
FINAL NOTICE

**Mr Mohammad Jamil
Cross Keys Estate & Finance Limited
794 Leeds Road
Bradford
West Yorkshire
BD3 9YT**

10 February 2016

ACTION

1. By an application dated 31 December 2014 ("the Application") Cross Keys Estate & Finance Ltd ("Cross Keys") applied under section 55A of the Financial Services and Markets Act 2000 ("the Act") for Part 4A permission to carry on the regulated activities of Credit Broking, Debt-counselling and Debt Adjusting.
2. The Application was completed by the provision of further information on 3 June 2015.
3. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

4. By its Warning Notice dated 23 November 2015 ("the Warning Notice") the Authority gave notice that it proposed to refuse the Application and that Cross Keys was entitled to make representations to the Authority about that proposed action.
5. As no representations have been received by the Authority from Cross Keys within the time allowed by the Warning Notice, the default procedures in paragraph 2.3.2 of the Authority's Decision Procedure and Penalties Manual apply, permitting the Authority to treat the matters referred to in its Warning Notice as undisputed and, accordingly, to give a Decision Notice.

6. By its Decision notice dated 23 December 2015 (“the Decision Notice”), the Authority gave Cross Keys notice that it had decided to take the action described above.
7. Cross Keys had 28 days from the date the Decision notice was given to refer the matter to the Upper Tribunal (formerly known as the Financial Services and Markets Tribunal). No referral was made to the Upper Tribunal within this period of time or to date.
8. Under section 390 (1) of the Act, the Authority, having decided to refuse the Application and there having been no reference of that decision to the Tribunal, must give Cross Keys Final Notice of its refusal.
9. For the reasons set out herein the Authority cannot ensure that Cross Keys will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act.
10. The Authority has decided to refuse the Application and to give this Final Notice as the Authority cannot ensure that Cross Keys will satisfy, and continue to satisfy, threshold conditions 2C (Effective Supervision), 2D (Appropriate Resources), 2E (Suitability) and 2F (Business Model).

DEFINITIONS

11. The definitions below are used in this Final Notice.

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

“the Authority” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority

“Cross Keys” means Cross Keys Estate & Finance Limited.

“Mr Jamil” means Mr Mohammad Jamil.

“the OFT” means the body that before 1 April 2014 was known as the Office of Fair Trading.

FACTS AND MATTERS

12. The Application was received on 31 December 2014.
13. Cross Keys is a private limited company incorporated on 21 June 2011 and has not traded since incorporation. However, Mr Mohammad Jamil “Mr Jamil” has previously held in a personal capacity an OFT licence to carry on consumer credit activities – debt-counselling, debt adjusting and credit broking – from 1989 to 1997. Mr Jamil is the only individual to hold a controlled function at Cross Keys.
14. Cross Keys was licensed and regulated by the OFT from 2012 to 2014. On 1 April 2014, Cross Keys became regulated by the Authority under Interim Permission reference 645049 with permissions for Credit Broking, Debt-counselling and Debt Adjusting. Cross Keys applied for full authorisation on 31 December 2014.
15. Cross Keys intends to act as a debt management firm. For the first 12 months following authorisation, Cross Keys intends to act only as an introducer to a third-party debt management firm. During this period, Cross Keys does not intend to give any debt advice but will simply refer customers to a third-party from which it

will receive a commission. During this 12-month period, as stated in its regulatory business plan, Cross Keys will be "learning the market" and then it will take all debt management matters in house.

16. Cross Keys intends to source its clients in its local area, Bradford, and specifically within the Asian community. According to its regulatory business plan, Cross Keys will offer a "culturally sensitive" service and will operate on a face-to-face basis out of its office. For the initial 12-month period, Cross Keys' only source of income will come from the commission it receives from the third-party debt management firm, and afterwards it will receive an income through management fees levied directly from its customers.
17. The Authority's concerns regarding Cross Keys' application arise from the quality of Mr Jamil's responses, on behalf of Cross Keys, to the questions asked of him during an interview to establish Mr Jamil's knowledge of debt-counselling and regulatory matters. The Authority is also concerned about the quality of Cross Keys' regulatory business plan.
18. During the course of the interview, Mr Jamil on behalf of Cross Keys was unable to satisfy the Authority of the appropriate level of knowledge and expertise to carry on the regulated activity of debt-counselling. Mr Jamil failed to give a satisfactory answer to all but one of the questions asked of him. When asked about specific debt solutions, Mr Jamil failed to coherently respond. Further, Mr Jamil explained that he found it difficult to answer some of the questions as it had been a number of years since he had last given debt advice.
19. In Cross Keys' response to the Authority's letter dated 13 July 2015, Mr Jamil maintains the position that as Cross Keys did not claim to be an expert in IVAs, it should not be expected to have "enough experience" with it. Cross Keys' understanding of debt-counselling is that it is not required to be able to provide advice on all available debt solutions.
20. Cross Keys has consistently displayed a lack of understanding of its regulatory rights, duties and obligations under the regulatory regime from the period preceding the submission of its application in December 2014 to date. One example is where Cross Keys failed to understand the status of its interim permission on the firm and its right to continue to trade despite being informed that it could trade by the Authority. It became apparent to the Authority that Cross Keys also failed to understand the difference between authorisation by the Authority and the former OFT licence which created a communication issue between the Authority and Mr Jamil in relation to regulatory matters.
21. During the interview, the Authority asked Mr Jamil how Cross Keys intended to operate during the first 12 months after authorisation. That discussion gave rise to the question of whether Cross Keys needed to be authorised. It was pointed out to Mr Jamil by the Authority on several occasions during the interview that as Cross Keys does not intend to provide advice to customers for the first 12 months and will simply refer them onto a third-party debt management company to recommend and administer the solution, it did not appear to need to be authorised.
22. It was explained to Mr Jamil by the Authority that Cross Keys' intended activities fall outside the regulatory framework as the mere completion of an income and expenditure form without further assessment or action does not constitute the regulated activity of debt-counselling. Mr Jamil did not appear to understand this despite several explanations and continued to insist that Cross Keys required authorisation.

23. There appeared to be an inconsistency between Mr Jamil's statement that Cross Keys would only complete an assessment of a customer's income and expenditure (which would not require authorisation) but that it would give "brief advice" (the extent of which could fall within the definition of debt-counselling). The general impression given by Mr Jamil during the interview was that Cross Keys' involvement with a customer in the initial 12-month period would be limited to a referral to a third-party who would give all of the advice. For this reason, the Authority continued to maintain that Cross Keys did not need authorisation.
24. The Authority is concerned that Cross Keys' business plan demonstrates that it will not act in the interest of consumers as it indicates that Cross Keys' primary objective is to generate a large income but makes no reference to the interests of consumers, specifically the risks posed by its business model and how these will be mitigated.
25. Overall the plan focuses on what benefits Cross Keys might enjoy such as an "unlimited" income, flexible working hours, stability (due to indebtedness being a long term issue for many people), whilst absent any real reference to customers, their needs and interests.

IMPACT ON THE THRESHOLD CONDITIONS

26. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
27. The Authority considers that, it cannot be satisfied that Cross Keys will satisfy, and will continue to satisfy the following threshold conditions:

2C (Effective supervision)

- i. Based on the issues raised in its communications with Cross Keys, the Authority is concerned that should Cross Keys be authorised, the Authority will not receive adequate information from it. Consequently Cross Keys has failed to demonstrate to the Authority that it is capable of being effectively supervised.

2D (Appropriate resources)

- ii. Cross Keys' resources will not, in the opinion of the Authority, be appropriate in relation to the regulated activities it seeks to carry on as it has failed to demonstrate to the Authority that it has the required skills to conduct the regulated activity of debt-counselling. Mr Jamil displayed a lack of awareness of the various types of debt solutions available to UK consumers, including the solution Cross Keys is most focused on, namely DMPs.
- iii. Given the inadequate responses of Mr Jamil to questions about major debt solutions relevant to Cross Keys' business model, by virtue of its connection with Mr Jamil, who manages Cross Keys' affairs, and his current lack of skills and experience, Cross Keys has failed to demonstrate that it has appropriate non-financial resources.
- iv. Moreover Cross Keys, through Mr Jamil, has failed to demonstrate an appropriate level of understanding of its rights and responsibilities under the Authority's regulation. Despite efforts on the part of the Authority to guide and clarify matters, Cross Keys has continued to display a significant lack of understanding of its regulatory duties.

2E (Suitability)

- v. Cross Keys has not satisfied the Authority that it is a fit and proper person having regard to all the circumstances including its connection with Mr Jamil, the nature of the regulated activity it seeks to carry on, the need to ensure that its affairs are conducted soundly and prudently or that it will be conducting business in the interests of consumers.

2F (Business model)

- vi. Cross Keys has failed to demonstrate that its business model considers the risks to and interests of consumers or that its business will be conducted in a sound and prudent manner.

28. On the basis of the facts and matters described above, the Authority has concluded that Cross Keys will not satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which Cross Keys would have permission if the application was granted.

IMPORTANT NOTICES

29. This Final Notice is given under section 390 (1) of the Act.

Publication

30. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter to which this 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 publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

31. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

For more information concerning this matter generally, contact James O'Connell, Manager, Credit Authorisations Division at the Authority (direct line: 020 7066 60328/ email: james.oconnell@fca.org.uk).

Philip Salter
Chair of the Regulatory Transactions Committee

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant Statutory Provisions

1. Section 55A(1) of the Act provides for an application for permission to carry on one or more regulated activities to be made to the appropriate regulator. Section 55A(2) defines the “appropriate regulator” for different applications.
2. Section 55B(3) of the Act provides that, in giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of Part 4A of the Act, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the threshold conditions for which that regulator is responsible.
3. The threshold conditions are set out in schedule 6 of the Act. In brief, the threshold conditions relate to:
 - (1) Threshold condition 2B: Location of offices
 - (2) Threshold condition 2C: Effective supervision
 - (3) Threshold condition 2D: Appropriate resources
 - (4) Threshold condition 2E: Suitability
 - (5) Threshold condition 2F: Business model

Relevant provisions of the Authority’s Handbook

4. In exercising its powers in relation to the granting of a Part 4A permission, the Authority must have regard to guidance published in the Authority Handbook, including the part titled Threshold Conditions (“COND”). The main considerations in relation to the action specified are set out below.

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Threshold condition 2C: Effective supervision

- 5. COND 2.3.3G provides that, in assessing the threshold conditions set out in paragraph 2C of Schedule 6 to the Act, factors which the FCA will take into consideration include, among other things, whether:

- (1) it is likely that the FCA will receive adequate information from the firm, and those persons with whom the firm has close links, to enable it to determine whether the firm is complying with the requirements and standards under the regulatory system for which the FCA is responsible and to identify and assess the impact on its statutory objectives; this will include consideration of whether the firm is ready, willing and organised to comply with Principle 11 (Relations with regulators and the rules in SUP on the provision of information to the FCA;

Threshold condition 2D: Appropriate Resources

- 6. COND 1.3.2G(2) states that, in relation to threshold conditions 2D to 2F, the Authority will consider whether a firm is ready, willing and organised to comply on a continuing basis with the requirements and standards under the regulatory system which will apply to the firm if it is granted Part 4A permission.

- 7. COND 2.4.2G(2) states that the FCA will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources (though only in the case of firms not carrying on, or seeking to carry on, a PRA-regulated activity), non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.

- 8. COND 2.4.2G(3) states that high level systems and control requirements are in SYSC. The FCA will consider whether the firm is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purpose of the threshold conditions set out in threshold condition 2D.

- 9. COND 2.4.4G states that, when assessing whether a firm has appropriate resources, the Authority will have regard to matters including:

- (d) whether the firm has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times.'

- 10. COND 2.5.1A states that the firm:

- (1) ... must be a fit and proper person having regard to all the circumstances, including-

- (a) [its] connection with any person;
- (b) the nature (including the complexity) of any regulated activity that [the firm] carries on or seeks to carry on;
- (c) the need to ensure that [the firm's] affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
- (e) whether those who manage [the firm's] affairs have adequate skills and experience and act with probity;
- (f) whether [the firm's] business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner; and
- (g) the need to minimise the extent to which it is possible for the business carried on by [the firm], or to be carried on by [the firm], to be used for a purpose connected with financial crime.

11. COND 2.5.4G(2)(c)G states that examples of the kind of general considerations to which the FCA may have regard when assessing whether a firm will satisfy, and continue to satisfy, threshold condition 2E include, but are not limited to, whether the firm can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

12. COND 2.5.6G provides 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, this threshold condition include, but are not limited to, whether:

(1A) the firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards for which the FCA is responsible under the regulatory system;

(10) the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities¹⁷

(12) those persons who perform controlled functions under certain arrangements entered into by the firm or its contractors (including appointed representatives or, where applicable, tied agents) act with due skill, care and diligence in carrying out their controlled function (see APER 4.2 (Statement of Principle 2) or managing the business for which they are responsible (see APER 4.7 (Statement of Principle 7))

Threshold condition 2E: Suitability

13. COND 2.5.2G(2) states that the FCA will also take into consideration anything that could influence a firm's continuing ability to satisfy the threshold conditions set out in paragraphs 2E and 3D of Schedule 6 to the Act. Examples include the firm's position within a UK or international group, information provided by overseas regulators about the firm, and the firm's plans to seek to vary its Part 4A permission to carry on additional regulated activities once it has been granted that permission.

14. COND 1.3.3BG provides that, in determining whether the firm will satisfy, and continue to satisfy, the FCA threshold conditions, the FCA will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.
15. COND 1.3.3CG provides that, when assessing the FCA threshold conditions, the FCA may have regard to any person appearing to be, or likely to be, in a relevant relationship with the firm, in accordance with section 55R of the Act (Persons connected with an applicant). For example, a firm's controllers, its directors or partners, other persons with close links to the firm (see COND 2.3), and other persons that exert influence on the firm which might pose a risk to the firm's satisfaction of the FCA threshold conditions, would be in a relevant relationship with the firm.
16. COND 2.5.3G(1) states that the emphasis of the threshold conditions set out in paragraphs 2E and 3D of Schedule 6 of the Act is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the FCA and/or the PRA, as appropriate, under the approved persons regime (see SUP 10 (Approved persons) and FIT). In certain circumstances, however, the FCA may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.
17. COND 2.5.6G provides 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, this threshold condition include, but are not limited to, whether:
 - (1A) the firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards for which the FCA is responsible under the regulatory system;
 - (10) the governing body of the firm is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the firm's regulated activities¹⁷
 - (12) those persons who perform controlled functions under certain arrangements entered into by the firm or its contractors (including appointed representatives or, where applicable, tied agents) act with due skill, care and diligence in carrying out their controlled function (see APER 4.2 (Statement of Principle 2) or managing the business for which they are responsible (see APER 4.7 (Statement of Principle 7))

Threshold condition 2F: Business Model

18. COND 2.7.7G states that, in assessing whether the threshold conditions set out in paragraphs 2F and 3E of Schedule 6 to the Act are satisfied, the FCA may consider all matters that might affect the design and execution of a firm's business model, taking into account the nature, scale and complexity of a firm's business.
19. COND 2.7.8G states that, in deciding how they will satisfy and continue to satisfy the threshold conditions set out in paragraphs 2F and 3E of Schedule 6 to the Act, firms should consider matters including (but not limited to) the following:
 - a. the assumptions underlying the firm's business model and justification for it;

- b. the rationale for the business the firm proposes to do or continues to do, its competitive advantage, viability and the longer-term profitability of the business;
- c. the needs of and risks to consumers;
- d. the expectations of stakeholders, for example, shareholders and regulators;
- e. the products and services being offered and product strategy;
- f. the governance and controls of the firm and of any member of its group (if appropriate);
- g. the growth strategy and any risks arising from it;
- h. any diversification strategies; and
- i. the impact of the external macroeconomic and business environment.