
FINAL NOTICE

To: **Larksway Investments Limited (in Liquidation)**

Address: **Beaver House
23-38 Hythe Bridge Street
Oxford
OX1 2EP**

**FCA
Reference
Number:** **516619**

**Interim
Variation of
Permission
Reference
Number:** **640731**

Dated: **27 November 2018**

ACTION

1. For the reasons set out in this Final Notice, the Authority hereby cancels Larksway's Part 4A permission.
2. The Authority gave Larksway a Decision Notice, which notified Larksway that, for the reasons given below and pursuant to section 55J of the Act, the Authority had decided to cancel the permission granted to Larksway under Part 4A of the Act.

The Authority issued the Decision Notice to Larksway on 25 October 2016. On 21 November 2016, Larksway referred the Decision Notice to the Upper Tribunal. On 30 October 2017 Larksway's Tribunal reference was struck out. Given the strike out, this notice is drafted in substantially the same terms as the Decision Notice and reflects the Authority's findings at the time of the Decision Notice.

DEFINITIONS

3. The definitions below are used in this Final Notice (and in Annexes):

“the Act” means the Financial Services and Markets Act 2000;

“the Authority” means the Financial Conduct Authority;

“COND” means the Threshold Conditions part of the Handbook;

“the Decision Notice” means the Decision Notice issued to Larksway on 25 October 2016;

“DISP” means the Dispute Resolution: Complaints Manual, which is part of the Handbook;

“EG” means the Enforcement Guide;

“the FOS” means the Financial Ombudsman Service;

“the FOS Award” means the Final Decision made by the FOS against Larksway on 17 December 2014, in relation to Ms B (decision reference: DRN4040664);

“the Handbook” means the Authority’s Handbook of rules and guidance;

“Larksway” means Larksway Investments Limited (in Liquidation);

“Larksway’s Part 4A permission” means the permission granted to Larksway under Part 4A of the Act;

“Ms B” means the customer of Larksway who made the complaint to the FOS to which the FOS Award relates;

“the Principles” means the Authority’s Principles for Businesses;

“the suitability Threshold Condition” means the threshold condition set out in paragraph 2E of schedule 6 to the Act;

“the Threshold Conditions” means the threshold conditions set out in Schedule 6 to the Act;

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber);

“the Warning Notice” means the Warning Notice issued to Larksway on 28 June 2016.

RELEVANT STATUTORY PROVISIONS

4. The statutory and regulatory provisions relevant to this Notice are set out in Annex A.

SUMMARY OF THE REASONS

5. On the basis of the facts and matters and conclusions described in the Warning Notice, and in the Decision Notice, it appears to the Authority that Larksway is failing to satisfy the suitability Threshold Condition, in that the Authority is not satisfied that Larksway is a fit and proper person having regard to all the circumstances.

6. Larksway has failed to satisfy the Authority that it is conducting its affairs in an appropriate manner, having regard to the interests of consumers. Specifically, Larksway has failed to comply with the FOS Award made against it on 17 December 2014, despite repeated requests by the FOS and the Authority that it do so. By not complying with the FOS Award, Larksway has breached DISP 3.7.12R (1) and Principle 6 (Customers' interests) and Principle 11 (Relations with regulators) of the Principles. Larksway did not seek a judicial review of the Award, which therefore remains binding on it under section 228(5) of the Act.

FACTS AND MATTERS

7. Larksway was authorised by the Authority on 30 November 2010 and is permitted to conduct insurance mediation business.
8. On 1 April 2014, following the transfer of Consumer Credit regulation from the Office of Fair Trading to the Authority, Larksway was granted an interim variation of permission to conduct credit broking, having submitted an application to the Authority for an Interim Variation of Permission on 19 September 2013.
9. Ms B's complaint to the FOS related to the sale to her by Larksway of a Professional Let Home Insurance Policy, a specialist landlord's insurance policy. Her property was broken into whilst it was being redecorated at the end of a tenancy. The property had been empty for eight days when the damage was discovered. The insurer rejected the claim on the basis that liability for theft and malicious damage was excluded where the property was not furnished for normal habitation. Ms B complained to the FOS that Larksway had not provided her with an insurance policy that met her needs and that Larksway had failed to explain the important restrictions in the policy that could affect her.
10. In its decision of 17 December 2014, the FOS upheld Ms B's complaint and directed Larksway to pay Ms B the value of her claim in accordance with the remaining terms and conditions of her policy (as if the exclusion described above did not apply) as determined by an independent loss adjuster appointed by Larksway at its own cost, together with interest at 8% simple per annum from the date of loss to the date of payment.
11. On 5 January 2015, Ms B accepted the FOS Award, at which stage the FOS decision became binding on her and Larksway. Larksway disputes the FOS Award. However, it has not sought judicial review of the award, which therefore remains binding on it under section 228(5) of the Act. Larksway has failed to comply with the FOS Award, despite repeated requests by the FOS and the Authority that it do so.

FAILINGS

12. As set out in the facts and matters described above, the Authority having regard to its operational objectives, which includes securing an appropriate degree of protection for consumers, has reached the following conclusions:
 - as a result of Larksway's persistent failure to comply with the FOS Award, despite repeated requests by the FOS and the Authority that it do so, Larksway has breached DISP 3.7.12R (1), which requires a firm to comply promptly with any award or direction made against it by the FOS;

- by not complying with the FOS Award, Larksway has also breached Principle 6 (Customers' interests) of the Principles, which requires a firm to pay due regard to the interests of its customers and treat them fairly;
- also, by not complying with the FOS Award, despite repeated requests by the Authority that it do so, Larksway has breached Principle 11 (Relations with regulators) of the Principles, which requires a firm to deal with its regulators in an open and co-operative way; and
- having regard to all the circumstances, Larksway is not fit and proper person because it has failed to satisfy the Authority that it is conducting its affairs in an appropriate manner, having regard in particular to the interests of consumers, and is therefore failing to satisfy the suitability Threshold Condition.
- These failures, which are significant in the context of Larksway's suitability, have led the Authority to conclude that Larksway has failed to manage its business in such a way as to ensure that its affairs are conducted in a sound and prudent manner, that it is not a fit and proper person, and that it is therefore failing to satisfy the Threshold Conditions in relation to the regulated activities for which Larksway has had a permission.

REPRESENTATIONS

13. Annex B contains a summary of the key representations made by Larksway and how they have been dealt with. In making the decision which gave rise to the obligation to give this Final Notice, the Authority has taken into account all the representations made by Larksway, whether or not set out in Annex B.

PROCEDURAL MATTERS

14. The Final Notice is given to Larksway in accordance with section 390 of the Act.

Decision Maker

15. This decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

Publicity

16. The Authority must publish such information about which this Final Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such information would, in the opinion of the Authority, be unfair to Larksway or prejudicial to the interests of consumers.
17. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority Contact

18. For more information concerning this matter generally, Larksway should contact Allen Kontos at the Authority (direct line: 020 7066 1634).

Anna Couzens
Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1(B) of the Act include securing an appropriate degree of protection for consumers.
2. The Authority is authorised by section 55J of the Act, amongst other things, to cancel an authorised person's Part 4A permission, where it appears to the Authority that it is failing to satisfy the Threshold Conditions.
3. Section 228(5) of the Act provides that if the complainant notifies the FOS that he/she accepts the determination, it is binding on the respondent and the complainant, and is final.
4. The suitability Threshold Condition provides, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

"A must be a fit and proper person having regard to all the circumstances, including –

[...]

- (c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers...;

[...]

- (f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in sound and prudent manner;

[...]”

RELEVANT REGULATORY PROVISIONS

5. In exercising its power to cancel a firm's Part 4A permission, the Authority must have regard to guidance published in the Handbook. The relevant main considerations in relation to the proposed cancellation action specified above are set out below.

Relevant Principles

6. Principle 6 (Customers' interests) of the Principles requires a firm to pay due regard to the interests of its customers and treat them fairly.

7. Principle 11 (Relations with regulators) of the Principles states that a firm must deal with its regulators in an open and co-operative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice.

Relevant Rule

8. DISP 3.7.12R (1), requires that a respondent complies promptly with any award or direction made by the FOS. Larksway is a respondent under the definition given in the Handbook.

Guidance concerning the suitability Threshold Condition

9. Guidance on the Threshold Conditions is set out in COND.

COND 2.5 – Suitability: Paragraph 2E of Schedule 6 to the Act

10. COND 2.5.1AUK(1) reproduces the relevant statutory provision that the person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including amongst other things, the need to ensure that his affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system, and whether the firm's business is being managed in such a way as to ensure that its affairs are being conducted in a sound and prudent manner (COND 2.5.1AUK(1)(c) and (f)).
11. COND 2.5.4G (2) states that examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy and continue to satisfy the Threshold Conditions include whether the firm conducts its business in compliance with proper standards (COND 2.5.4G(2)(a)).
12. COND 2.5.6G states that examples of the kind of particular considerations to which the FCA may have regard when assessing whether a firm will satisfy, and continue to satisfy, the suitability Threshold Condition include, but are not limited to, whether the firm has been open and co-operative in all its dealings with the Authority and is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1)), and whether the firm has contravened any provisions of the Act or the regulatory system, which include the Principles and other rules (COND 2.5.6G(4)).

Cancelling a firm's Part 4A permission on the Authority's own initiative

13. The Authority's policy in relation to its enforcement powers is set out in EG.
14. EG 8.1(1) provides that the Authority may use its own initiative power to vary or cancel the permission of an authorised person under section 55J of the Act, where the person is failing or is likely to fail to satisfy the Threshold Conditions.
15. EG 8.5.1(1) states that the Authority will consider cancelling a firm's Part 4A permission using its own initiative powers contained in section 55J of the Act in circumstances where the Authority has very serious concerns about the firm, or the way its business is or has been conducted.

16. EG 8.5.2 provides examples of the types of circumstances in which the Authority may cancel a firm's Part 4A permission. EG 8.5.2(1) specifies that non-compliance with an award made by the FOS against a firm is one such circumstance.

ANNEX B

REPRESENTATIONS

1. Larkway's representations (in italics), and the Authority's conclusions in respect of them, are set out below.
2. *Larkway had not done anything wrong when selling the insurance policy to Ms B and it disagreed with the FOS's decision. It was unfair that Larkway should be held accountable when it had acted properly.*
3. *The policy restriction in question was not unusual and was contained in equivalent insurance policies offered by other companies. Larkway should therefore not have been expected to explain that restriction to her. The FOS had not explained the basis for its conclusion that the policy restriction was unusual.*
4. *Ms B had committed fraud in respect of various insurance claims made by her, including that which was the subject of the FOS Award, and was currently being investigated by the police. The FOS had failed to take into account evidence which showed that Ms B had lied to it.*
5. *The FOS Award is inconsistent with other decisions made by the FOS, as illustrated by certain case studies issued by the FOS.*
6. *Larkway had not sought a judicial review of the FOS's decision as it would have been too expensive for it to bring such proceedings.*
7. *Despite its reservations, Larkway would acquiesce with the FOS's findings and therefore the action set out in this Notice to cancel its permissions should be suspended.*
8. It is not the Authority's role to review the FOS's decisions and the Authority does not have the power to overturn the FOS's decision in respect of Ms B's complaint. As Larkway was informed on many occasions, the appropriate route for contesting the FOS's decision was by seeking a judicial review. Larkway has not provided the Authority with any evidence in support of its submission that it would have been too expensive for it to bring judicial review proceedings. The Authority notes that, had Larkway brought a judicial review claim and been successful, it is likely that it would have recovered its legal costs. As Larkway has not sought a judicial review of the FOS's decision, the FOS Award remains binding on it.
9. As an authorised firm, Larkway is required to comply with the Authority's rules. These include DISP 3.7.12R(1), which requires a firm to comply promptly with any award or direction made against it by the FOS. The concerns raised by Larkway regarding the merits of the FOS's decision do not negate its regulatory responsibility to comply with the FOS Award. As is explained in the Notice, the Authority has concluded that Larkway is failing to satisfy the suitability Threshold Condition because it has not complied with the Award, despite repeated requests from the FOS and the Authority that it do so.

10. Since informing the Authority that it would acquiesce with the FOS's findings, Larksway has taken no steps to comply with the FOS Award. It has also informed the Authority that, if it did so comply, it would be doing so under duress and in breach of the law regarding money laundering, and so requested an indemnity from the Authority that no action would be taken against it for money laundering related matters. The Authority does not consider an indemnity to be relevant to the matters set out in the Notice and has informed Larksway that it is not willing to provide one. As it appears that Larksway does not have a genuine intention to comply with the FOS Award, the Authority has decided it is appropriate to proceed with the action against Larksway set out in this Notice.