



FINAL NOTICE

To: **Ms Gillian Birkett ("Ms Birkett")**

Individual Reference Number: **GXB01928**

Date: **6 February 2020**

1. PUBLIC CENSURE

- 1.1. For the reasons given in this notice, the PRA hereby issues a statement of Ms Birkett's misconduct (a "public censure") pursuant to section 66 of the Financial Services and Markets Act 2000 ("the Act") for failing to comply with Statement of Principle 6.
- 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.

2. SUMMARY OF THE GROUNDS FOR ACTION

- 2.1. On the basis of the facts and matters described below, the PRA considers that Ms Birkett failed to comply with Statement of Principle 6 while performing the CF1 (director) function at Enterprise the Business Credit Union Ltd ("EBCU") during the period from the date Ms Birkett took up her role as a director (12 December 2012) until EBCU entered into administration on 14 May 2015 ("the Relevant Period").

Background

- 2.2. EBCU is 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. The common bond of its members was that they were also members of the Federation of Small Businesses and/or Company A (a community interest company). 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. During the Relevant Period, EBCU had one employee and between three and five directors (including a chair) on its board ("the EBCU Board"). EBCU outsourced the day-to-day administration of its business to Company A, also based in Bournemouth. This outsourcing arrangement included all administration, payment of expenses, all banking, all transferring of funds including issuing of loans, and collection of loan repayments.
- 2.4. Dorset Energy Advice Centre Limited ("DEAC") was a not-for-profit company. It was a branch of Company A, meaning that DEAC's clients could, by becoming members of Company A, become members of EBCU and thereby access EBCU's services. DEAC's clients made up a significant proportion of EBCU's borrowers. DEAC received fees and commission in respect of EBCU products taken out by DEAC's clients, via Company A. For the duration of the Relevant Period, Ms Birkett was, together with Mr Phil Neale (also a director of EBCU), a director of DEAC and ran its advice centre. Ms Birkett was responsible for general office management and bookkeeping. Her position at DEAC was remunerated.

Ms Birkett's role at EBCU

- 2.5. Ms Birkett was appointed as a director of EBCU on 9 December 2012 and was approved by the FSA on 12 December 2012 to perform the CF1 (director) controlled function. She held this function throughout the Relevant Period.
- 2.6. Also on 9 December 2012, the EBCU Board appointed Ms Birkett to the role of Treasurer, with responsibilities related to monitoring EBCU's financial position. She accepted that role and was the only individual to hold that role during the Relevant Period. Her role as director of EBCU was voluntary and was not remunerated.
- 2.7. 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 (i.e. performing the SMF8 function) 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.
- 2.8. 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. Where a director is also the Treasurer, or has been allocated

the specific responsibility for managing the firm's financial resources, this responsibility is important and he or she must carry out their role prudently. The careful and prudent management of a firm's financial resources is paramount to its safety and soundness.

Conflict of interest

- 2.9. Throughout the Relevant Period, Ms Birkett was a director of both EBCU and DEAC and so had a duty to act in the interests of both companies. As a paid employee of DEAC, she had a financial interest in DEAC, which derived a proportion of its income from the fees generated by the EBCU products and services. These fees were paid by Company A.
- 2.10. This potential conflict of interest was acknowledged by the EBCU Board at the time she took up the position of Director and treasurer of EBCU. Ms Birkett did not fully appreciate the nature of this conflict, however, and therefore did nothing to manage it appropriately after that point. For instance, she did not make any disclosures surrounding any EBCU Board decisions relating to Company A that might affect its ability to pay fees to DEAC, nor abstain from any EBCU decision on the basis of a conflict of interest.
- 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 them 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, including DEAC, would promote EBCU's loans to their clients/customer base. Under the outsourcing arrangement with EBCU, Company A was involved with every stage of EBCU's loans 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 directors and senior managers, who are approved to perform controlled functions, to take an active role in ensuring the safety and soundness of the authorised firm. They have 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 individuals) and ensuring appropriate oversight and control of those delegated activities.
- 2.18. In the circumstances, the PRA would have expected Ms Birkett, as a director and Treasurer of EBCU to have:

- (1) adequately informed herself 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;
- (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; and
- (4) put in place appropriate measures to mitigate the risks arising from conflicts of interest between her duties and interests in relation to EBCU and DEAC.

The PRA Requirement on EBCU not to issue new loans

- 2.19. 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.
- 2.20. 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.
- 2.21. 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.
- 2.22. 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 had 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.

Director disqualification

- 2.24. On 9 March 2017, Ms Birkett agreed a disqualification undertaking with the Secretary of State preventing her from directly or indirectly becoming involved in the promotion, formation or management of a company for six years without the permission of the Court. This was on the grounds that Ms Birkett failed to ensure that EBCU complied with the PRA Requirement.

3. BREACHES AND FAILURES

- 3.1. During the Relevant Period, the PRA considers Ms Birkett breached Statement of Principle 6 by failing to exercise due skill, care and diligence in managing the business of EBCU for which she was responsible as a CF1 (director) with responsibility for managing the firms' finances as Treasurer. In particular, she:
- (1) failed to identify the potential conflicts between her competing duties and interests as a director of both EBCU and DEAC, and failed to put in place appropriate measures to manage those potential conflicts;
 - (2) failed adequately to inform herself 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;
 - (3) failed to supervise and monitor adequately the activities of Company A, led by Mr Grimsdale (to whom the processing and payment of loans had effectively been delegated, as well as sole control of EBCU's bank account);
 - (4) failed to consider the risks associated with: (i) the outsourcing arrangement with Company A, and (ii) the delegation of key roles to individuals at Company A who were non-approved persons, and therefore she failed to put appropriate mitigation in place; and
 - (5) failed to monitor adequately EBCU's compliance with the PRA Requirement.

- 3.2. More detailed information on the facts and matters relied on by the PRA in its decision-making process regarding Ms Birkett 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 on Ms Birkett supports that objective. The PRA considers Ms Birkett's failures undermined the safety and soundness of EBCU.
- 4.6. Ms Birkett's failure to recognise that a conflict of interest could arise between her role as director of DEAC and that as director of EBCU meant that she did not manage appropriately situations of conflict or potential conflict. This failure demonstrates that she did not understand her duties as a director, and put the credit union at risk of her acting for the benefit of DEAC, to the detriment of the credit union and its safety and soundness.
- 4.7. 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, Ms Birkett 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.
- 4.8. Ms Birkett's lack of understanding of the risks arising from the outsourcing

arrangement meant that she placed total reliance on Mr Grimsdale (a non-approved person) to undertake all activities involving EBCU's finances for which she was responsible as director and Treasurer of EBCU. This resulted in the situation where Mr Grimsdale was permitted to take charge of EBCU's bank account without appropriate supervision or control.

- 4.9. In particular, Ms Birkett's failure to monitor Mr Grimsdale's use of EBCU's bank account (which it was in her power to do as one of only two EBCU directors with signing authority over the account, and which it was her duty to do as Treasurer) meant that she was not in control of EBCU's financial position or loans business. Her failure to monitor the bank account during the period when the PRA Requirement was in place, in circumstances where she had reason to suspect loans were being paid out in breach of the PRA Requirement, is especially egregious. Moreover, Ms Birkett's consent to the breach of the PRA Requirement in certain limited circumstances shows a disregard for the rules and requirements of the regulatory system. Ms Birkett's failure to ensure that EBCU complied with the terms of the PRA Requirement in full was detrimental to its safety and soundness and contributed to it needing to be 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.

5. SANCTION

Public censure

- 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 Ms Birkett's breach of Statement of Principle 6 warrants the imposition of a public censure.
- 5.2. This action is intended to be punitive. The PRA has taken into account that Ms Birkett was a voluntary director who received no remuneration for her position at EBCU, she does not appear to have benefited financially from her misconduct and a financial penalty does not appear to the PRA to be necessary to deter her from committing this or similar misconduct in the future.
- 5.3. The publication of the censure is also intended to serve as a deterrent to senior management function holders in credit unions and other regulated firms.
- 5.4. The PRA's decision 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.

Other considerations

- 5.5. As set out further in Annex C, the PRA has also taken into account that Ms Birkett: (i) attempted to stand down from the Treasurer role (recognising she did not have the sufficient skills to perform the role properly); (ii) demonstrated insight into her failings; (iii) agreed a disqualification undertaking with the Secretary of State, which she accepts was appropriate in the circumstances; and (iv) is in retirement and has stated she does not intend to work in the financial services industry again.
- 5.6. Had the above factors not been present, the PRA would have seriously considered the imposition of a prohibition order against Ms Birkett on the grounds of lack of competence and capability.

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 Ms Birkett can be found in **Annex A**. Ms Birkett's misconduct and failings are detailed in **Annex B** and the basis for the public censure 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 Mutuals 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 interests 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.

- 1.6. DEAC became a branch of Company A upon Ms Birkett and Mr Neale becoming directors of EBCU. Clients and customers of Company A's branches, including DEAC, could apply for loans from EBCU provided that they were, or became, members of Company A (and thus of EBCU). This involved paying an annual membership fee to Company A. EBCU provided both personal and business loans to its members.
- 1.7. EBCU designed a loan product specifically intended for DEAC called "Your Greener Loan" which enabled clients to get heating solutions (e.g. boilers etc.) fitted on credit. The loans taken out were often paid directly to the fitter/installer. The largest source of applications for EBCU loans was DEAC. During the Relevant Period, "Your Greener Loans" made up the vast majority of EBCU's loans business.
- 1.8. As a branch of Company A, DEAC received a commission/fee from Company A in respect of EBCU loans taken out by DEAC clients.

EBCU's arrangements with Mr Grimsdale and Company A

- 1.9. 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) appointed Mr Richard Nichols (one of Company A's directors) 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.
- 1.10. 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).

- 1.11. 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."
- 1.12. 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.
- 1.13. 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. MS BIRKETT'S BACKGROUND AND ROLES AT DEAC AND EBCU

Background

- 2.1. Prior to her directorship role in EBCU, Ms Birkett had no experience of working in any position in, or related to, financial services. At interview with the PRA, she described herself as a "stay at home mum" who later went into hairdressing.
- 2.2. In the late 1990s, Ms Birkett became an energy advisor, working with and for Mr Neale. Shortly thereafter, upon the formation of DEAC in 2000, Ms Birkett was appointed a director of DEAC, along with Mr Neale. As well as being a director, Ms Birkett carried out the bookkeeping for DEAC's business. Ms Birkett's role at DEAC was remunerated.
- 2.3. In 2012, Ms Birkett was approached by Mr Grimsdale about becoming a director of a credit union board. She was interested in the offer because she believed the types of clients she and Mr Neale dealt with in their role at DEAC could benefit from a credit union of the type being proposed. Ms Birkett was subsequently appointed as part of a new EBCU Board in December 2012 and was approved to perform the CF1 (director) function. Her role as director of EBCU was not remunerated.

Ms Birkett's conflict of interest

- 2.4. Throughout the Relevant Period, Ms Birkett was a director of both EBCU and DEAC. Her role as director of DEAC was remunerated. The EBCU Board discussed potential conflicts of interest that could arise between directors' interests in

branches of Company A (such as DEAC) on the one hand, and their obligations towards EBCU on the other. However, no action was taken to appropriately manage the potential conflicts of interest.

- 2.5. During the Relevant Period, the largest source of applications for EBCU loans was DEAC and the loans paid to DEAC's installers/clients/customer base made up the vast majority of EBCU's loans business. Thus, a portion of DEAC's income came from commissions and fees paid to it by Company A in respect of EBCU products taken out by DEAC installers/clients.
- 2.6. Notwithstanding the fact that DEAC benefited financially from its business with EBCU, and Ms Birkett benefitted financially from her position at DEAC, she:(i) did not consider that her decisions as a member of the EBCU Board could be conflicted by her interests at DEAC, (ii) did not explicitly bring to the attention of the EBCU Board the existence of the conflict in connection with any EBCU decisions that were for the benefit of DEAC/Company A branches generally, and (iii) did not abstain from taking any such decisions on account of her conflict of interest.
- 2.7. When interviewed by the PRA Ms Birkett did not recognise that a conflict of interest could arise between her role as Director of DEAC and that as Director of EBCU. She did not recognise the possibility that the prudent management of EBCU as a credit union could potentially be at odds with the interests of DEAC and its clients who were applying for EBCU loans.

3. MS BIRKETT'S ROLE AND RESPONSIBILITIES ON THE EBCU BOARD

- 3.1. At the first meeting of the new EBCU Board in December 2012, Ms Birkett was appointed as a director and given the role of Treasurer. Ms Birkett accepted the appointment.
- 3.2. 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.
- 3.3. Ms Birkett attended EBCU Board meetings regularly but had limited participation

in those meetings. There was a section in most board meetings devoted to a Treasurer's Report. 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.

- 3.4. Although Ms Birkett accepts she was appointed as Treasurer by the EBCU Board, she told the PRA at interview that she did not carry out the functions of EBCU's Treasurer, which she understood to include monitoring EBCU's financial position. She told us that she did not feel comfortable with having the Treasurer role because she felt she had insufficient knowledge and time, and that she sought to stand down from the Treasurer role in July 2014 (one and a half years after she was appointed). In the absence of a replacement, however, she retained the role throughout the Relevant Period.

4. MS BIRKETT'S OVERSIGHT OF COMPANY A'S OPERATIONS

- 4.1. Ms Birkett understood that Company A, led by Mr Grimsdale, carried out all of EBCU's operations and that, accordingly, neither she nor the EBCU Board had day-to-day oversight or control of its activities. Nevertheless, she did not understand the risks arising from the outsourcing arrangements and accordingly did not take any steps to establish and implement appropriate systems and controls to ensure effective oversight of Company A's activities.
- 4.2. The EBCU Board had no involvement in loan approvals. Company A's branches, such as DEAC, 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.
- 4.3. 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. Either Ms Birkett or Mr Neale could be the third member of the Lending Committee. Ms Birkett recalled attending EBCU Lending Committees only a couple of times; she told the PRA at interview that this was more for the purposes of giving a second opinion

rather than her actually taking the lending decisions that were discussed.

- 4.4. 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.
- 4.5. Ms Birkett, together with Mr Neale, had signatory authority over EBCU's bank account. Ms Birkett and Mr Neale signed the Internet Banking Services approval forms granting Mr Grimsdale and Individual A the fullest access possible to EBCU's bank account, which included the ability to view account information, to input payments, and to approve and make payments.¹ The operation of the online bank account, however, was delegated entirely to Mr Grimsdale and Individual A. In respect of any loans, 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).
- 4.6. 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 Ms Birkett nor EBCU's other directors had 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 from Mr Grimsdale at EBCU Board meetings.
- 4.7. 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.
- 4.8. Although Ms Birkett was a named signatory on EBCU's bank account, she did not exercise that control in practice. Having delegated access to EBCU's online banking to Mr Grimsdale and Individual A, she did not otherwise monitor payments being made into or out of the account. She 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. Financial accounts, updates on lending figures, and/or forecasts were

provided by Mr Grimsdale in advance of EBCU Board meetings. Despite her role as EBCU's Treasurer, she told the PRA at interview that she might have reviewed them during the EBCU Board meeting, but not beforehand.

- 4.9. In respect of the process surrounding Company A's remuneration for the services it provided, Ms Birkett had no recollection of discussing this, either with Company A or with the EBCU Board. Whilst Ms Birkett knew that Company A was incurring costs in the administration of EBCU's business, and was spending money on premises and staff, she did not question how or whether it was taking payment for the services carried out on behalf of EBCU. Ms Birkett was aware that a contract existed between EBCU and Company A under which Company A was owed a fee, and knew that Company A (via Mr Grimsdale) had control of EBCU's online bank account. Ms Birkett did not appreciate the risks inherent in this arrangement.
- 4.10. 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 including BACS payments and credits. The report was considered by the EBCU Board, including Ms Birkett, but no action was taken to address the risks identified.

5. THE PRA REQUIREMENT NOT TO ISSUE NEW LOANS

Imposition of the PRA Requirement

- 5.1. 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.
- 5.2. 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.
- 5.3. On 17 December 2014, the EBCU Board, including Ms Birkett, 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, and would apply for it to be

imposed voluntarily, 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.

- 5.4. Accordingly, on 24 December 2014 the PRA imposed the Requirement on EBCU under section 55M of the Act with immediate effect. The terms of the 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).*

- 5.5. Ms Birkett told the PRA at interview that she was aware of the PRA Requirement and understood its terms.

Ms Birkett's role in EBCU's breach of the PRA Requirement

EBCU Lending Committee approval of loan applications

- 5.6. Ms Birkett told the PRA in interview that she 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. Company A continued to receive applications for EBCU loans after the PRA Requirement was imposed, and the Lending Committee continued to approve those applications. This meant that they underwent the usual due diligence and credit scoring checks. Ms Birkett told the PRA that following the imposition of the PRA Requirement, she knew that Company A was continuing to process applications, but it was her belief that

Company A understood loans were not meant to be paid out unless and until the PRA Requirement was lifted. Ms Birkett believed Company A was compiling a pipeline of loans that would be ready to pay out as soon as the PRA Requirement was lifted.

- 5.7. 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.. Ms Birkett maintains that she was not aware of this breach at the time and alleges, in fact, that Company A provided DEAC with daily evidence to the contrary.

The EBCU Board's instructions

- 5.8. 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 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.
- 5.9. 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.
- 5.10. Ms Birkett was aware of and consented to this breach of the PRA Requirement. At no stage did she seek the PRA's approval for these payments, which she knew were in clear contravention of the terms of the PRA Requirement.

Payment of loans after the PRA Requirement

- 5.11. 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.

- 5.12. In total, after the imposition of the PRA Requirement, Mr Grimsdale paid out £642,502.93 in respect of over 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.
- 5.13. Ms Birkett told the PRA at interview that the EBCU Board made it clear to Company A that the only loans they had permitted were the initial 10-15. According to Ms Birkett, the rest of the loans paid out between 24 December 2014 and 22 April 2015 were paid out, according to Ms Birkett, without the approval or consent of the EBCU Board.
- 5.14. In February 2015, DEAC received information suggesting that certain loans had been paid out in respect of DEAC clients. By way of an email dated 19 February 2015, Mr Neale wrote to Company A seeking assurances from it that it was not paying out loans to clients or installers in contravention of the PRA Requirement. Ms Birkett was copied to this email.
- 5.15. There is no evidence that such assurances were forthcoming. Nonetheless, Ms Birkett told us that she did not take any steps to press the matter and/or seek those assurances from Company A, beyond discussing the matter with Mr Neale. Ms Birkett told the PRA at interview that she relied on spreadsheets provided regularly by Company A to DEAC which did not indicate that loans had been paid out to DEAC clients.
- 5.16. In her capacity as an authorised signatory on the EBCU bank account, Ms Birkett was in fact in a position to monitor the account and also to restrict the access of Company A staff to it. She did not monitor the account (which would have confirmed the information she had received by email that Company A was paying out unauthorised loans in contravention of the PRA Requirement) nor did she restrict Company A's access to the account.
- 5.17. During the period that the PRA Requirement was in force, £522,610 worth of loans were paid out to DEAC's clients.

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 Ms Birkett has breached Statement of Principle 6.

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

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

1.3. During the Relevant Period Ms Birkett was an approved person performing the CF1 (director) function at EBCU.

1.4. Ms Birkett breached Statement of Principle 6 as follows:

Inadequate understanding of EBCU's loans business

1.5. Ms Birkett failed to keep herself adequately informed about, and did not maintain an appropriate level of understanding of, EBCU's loans business. She did not review accounts or forecast projections in advance of meetings, as expected of any credit union director acting with due skill care and diligence, in particular a director performing the role of Treasurer or who has been allocated the specific responsibility for managing the firm's financial resources. She made no use of her authority over EBCU's bank account to inform herself of the level of EBCU's lending, either before or after the imposition of the Requirement.

Inadequate supervision of Company A's activities

1.6. Ms Birkett failed to adequately supervise/monitor the activities of Company A in administering, processing and paying loans on behalf of EBCU and in controlling EBCU's bank account. She took no steps whatsoever to scrutinise or verify the reports she received from Company A. She considered those in Company A to whom the business had been outsourced to be more skilled and experienced than herself, and accordingly disregarded their activities entirely and neglected her duty to monitor their performance of the delegated activities.

Risks arising from delegation

1.7. Ms Birkett failed to consider 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.

- 1.8. These failures in relation to risk management suggest that Ms Birkett 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

- 1.9. Ms Birkett failed to monitor adequately EBCU's compliance with the Requirement.
- 1.10. Upon suspecting that the PRA Requirement was being breached by Company A staff, she took no steps to seek assurances from Company A that the Requirement would be followed. Moreover, as outlined in Annex A, she consented to the breach of the PRA Requirement in certain limited circumstances. She did not seek the PRA's approval of these exceptions. While the PRA Requirement was in place Ms Birkett did not use the means available to her to monitor and control Company A's adherence to its terms (e.g. by checking the EBCU bank account, by restricting access to it, or by contacting DEAC clients and fitters/installers).

Conflict of interest

- 1.11. Ms Birkett failed to identify the potential conflicts between her competing duties and interests as a director of both EBCU and DEAC and failed to put in place appropriate measures to manage or mitigate the risks arising from those potential conflicts.
- 1.12. She did not recognise the possibility that the prudent management of EBCU as a credit union could potentially be at odds with the interests of DEAC and its clients who were applying for EBCU loans. Her failure to recognise and appropriately manage this put EBCU at risk.

2. IMPACT OF FAILINGS

- 2.1. By failing to exercise due skill, care and diligence in managing the business of the firm for which she was responsible in her role as director of EBCU in the ways outlined above, Ms Birkett put the safety and soundness of EBCU at risk. Her misconduct ultimately contributed to EBCU being placed into administration and, subsequently, liquidation; the largest PRA-authorized credit union to fail

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.

ANNEX C - SANCTION

1. PUBLIC CENSURE

- 1.1. Pursuant to section 66(3)(b) of the Act, as Ms Birkett has breached the PRA's regulatory requirements, the PRA may, among other options, impose a penalty on Ms Birkett and/or publish a statement of her misconduct (a "public censure").
- 1.2. The PRA's policy in relation to financial penalties and public censures is set out in the PRA's Penalty Policy.
- 1.3. This sets out a non-exhaustive list of factors that may be taken into account when determining the appropriate sanction.
- 1.4. The PRA considers the following factors to be particularly important:
 - (1) as a CF1 (director) of EBCU with responsibility as Treasurer for managing the firm's finances, Ms Birkett held an important position on the EBCU Board with regards to ensuring the firm's safety and soundness;
 - (2) Ms Birkett's misconduct created a risk to the safety and soundness of EBCU. Her misconduct 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) the breach occurred from December 2012 to May 2105, a period of two-and-a-half years;
 - (4) that the PRA has not found Ms Birkett's misconduct to be either deliberate or reckless;
 - (5) Ms Birkett was a volunteer director of EBCU with no previous experience in the financial services industry;
 - (6) Ms Birkett did not receive any remuneration from EBCU;
 - (7) the publishing of a censure against Ms Birkett should have a deterrent effect both on Ms Birkett herself and on others who are subject to the PRA's regulatory requirements;
 - (8) Ms Birkett had attempted to stand down from the Treasurer role in 2014, in

recognition of the fact that she did not have the sufficient skills to perform the role properly;

- (9) Ms Birkett has demonstrated insight into her failings and by her own admission, does not intend to work in the financial services industry again;
- (10) Ms Birkett agreed a disqualification undertaking with the Secretary of State (on 24 April 2017) preventing her from directly or indirectly becoming involved in the promotion, formation or management of a company for six years without the permission of the Court. During the PRA interview, Ms Birkett accepted that the disqualification was appropriate in the circumstances; and
- (11) by virtue of the matters identified in paragraph (8) and (9) and by virtue of her disqualification referred to in (10), Ms Birkett is unlikely to commit the same or similar breaches in the future. Had the above factors not been present, the PRA would have seriously considered the imposition of a prohibition order against Ms Birkett on the grounds of lack of competence and capability.

Conclusion

- 1.5. For these reasons the PRA has issued a public statement that Ms Birkett has breached Statement of Principle 6.

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.

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. "Company A" means the UK community interests company based in Bournemouth to which EBCU outsourced its day-to-day administration;
- 1.3. "Curtains" means the accounting software used by Company A;
- 1.4. "DEAC" means Dorset Energy Advice Company Limited, a branch of Company A and of which Ms Birkett and Mr Neale were directors
- 1.5. "EBCU" means Enterprise the Business Credit Union Ltd (in liquidation), a UK credit union based in Bournemouth;
- 1.6. "the EBCU Board" means EBCU's board of directors;
- 1.7. "the FCA" means the Financial Conduct Authority;
- 1.8. "the FSA" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;
- 1.9. "FSCS" means the Financial Services Compensation Scheme;
- 1.10. "Individual A" means the individual who was a permanent member of EBCU's Lending Committee with Mr Grimsdale;
- 1.11. "Mr Neale" means Mr Phil Neale, with Individual Reference Number PXN01278 (on the Financial Services Register);
- 1.12. "Ms Birkett" means Ms Gillian Birkett, with Individual Reference Number GXB01928 (on the Financial Services Register);
- 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. “public censure” means a statement of a person’s misconduct published by the PRA pursuant to section 66(3)(b) of the Act;
- 1.19. “the Relevant Period” means 12 December 2012 to 14 May 2015;
- 1.20. “Statement of Principle” means the principles included in the FSA’s and (after 1 April 2013) the PRA’s Statements of Principle for Approved Persons;
- 1.21. “the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber);
- 1.22. “UK” means the United Kingdom.

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.

2. RELEVANT REGULATORY PROVISIONS

Statement of Principle 6

- 2.1. 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

- 2.2. The PRA's policy on the publication of public censures is set out in *The Prudential Regulatory Authority's approach to enforcement: statutory statements of policy and procedure, August 2018*. This sets out the PRA's approach to exercising its main enforcement powers under the Act.
- 2.3. The PRA's approach to the imposition of public censures is outlined in the PRA Penalty Policy at Chapter 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.
- 2.4. 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.