking.
- D3.17. The PRA Investigation Team has provided EBCU Board minutes for May and June 2014, which make no reference to Version 2 of the contract or any other contract between EBCU and Company A.

D4. PRA Requirement allegation

- D4.1. *Mr Grimsdale accepts that the PRA Requirement was breached but genuinely believed that he was carrying out the EBCU Board's instructions and wishes in respect of the PRA Requirement.*
- D4.2. *Mr Grimsdale was at the EBCU Board meeting on 17 or 19 December 2014, but not other meetings. He was not the direct recipient of information regarding the PRA Requirement and was therefore reliant on information passed on from the EBCU Board of directors.*
- D4.3. *The EBCU Board provided an inconsistent and misleading message about what the EBCU Board wanted him to pay or put on hold. There was not written instruction to Company A or Mr Grimsdale; an EBCU director was supposed to relay information, but only did this a week after it was imposed. That EBCU director was keen to continue accepting and paying loans. The EBCU Board sanctioned a*

request to pay "pipeline" business. It does not appear that it was made clear what this covered. Correspondence suggested this was a temporary issue.

D4.4. *The EBCU Board knew or ought to have known the loans payments were being made. 61 applications were made/approved after the PRA requirement, of which 31 were approved on second authority by Mr Grimsdale, and 10 on first authority. Quotes were received before the PRA Requirement in all but 4 of the loan applications.*

D4.5. *Mr Grimsdale's position is that he was authorised by the EBCU Board to make the loan payments that he did, he also received authorisation for his actions from an EBCU director; and he followed a process at all times with respect to the payment of loans.*

D4.6. **PRA Conclusions:** Mr Grimsdale was present at the EBCU Board meeting of 17 December 2014, the minutes of which record that the draft PRA Requirement was discussed and the EBCU Board agreed to confirm to the PRA that it would fully comply with the PRA Requirement, but requested an amendment relating to managed accounts. Mr Grimsdale confirmed at interview he saw the draft PRA Requirement, and was aware of it, including its start date and terms. The PRA Investigation Team also consider that Mr Grimsdale was present at the meeting on or around 6 January 2015, where it was agreed a small volume of loans would be paid out on an exceptional basis. The PRA Investigation Team confirms it had not previously seen the DEAC email of 16 January 2015, which shows loans already approved would be paid out, but the PRA concludes that this is consistent with that agreement. Mr Grimsdale was responsible for making loan payments in breach of the PRA Requirement and took steps to conceal the payments.

D5. Lack of honesty and integrity

D5.1. *Dishonesty is assessed on the balance of probabilities, having regard to the quality of the evidence. Mr Grimsdale denies dishonesty. There is ample evidence that the EBCU Board was agreeable to a fee for ISAs business, and the PRA places too much weight on the difference between the loans commission interest receivable (whether based on loans created or loan interest received) given the date on which the invoices were in fact raised. Mr Grimsdale genuinely believed that Version 2 was the applicable contract. Whether or not this was correct, the question is whether his conduct was dishonest by objective standards. Given the lack of clarity surrounding the ISAs, the irregular invoicing of EBCU and the other circumstantial*

evidence supporting Version 2 of the contract, it is submitted that Mr Grimsdale was not dishonest.

- D5.2. *Mr Grimsdale denies dishonesty about the PRA Requirement. He always believed he was carrying out the instructions of the EBCU Board, and it is clear that the EBCU Board were not properly or consistently applying the PRA Requirement. There was an absence of clear instructions from the Board. Mr Grimsdale had a genuine, if mistaken, belief he ought to pay the loans he did.*
- D5.3. *Mr Grimsdale's conduct could not have been dishonest if not done covertly without the knowledge of the EBCU Board. Instead, at least certain of the EBCU directors were well aware of the approvals and payments made.*
- D5.4. *Mr Grimsdale did not lack honesty, and this is the key ground on which the PRA determined he lacked integrity.*
- D5.5. **PRA Conclusions:** The question for the PRA is whether Mr Grimsdale is fit and proper. Dishonesty is one kind of lack of integrity, but the question of integrity is broader than that of dishonesty. The PRA concludes that the evidence supports findings of dishonesty in certain respects and a lack of integrity in other respects.
- D5.6. Mr Grimsdale did not have a genuinely held belief that Version 2 of the contract had been approved by the EBCU Board, and concealed from the EBCU Board the terms on which he operated (in particular in respect of loan fees).
- D5.7. Mr Grimsdale took actions in breach of the PRA Requirement, repeatedly and over a substantial period of time, knowing of the PRA Requirement. There is evidence that the EBCU Board authorised a small volume of exceptions, this would not justify acting in breach of a PRA Requirement. Furthermore, this could not explain or excuse the substantial level of further loans authorised and payments made by Mr Grimsdale.
- D5.8. The evidence does not support Mr Grimsdale's contention that he had a genuinely held belief that, when paying out loans in breach of the PRA Requirement, he was carrying out the instructions of the EBCU Board. On the contrary, the evidence that Mr Grimsdale took steps to conceal from EBCU the volume of loans he issued in breach of the PRA Requirement remains compelling.

D6. Prohibition order

- D6.1. *The justification for a prohibition order is that Mr Grimsdale allegedly poses a risk to the PRA's general objective going forward. Mr Grimsdale denies the allegations. Further Company A no longer has any links with one of its principals, a firm authorised by the FCA. Mr Grimsdale is no longer operations director, he is Mission Director. Company A is currently recruiting for a CEO and has strengthened its board with experienced individuals, supported by independent professional advisers. Mr Grimsdale is reducing his shareholding in Company A from 71% to 20% as a result of a new investor. Mr Grimsdale is committed to ensuring he does not have anything to do with an approved person role in a controlled function.*
- D6.2. **PRA Conclusions:** For the reasons set out in the Notice, the PRA concludes that it is appropriate to impose a prohibition order because Mr Grimsdale is not fit and proper to carry out functions in relation to regulated activities, on the grounds of lack of integrity and, in certain respects, dishonesty.
- D6.3. Without a prohibition order, Mr Grimsdale would pose an ongoing risk to the PRA's general objective of promoting the safety and soundness of PRA-regulated firms, so the prohibition order is a necessary preventative measure. Mr Grimsdale has not shown insight about the legitimacy of his actions or their consequences for the safety and soundness of EBCU. Without a prohibition order, there is a risk that Mr Grimsdale could act again in a position of responsibility in respect of a PRA-regulated firm, to the detriment of the firm's safety and soundness.
- D6.4. The prohibition order also gives an important message to the credit union industry, and those who provide outsourced services to that industry, of the types of behaviour that the PRA considers unacceptable.
- D6.5. Contrary to Mr Grimsdale's representations, Company A is still an appointed representative of two authorised firms, and is therefore an exempt person. It would be for Mr Grimsdale and Company A in the first instance to consider whether Mr Grimsdale's functions as Mission Director were functions in relation to any regulated activity. The prohibition order does not affect Mr Grimsdale's ability to hold shares in Company A.

D7. Delay

- D7.1. *The PRA's investigations, prior to commencing an investigation into Mr Grimsdale*

personally, took more than two years. His compelled interview took place more than five months later, and it was 14 months before a draft warning notice was issued. Mr Grimsdale then had 28 days to consider settlement, despite having no legal representation. Delay not only increases distress and uncertainty, but also risks tainting the substantive investigation.

D7.2. **PRA Conclusions:** The EDMC appreciate that an investigation brings with it distress and uncertainty, particularly where the investigation directly involves an individual. The EDMC does not consider that there was unreasonable delay in this case. The time to prepare a case and the time periods for settlement are not comparable. The EDMC considers that the time periods concerned have not prejudiced Mr Grimsdale.

D7.3. The PRA Investigation Team has confirmed that it awaited the end of the Insolvency Service investigation, which ended in April 2017, to use resources efficiently and avoid duplication. After consideration the investigation into Mr Grimsdale was opened in September 2017. Time periods were not unreasonable, given the work on the various connected investigations, and the need to work comprehensively and carefully.

D7.4. Time periods for settlement were not unreasonable, and were in line with the PRA's settlement policy. At Mr Grimsdale's request, the settlement period was not deferred until after Christmas; and Mr Grimsdale was informed that the period could be extended in exceptional circumstances.

D8. Conduct of interviews

D8.1. *The interview process was flawed and the PRA Investigation Team had a predestined outcome. In particular the PRA has asked leading questions during the course of interviews, predestined to reach a certain outcome, failed to ask follow up questions and failed to consider properly the answers provided, failed to take into account relevant evidence, cited incomplete extracts and reached conclusions not supported by the evidence.*

D8.2. **PRA Conclusions:** The EDMC is the PRA's decision-maker on contested enforcement matters. The EDMC panel members were provided with, and have reviewed, full interview transcripts. The EDMC notes the representations made on behalf of Mr Grimsdale with regard to certain interview questions; but consider it appropriate that matters under consideration were put to interviewees. This was

part of proper interviewing and appropriate consideration of the evidence.

D9. Document requests

D9.1. *The only request for documents ever made by the PRA to Mr Grimsdale was for documents to verify his income, indicating that by March 2018 the PRA was already considering the level of financial penalty.*

D9.2. **PRA Conclusions:** The PRA Investigation Team has confirmed to the EDMC that it obtained relevant information from a number of sources, including EBCU (via the Liquidators) and Company A. Of the information Mr Grimsdale has now provided, largely this is documentation the PRA Investigation Team had reviewed and considers irrelevant, with one exception (noted above). Financial information is obtained as a routine matter, this is not evidence of the PRA Investigation Team approaching the investigation with a pre-determined outcome.

D9.3. The EDMC is independent of the investigative process. In respect of each of the procedural issues raised by Mr Grimsdale, the EDMC is satisfied that the matters raised are not prejudicial to the fairness of the decision-making.

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. "Bank A" means the commercial bank with whom EBCU opened an account in December 2012;
- 1.4. "Company A" means a UK community interest company based in Bournemouth to whom EBCU outsourced the administration of its business;
- 1.5. "Curtains" means the accounting software used by Company A;
- 1.1. "DEAC" means Dorset Energy Advice Company Limited, a branch of Company A and of which Ms Birkett and Mr Neale were directors.
- 1.2. "EBCU" means Enterprise the Business Credit Union Limited (now in liquidation), a UK credit union based in Bournemouth;
- 1.3. "the EBCU Board" means EBCU's board of directors;
- 1.4. "the FCA" means the Financial Conduct Authority;
- 1.5. "the FSA" means the body corporate previously known as the Financial Services Authority (renamed on 1 April 2013 as the Financial Conduct Authority);
- 1.6. "FSCS" means the Financial Services and Compensation Scheme;
- 1.7. "Individual A" means the individual who was a permanent member of EBCU's Lending Committee with Mr Grimsdale;
- 1.8. "Individual B" means an individual who became a director of EBCU;
- 1.9. "Mr Grimsdale" means Mr Michael ("Mike") Graeme Grimsdale;
- 1.10. "Mr Neale" means Mr Phil Neale (a director of EBCU and of Branch A), with Individual Reference Number PXN01278;
- 1.11. "Mr Nichols" means Mr Richard Nichols (Mr Grimsdale's business associate; co-

founder, director, employee and shareholder of Company A; and a director of EBCU), with Individual Reference Number RCN01028;

- 1.12. "Ms Birkett" means Ms Gillian Birkett (a director of EBCU and of Branch A), with Individual Reference Number GXB01928;
- 1.13. "Notice" means this final notice;
- 1.14. "the PRA" means the Prudential Regulation Authority;
- 1.15. "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';
- 1.16. "the PRA Requirement" means the voluntary requirement imposed by the PRA on EBCU on 24 December 2014 under section 55M of the Act;
- 1.17. "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';
- 1.18. "the Relevant Period" means 9 December 2012 to 14 May 2015;
- 1.19. "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;
- 1.20. "the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);
- 1.21. "UK" means the United Kingdom; and
- 1.22. "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 56 – not a fit and proper person

- 1.2. 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 rule 2.6 in the Fitness and Propriety Part of the PRA Rulebook, personal characteristics include the individual's reputation and integrity.

PRA Approach to Enforcement

- 2.2. 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. In particular:
- (1) 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) The PRA's approach to settlement is outlined in the PRA Settlement Policy at Annex 4.