

Bank of England

Prudential Regulation Authority

DECISION NOTICE

To: Cardenden & Kinglassie Credit Union Limited

Of: 13 Dundonald Park, Cardenden, Lochgelly. Fife
KY5 0BZ

Firm Reference Number: 213808

Date: 24 July 2024

ACTION

1. Further to the Warning Notice issued to Cardenden & Kinglassie Credit Union Limited on 5 March 2024, and for the reasons set out in Section A of this Notice and pursuant to section 55J(3) of the Financial Services and Markets Act 2000 (the "Act"), the Prudential Regulation Authority has decided to cancel the permission granted to Cardenden & Kinglassie Credit Union Limited pursuant to Part 4A of the Act.

PROCEDURAL MATTERS

2. The procedural matters set out in Section B are important.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

3. The relevant statutory and regulatory provisions are set out in Section C.

DEFINITIONS

The definitions below are used in this Notice:

"the Act" means the Financial Services and Markets Act 2000

"director" has the meaning specified by the Glossary Part of the PRA Rulebook

"the FCA" means the Financial Conduct Authority

"the firm" means Cardenden & Kinglassie Credit Union Limited

"the FSA" means the Financial Services Authority, which was the predecessor to the FCA

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“the FSCS” means the Financial Services Compensation Scheme

“the Notice” means this Decision Notice, including Section A, Section B and Section C

“Part 4A permission” means permission to conduct regulated activity given under Part 4A of the Act

“the PRA” means the Prudential Regulation Authority

“Threshold Conditions” means the conditions set out in Part 1E of Schedule 6 to the Act

“the Tribunal” means The Upper Tribunal, Tax and Chancery Chamber

Marcela Hashim

For and on behalf of the Prudential Regulation Authority
Manager, Credit Unions Team

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SECTION A OF THE DECISION NOTICE ISSUED BY THE PRUDENTIAL REGULATION AUTHORITY TO THE FIRM ON 24 JULY 2024

SUMMARY OF REASONS

1. On the basis of the facts and matters described below, in PRA's view the firm is failing to satisfy the PRA's threshold conditions, as set out in Part 1E, Schedule 6 to the Act, as it is failing to satisfy Threshold Condition 5C (Location of offices), Threshold Condition 5D (Business to be conducted in a prudent manner), Threshold Condition 5E (Suitability) and Threshold Condition 5F (Effective supervision).
2. In the opinion of the PRA:
 - 2.1. The firm no longer maintains any registered office and is failing to satisfy Threshold Condition 5C.
 - 2.2. The firm does not have any approved senior managers and, as far as the PRA is aware, the firm does not have any directors, officers, employees or other persons able to manage the firm's operations or ensure its compliance with regulatory requirements. As a result of the firm's lack of appropriate human resources, the PRA considers that the firm is failing to satisfy Threshold Conditions 5D, 5E and 5F.
3. Additionally, the firm has not conducted any regulated activity for a period of at least 12 months. To the knowledge of the PRA, the firm has not conducted regulated activity since around July 2021.
4. In these circumstances, and for the reasons set out in this decision, the PRA therefore considers that it is reasonable and proportionate to cancel the firm's Part 4A permission, pursuant to section 55J of the Act.

FACTS AND MATTERS RELIED UPON

5. The firm was registered on 28 November 1994 under the Industrial and Provident Societies Act 1965¹, by virtue of s1 of the Credit Union Act 1979. Sections 1 and 150(1) of the Cooperative and Community Benefit Societies Act 2014 provide that any society registered under the Industrial and Provident Societies Act 1965 is considered a registered society for the purposes of the Cooperative and Community Benefit Societies Act 2014. It provided loans and shared accounts to its members and is authorised by the PRA and regulated by the FCA and the PRA.

¹ *Cooperative and Community Benefit Societies Act 2014 came into force on 01 August 2014 hence any credit unions who were registered before 1 August 2014 were registered under the Industrial and Provident Societies Act 1965.*

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6. The PRA records indicate that the firm had last provided financial statements in January 2020. The quarterly return received covered the quarter to 31 December 2019, and the last annual return for the firm covered the year to 30 September 2019.
7. Upon receipt of a referral from the PRA, the FSCS issued a decision on 21 July 2021 declaring that the firm had unavailable deposits and was therefore in default for the purposes of the Depositor Protection rules as of 19 July 2021. To the PRA's knowledge, all eligible members were compensated by the FSCS.

Engagement with the PRA

8. On 23 November 2020, a member in C&K contacted PRA Supervision via email, informing them of her intention to resign from her position in relation to the management of the firm. However, as she did not follow the correct procedure, her resignation could not be accepted. In the same email, the member indicated that the firm had been inactive since March 2020, following the initial COVID-19 lockdown, and that the firm's committee members had decided to close it down. Subsequently, to assess the firm's financial position, PRA Supervision sent several emails (dated 24 November 2020, 01 December 2020 and 28 January 2021) to the C&K member, requesting further information. In response, the firm's bank statements were submitted to the FSCS via the firm's auditor in 2021. These statements indicated that the firm was in financial difficulty.
9. On 19 May 2021, CK's same member called the PRA and notified that the firm's members were contacting her for their shares. She indicated that loans had not been repaid for the last 12 months as the firm was in financial difficulty.
10. On 01 June 2021, the FCA imposed a partial restriction on the firm via a VREQ (voluntary requirement) under section 55L of the Act and prohibited the firm to undertake any new regulated business. The VREQ was signed by the firm's member.
11. In around July 2021, the firm's SCV file (Single Customer View) was filed. Thereafter, on 19 July 2021, the firm was referred to FSCS (Financial Services Compensations Scheme) who issued a decision on 21 July 2021 declaring that the firm had unavailable deposits and was therefore in default for the purposes of the Depositor Protection rules as of 19 July 2021. To the PRA's knowledge, all eligible members were compensated by the FSCS.

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12. In September 2021, the PRA requested the firm's member via email to provide up-to-date bank statements. The PRA did not receive any response from the firm.
13. On 26 May 2023, the PRA was notified by the FCA that the firm's last remaining member had passed away on 8 May 2023.

FAILURES

Failure to Satisfy the Threshold Conditions

Location of Offices (Paragraph 5C of Part 1E of Schedule 6 to the Act)

14. Paragraph 5C(1) of Part 1E, Schedule 6 of the Act provides that, if a firm is a body corporate incorporated in the United Kingdom, its head office and registered office (if applicable) must be in the United Kingdom. The firm is a body corporate incorporated in the UK and has failed to maintain a head office or registered office in the UK. To the PRA's knowledge, the residential address for the firm's member, who is now deceased, had been the registered address for the firm since 2013 and there is no alternative address available. The history of firm's engagement with the PRA is set out in paragraphs 8-13 above.

Business to be conducted in a prudent manner (Paragraph 5D of Part 1E of Schedule 6 to the Act)

15. Paragraph 5D(1) of Part 1E, Schedule 6 of the Act provides that the business of a firm must be conducted in a prudent manner. To satisfy this condition, a firm must have appropriate financial and non-financial resources. For the purposes of this requirement, "non-financial resources" includes the human resources that a firm has available (paragraph 1A, Part 1, Schedule 6 of the Act).
16. To have appropriate non-financial resources, a firm must satisfy (amongst others) the following conditions as set out in paragraph 5D (4), Part 1E of Schedule 6 of the Act:
 - 16.1. the effectiveness with which the firm's business is managed must meet a reasonable standard of effectiveness, and
 - 16.2. the firm's non-financial resources must be sufficient to enable the firm to comply with:
 - (i) requirements imposed or likely to be imposed on the firm by the PRA in the exercise of its functions, and

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- (ii) any other requirement in relation to whose contravention the PRA would be the appropriate regulator for the purpose of any provision of Part 14 of the Act.

17. The firm does not have in place appropriate non-financial resources. The firm has no approved senior managers, and, to the PRA's knowledge, the firm has no current directors, officers or employees to manage the firm's affairs.

18. The PRA considers that the firm lacks human resources adequate to satisfy the conditions set out in paragraphs 16.1 to 16.2 above and therefore that the firm does not have appropriate non-financial resources and its business is not conducted in a prudent manner.

Suitability (Paragraph 5E of Part 1E of Schedule 6 to the Act)

19. Paragraph 5E (1), Part 1E of Schedule 6 of the Act provides that a firm must be a fit and proper person, having regards to the PRA's objectives. The matters relevant to determining whether a firm is fit and proper include whether those who manage firm's affairs have adequate skills and experience.

20. The firm has failed to be a fit and proper person, having regard to the PRA's objectives because it has no directors, officers, controller, employees and/or other persons to manage the firm or conduct regulated activity.

Effective Supervision (Paragraph 5F of Part 1E of Schedule 6 to the Act)

21. Paragraph 5F(1), Part 1E of Schedule 6 of the Act provides that a person must be capable of being effectively supervised by the PRA.

22. The firm has failed to be capable of being effectively supervised by the PRA because it has no active directors which means that the PRA is unable to request or receive information from the firm.

23. The firm has failed to comply with requirements imposed by the PRA in the exercise of the PRA's functions. In particular, the firm has failed to submit the firm's annual reports and audited accounts for the periods ending 31 September 2020, 31 September 2021, 31 September 2022.

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Conclusion on Threshold Conditions

24. On the basis of the facts and matters described above, it appears to the PRA that the firm is failing to satisfy the conditions set out in paragraphs 5C (Location of offices), 5D (Business to be conducted in a prudent manner), 5E (Suitability) and 5F (Effective supervision) of the PRA's threshold conditions.

Failure to carry on regulated activity

25. As set out above, in PRA's view the firm has not carried on regulated activity by way of business in the UK since March 2020 or at least July 2021 (when it was declared in default). Given the firm's lack of non-financial resources, the PRA considers there is no realistic prospect of the firm resuming regulated activity.

REGULATORY ACTION

26. On 5 March 2024 the PRA issued a Warning Notice to the firm and advised that the PRA was proposing to cancel the firm's Part 4A permission. The PRA gave more than 14 days to the firm until 21 March to make oral representations to the PRA on the contents of the Warning Notice and more than 21 days until 28 March 2024 should the firm wish to submit any written representations.

27. The PRA has received no response from the firm to the PRA's Warning Notice dated 5 March 2024.

28. For the reasons above, the PRA considers it appropriate to exercise its power under section 55J(3) of the Act because in the PRA's view the firm is failing to satisfy the threshold conditions for which the PRA is responsible and it has not conducted regulated activity for a period of at least 12 months.

ACTION

29. For the reasons given in this Notice, and pursuant to section 55 J(3) of the Act, the PRA has decided to cancel the firm's Part 4A permission.

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SECTION B OF THE DECISION NOTICE ISSUED BY THE PRUDENTIAL REGULATION AUTHORITY TO THE FIRM ON 24 JULY 2024

PROCEDURAL MATTERS

Decision-Maker

1. The decision which gave rise to the obligation to give this Notice was made by the PRA's Heads of Department and Managers Panel.
2. This Notice is given to the firm under section 55Z(2) of the Act, in accordance with section 388 of the Act, and is being served on the firm by post pursuant to the requirements of the Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001.
3. The following statutory rights are important.

The Upper Tribunal

4. The firm has the right to refer the matter to which this Notice relates to the Upper Tribunal. Under paragraph 2(2) of Schedule 3 of the Upper Tribunal Procedure Rules 2008, the firm has 28 days, from the date on which this Notice is given, to refer the matter to the Upper Tribunal.
5. A reference to the Upper Tribunal is made by way of a reference notice (Form FTC3) signed by or on behalf of the firm and filed with a copy of this Notice. The Upper Tribunal's address is:

Upper Tribunal (Tax and Chancery Chamber)
Fifth Floor
Rolls Building
Fetter Lane
London
EC4A 1NL
Tel: (020) 7612 9730
Email: uttc@justice.gov.uk

6. Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Tribunal website: [Refer a financial services case to the Upper Tribunal \(Tax and Chancery\) \(T400\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/684444/Refer_a_financial_services_case_to_the_Upper_Tribunal_Tax_and_Chancery_T400_-_GOV.UK.pdf)
7. The firm should note that a copy of the reference notice (Form FTC3) must be sent to the PRA at the same time as the firm files a reference with the Upper Tribunal. A copy of the reference notice should be sent to **Marcela Hashim** at the PRA, 20 Moorgate, London, EC2R 6DA.

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Access to evidence

8. Section 394 of the Act applies to this Notice.
9. The firm has the right to access:
 - a) the material upon which the PRA has relied in taking the decision which gave rise to the obligation to give this notice; and
 - b) any secondary material which, in the opinion of the PRA, might undermine that decision.
10. The PRA considers that there is no secondary material which, in the opinion of the PRA, might undermine the PRA's decision.
11. The PRA is not required to allow access to any material that is a “protected item”.

Confidentiality and publicity

12. Sections 391(1A), 391(4), 391(6A) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates.
13. Under those provisions, a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the PRA has published the Notice or those details. The PRA must publish such information about the matter to which the Notice relates as it considers appropriate.

PRA contacts

14. For more information concerning this matter generally, the firm should contact Marcela Hashim at the PRA, 20 Moorgate, London EC2R 6DA.

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SECTION C OF THE DECISION NOTICE ISSUED BY THE PRUDENTIAL REGULATION AUTHORITY TO THE FIRM ON 24 JULY 2024

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. Under section 2B(2) of the Act, the PRA's general objective is: promoting the safety and soundness of PRA-authorized persons.
2. Section 55J(1) of the Act authorises the PRA to exercise its own-initiative variation or cancellation power under section 55J(3) where:
 - a) a firm is failing, or is likely to fail, to satisfy the threshold conditions for which the PRA is responsible;
 - b) the firm has failed, during a period of at least 12 months, to carry on a regulated activity to which the part 4A permission relates; or
 - c) it is desirable to exercise the power in order to advance the PRA's objectives.
3. Section 55J(3) of the Act provides that the PRA's power under section 55J is the power in the case of a PRA-authorized person, to vary the Part 4A permission in any of the ways mentioned in section 55I(1) or to cancel it.
4. Part 1E of Schedule 6 to the Act sets out the threshold conditions for which the PRA is responsible in relation to PRA-authorized persons.
5. Under paragraph 5C(1), Part 1E of Schedule 6 of the Act, if a person is a body corporate incorporated in the United Kingdom, the person's head office and registered office (if applicable) must be in the United Kingdom.
6. Paragraph 5D(1), Part 1E of Schedule 6 of the Act provides that the business of the person concerned must be conducted in a prudent manner. Paragraph 5D(2) provides that, to satisfy the condition in sub-paragraph (1), the person concerned must in particular have appropriate financial and non-financial resources.
7. Paragraph 5D(4), Part 1E of Schedule 6 of the Act sets out the conditions which the person concerned ("D") must satisfy to have appropriate non-financial resources. These conditions include (amongst others) that:
 - a) the effectiveness with which D's business is managed must meet a reasonable standard of effectiveness,
 - b) D's non-financial resources must be sufficient to enable D to comply with—
 - i. requirements imposed or likely to be imposed on D by the PRA in the exercise of its functions, and

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- ii. any other requirement in relation to whose contravention the PRA would be the appropriate regulator for the purpose of any provision of Part 14 of this Act.
8. Paragraph 1A(2) of Part I of Schedule 6 of the Act provides that, for the purposes of Schedule 6, the “non-financial resources” of a person include any systems, controls, plans or policies that the person maintains, any information that the person holds and the human resources that the person has available.
9. Under paragraph 5E(1), Part 1E of Schedule 6 of the Act, the person concerned must be a fit and proper person, having regard to the PRA’s objectives. The matters which are relevant in determining whether the person concerned satisfies this condition include whether those managing the persons affairs have adequate skills and experience (pursuant to paragraph 5E(2)(b)).
10. Paragraph 5F(1), Part 1E of Schedule 6 of the Act provides that the person concerned must be capable of being effectively supervised by the PRA. Under paragraph 5F(2), the matters relevant in determining whether the person concerned satisfies this condition include the way in which the person's business is organised.
11. The exercise of PRA’s own initiative power entails issue of warning notice followed by a decision notice under section 55Z(1) and 55Z(2) of the Act.
12. Under section 388 of the Act, a decision notice must—
 - 12.1 be in writing;
 - 12.2 give reasons for the proposed action;
 - 12.3 state whether section 394 applies;
 - 12.4 if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it; and
 - 12.5 give indication of any right to have the matter referred to the Tribunal and the procedure on such a reference.
13. Section 388(2) provides that if the decision notice was preceded by a warning notice, the action to which the decision notice relates must be action under the same Part as the action proposed in the warning notice.
14. Section 391(4) FSMA obligates the PRA to publish information related to decision notice issued under s55Z(2) as it considers appropriate. However, before exercising its discretion under s391(4), the PRA must give regard to subsection (6A) which requires it to consider if publication of information would be-

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- a) unfair to the person with respect to whom the action was taken (or was proposed to be taken),
- b) prejudicial to the safety and soundness of PRA-authorized persons, or
- c) in a case where section 2C applies, prejudicial to securing the appropriate degree of protection for policyholders.