
FINAL NOTICE

**Mr Kevin Clarke
t/a SC Motorsales
39 Duke Street
Stoke-on-Trent
Staffordshire
ST4 3PA**

9 June 2016

ACTION

1. By an application dated 17 March 2015 Kevin Clarke trading as SC Motorsales applied under section 55A of the Act for Part 4A permission to carry on the regulated activities of credit broking, debt adjusting and debt counselling.
2. The Application was complete on receipt.
3. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

4. By its Warning Notice dated 7 March 2016 the Authority gave notice that it proposed to refuse the Application and that Mr Clarke was entitled to make representations to the Authority about that proposed action.
5. As no representations have been received by the Authority from Mr Clarke 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 21 April 2016, the Authority gave Mr Clarke notice that it had decided to take the action described above.
7. Mr Clarke 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 Mr Clarke Final Notice of its refusal.
9. For the reasons set out herein the Authority cannot ensure that Mr Clarke will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 of the Act, in particular threshold conditions 2C (Effective Supervision) and 2E (Suitability).
10. Over a period of 15 years, Mr Clarke has engaged in a pattern of behaviour that raises concerns as to his honesty and integrity. Specifically, he has:
 - i. been convicted of a number of offences involving dishonesty, namely the 2003 Convictions; and
 - ii. subsequently failed to disclose various convictions in applications for regulatory approval he has made to the OFT in 2012 and to the FCA in 2015 and 2016 (including, in the Application, the 2003 Convictions).

The above non-disclosures occurred notwithstanding that the relevant application forms each contained questions that clearly required the information in question to be disclosed to the regulator.

11. The Authority's concern arising from the matters in the preceding paragraph is heightened by the fact that:
 - i. in the course of considering an application by Mr Clarke in 2012 for a consumer credit licence, the OFT informed Mr Clarke that it had serious concerns about his failure to declare past convictions in the application form. Despite this clear warning of the importance of full disclosure to the regulator, Mr Clarke failed to ensure that he disclosed in the Application all information required of him (in particular about his past convictions).
 - ii. having not disclosed the 2003 Convictions to the Authority in the Application, Mr Clarke continued not to disclose them in response to specific requests made subsequently by the Authority in correspondence.
 - iii. in the course of its assessment of the Application, the Authority informed Mr Clarke that the conviction certificate, the business address of the convictions and that the case was heard at Stoke on Trent Crown Court which was the town where he resided at the time linked him to the 2003 Convictions (contrary to his prior assertions that they did not relate to him). However, Mr Clarke continued to maintain that the 2003 Convictions related to another person of the same name, but has not provided any evidence in support of his claim.

12. In light of the above, the Authority considers that Mr Clarke has not been open and co-operative in his dealings with his regulators. The repeated pattern of non-disclosure during the period from 2012 to 2016 calls into question:
- i. his honesty and integrity, and therefore whether he is a fit and proper person to perform the regulated activities to which the Application relates;
 - ii. whether Mr Clarke is ready, willing and organised to comply with Principle 11 of the Principles for Businesses; and
 - iii. whether, were the Application to be granted, the Authority would receive adequate information from Mr Clarke to enable it to determine whether he is complying with the applicable requirements and standards under the regulatory system.
13. Given the above, the Authority cannot ensure that, if the Application were granted, Mr Clarke would satisfy, and continue to satisfy threshold conditions 2C (Effective Supervision) and 2E (Suitability).

DEFINITIONS

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

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

"the Application" means an application dated 17 March 2015 from Mr Clarke under section 55A of the Act for Part 4A permission to carry on the regulated activities of credit broking, debt adjusting and debt counselling.

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

"the Decision Notice" means the decision notice dated 21 April 2016 given to Mr Clarke by the Authority.

"Mr Clarke" means Kevin Clarke trading as SC Motorsales.

"the OFT" means the body which before 1 April 2014 was known as The Office of Fair Trading.

"RDC" means the Authority's Regulatory Decisions Committee.

"RTC" means the Authority's Regulatory Transactions Committee.

"Stoke TSS" means Stoke on Trent Trading Standards.

"the Tribunal" means the Upper Tribunal (Tax & Chancery Chamber).

"the 2003 Convictions" means Mr Clarke's convictions for 18 counts of "*Applying false trade description to goods*" and seven counts of "*Supplying goods to which false trade description applied*" contrary to Section 1 of the Trade Descriptions Act 1968 on 27 January 2003.

"the Warning Notice" means the warning notice dated 7 March 2016 given to Mr Clarke by the Authority.

FACTS AND MATTERS

15. Mr Clarke operated as a motor dealership trading as 'Clarkes Car Centre' from 26 March 1987 to 25 August 2002 under a Consumer Credit licence (number 209947) which was issued by the OFT on 26 March 1987. Mr Clarke has subsequently been operating as a motor dealership trading as SC Motorsales under (i) a Consumer Credit licence (number 598010) which was issued by the OFT on 18 April 2007 for the period from 18 April 2007 to 18 April 2012; and (ii) a Consumer Credit licence number 650459 which was issued by the OFT on 18 June 2012 for the period 18 June 2012 to 1 April 2014. Mr Clarke's licensing history and its relevance to the Application is set out at paragraphs 20 to 23 below.
16. On 1 April 2014, Mr Clarke became regulated by the Authority under interim permission reference number 650459 with permission to carry out Credit Broking, Debt Adjusting and Debt Counselling. Mr Clarke applied for full authorisation on 17 March 2015 to conduct the regulated activities of Credit Broking, Debt Adjusting and Debt Counselling.
17. Mr Clarke is a sole trader trading as a motor dealer in Stoke on Trent. Mr Clarke wishes to offer finance options to his customers in order to purchase motor vehicles offered for sale. Mr Clarke's business model includes the sale of motor vehicles in part exchange for those owned by Mr Clarke's customers.
18. Mr Clarke has convictions for:
 - i. 18 counts of "*Applying false trade description to goods*" contrary to Section 1 of the Trade Descriptions Act 1968 (on 27 January 2003);
 - ii. seven counts of "*Supplying goods to which false trade description applied*" contrary to Section 1 of the Trade Descriptions Act 1968 (on 27 January 2003);
 - iii. driving a motor vehicle with excess alcohol contrary to the Road Traffic Act 1988 (3 February 2005);
 - iv. using a vehicle whilst uninsured contrary to the Road Traffic Act 1988 (26 March 2008); and
 - v. driving whilst disqualified contrary to the Road Traffic Act 1988 (26 March 2008).
19. Mr Clarke signed and submitted the Application on 17 March 2015 confirming that it had been read in full and that the information supplied to the Authority was accurate and complete to the best of his knowledge.

OFT licensing history

20. Consumer Credit licences granted by the OFT were unique to the individual to whom they were granted. When Mr Clarke surrendered Consumer Credit licence number 209947 (which was granted to him when he traded with another individual but did not reflect this) the OFT was required to issue Mr Clarke with a new Consumer Credit licence number 219544 to Mr Clarke and his partner in Clarkes Car Centre.

21. In the Firm Details section of the Application, Mr Clarke disclosed that he had previously held with the OFT Consumer Credit licence number 650459.

22. The details of Mr Clarke's licensing history with the OFT are set out in the table below.

Date licensed issued	Licence number	Trading names	Principal Place of Business	Information declared on application	
26 March 1987	209947	Mr Kevin Clarke t/a Clarke's Car Centre	608, Leek Road, Hanley, Stoke On Trent, Staffs, ST1		Terminated on 1 October 1987 as this licence was superseded by licence no 219544
26 August 1987	219544	Kevin Clark & another individual t/a Clarkes Car Centre	608 Leek Road, Hanley, Stoke on Trent ST1 3NQ	Application completed by Mr Clarke confirming that he previously held licence no 209947	Lapsed on 25 August 2002
18 April 2007	598010	Mr Kevin Clarke t/a S.C. Motorsales	Duke Street, Fenton, Stoke On Trent, ST4 3PA	Application completed by Mr Clarke confirming that he previously held licence no 209947	Lapsed on 18 April 2012
18 June 2012	650459	Mr Kevin Clarke t/a S C Motorsales	39c, Duke Street, Fenton, Stoke On Trent, Staffordshire, ST4 3PA	Application completed by Mr Clarke confirming that he held interim permission no 598010	

23. For each application submitted to the OFT Mr Clarke has signed to confirm the accuracy of its contents. By completing the Application, Mr Clarke confirmed that *"the information provided in this application is accurate and complete to the best of (his) knowledge"*.

Non-disclosure – OFT application

24. The Authority notes that as part of Mr Clarke's application for Consumer Credit licence (number 650459) to the OFT dated 23 April 2012, Mr Clarke was asked if he had any unspent convictions, to which Mr Clarke answered *"No"*.

25. On 13 June 2012, the OFT wrote to Mr Clarke to advise it was aware that Mr Clarke was "*convicted on 26 March 2008 for two offences under the Road Traffic Act 1988. These offences are not yet spent under the Rehabilitation of Offenders Act. We have serious concerns about these convictions and your failure to declare them because, by knowingly or recklessly giving information to the OFT which, in a material particular, is false or misleading, which is a contravention of section 7 of the [Consumer Credit Act 1974]*". No further action was taken by the OFT.

Non-disclosure of 2003 Convictions – Application to the Authority

26. In April 2001 Stoke TSS commenced an investigation into Clarke's Car Centre of 608 Leek Road, Hanley, Stoke on Trent ST1 3NQ.
27. Mr Clarke was subsequently prosecuted by Stoke TSS and on 27 January 2003, he was convicted at Stoke on Trent Crown Court of the 2003 Convictions. The 2003 Convictions constituted 25 offences which involve dishonesty. Mr Clarke was sentenced to three months' imprisonment for each offence, to run concurrently.
28. The Fitness and Propriety section of the Application requires disclosure of any previous criminal convictions. Mr Clarke did not disclose the 2003 Convictions.

Non-disclosure - correspondence with the Authority

29. On 14 May 2015, the Authority asked Mr Clarke to revisit his responses to the questions concerning the declaration of unspent convictions in the Application and to update his responses to the relevant sections of the Application where required.
30. On 18 May 2015, the Authority telephoned Mr Clarke to discuss the disclosures in his Application, specifically in relation to the 2003 Convictions. When asked by the Authority, Mr Clarke denied he had any fraud convictions in 2003 and instead stated that he had been previously mistaken for another individual of the same name details who was located "*down south*".
31. On 19 May 2015, Mr Clarke stated by email that he had "*never been involved with fraud in 2003 with this business*".
32. On 18 June 2015, the Authority telephoned Mr Clarke and explained that it was concerned that he had failed to disclose all of his previous convictions. Mr Clarke stated that when he attended Stoke Magistrates' Court in 2005 in relation to the driving whilst disqualified offence (which was disclosed in the Application and to which Mr Clarke had pleaded guilty), the issue of mistaken identity regarding the 2003 Convictions was brought to the court's attention. Mr Clarke stated that he believed that the person to whom the 2003 Convictions are attributable lived in Somerset. The Authority confirmed the concerns it had raised during the telephone conversation with Mr Clarke by email the same day.
33. On 1 July 2015, the Authority suggested that Mr Clarke might wish to acquire further information regarding the issue of whether the 2003 Convictions were attributable to him. One option suggested by the Authority to Mr Clarke was to contact Disclosure Scotland and apply for a disclosure certificate which would contain details of all convictions (spent and unspent) that were attributable to him. Disclosure Scotland is an Executive Agency of the Scottish Government permitted to provide criminal record checks under Part V of the Police Act 1997. This was suggested to Mr Clarke so that he could review the information and identify any inaccuracies with details of the data controller of the information

provided. Using those details Mr Clarke could then contact the relevant data controller(s) to request they update their records so they were accurate. This would then assist Mr Clarke in resolving the issue of whether the 2003 Convictions were in fact attributable to him, i.e. he should then be able to establish that the references were not attributable to him.

34. The Authority again telephoned Mr Clarke on 8 January 2016 to discuss the unresolved issue of whether the 2003 Convictions were attributable to him. Mr Clarke maintained that the 2003 Convictions were not attributable to him. Mr Clarke stated that the Application only requested disclosure of criminal convictions in the last ten years and that he was not involved in Clarke's Car Centre at the relevant time.
35. On 3 February 2016, the Authority emailed Mr Clarke asking him to confirm if he was involved with Clarke's Car Centre to which Consumer Credit licence number 219544 and the 2003 Convictions relate to because he had previously been evasive as to whether he was involved in the business. The 2003 Convictions related to Clarke's Car Centre.
36. On 12 February 2016, Mr Clarke replied to the Authority's email of 3 February 2016 stating that he had not contacted Disclosure Scotland regarding the 2003 Convictions as *"I have done all I can in obtaining information from the courts to resolve the misidentification"*.

Link between the 2003 Convictions and Mr Clarke

37. The Authority is satisfied that the 2003 Convictions are attributable to Mr Clarke for the following reasons:
 - i. Mr Clarke declared to the OFT in his application for a Consumer Credit licence (number 598010) in 2007 that he previously held a Consumer Credit licence under the trading name Clarke's Car Centre (number 209947) with the OFT, with a trading address of 608 Leek Road, Hanley, Stoke on Trent, ST1 3NQ;
 - ii. The 2003 Convictions relate to Clarke's Car Centre of 608 Leek Road, Hanley, Stoke on Trent, ST1 3NQ of which Mr Clarke was the sole proprietor at the relevant time;
 - iii. The conviction certificates supplied by Stoke on Trent Crown Court confirm the person convicted has the same name and date of birth as Mr Clarke; and
 - iv. In addition, the case was heard at Stoke on Trent Crown Court, which the Consumer Credit licensing history (see paragraph 22) states as the town where Mr Clarke lived immediately before and after the date of the 2003 Convictions.
38. The Authority is satisfied that the Mr Clarke to whom the 2003 Convictions relate is the same as the Mr Clarke who traded as Clarkes Car Centre under Consumer Credit licence (number 219544) with the OFT.
39. Whilst Mr Clarke has asserted that the 2003 Convictions are not attributable to him he has failed to provide any evidence to support this assertion, despite being given numerous opportunities to do so.
40. In addition to the matters in paragraphs 37 to 39 above, the Authority infers from Mr Clarke's refusal to contact Disclosure Scotland that the 2003 Convictions relate to him.

41. The Authority notes that Mr Clarke has not made any attempts of his own initiative to investigate or correct the position regarding the 2003 Convictions post the hearing at Stoke on Trent Magistrates' Court in 2005.

IMPACT ON THE THRESHOLD CONDITIONS

42. The regulatory provisions relevant to this Final Notice are referred to in Annex A.

43. In light of the facts and matters set out above and for the reasons set out below, the Authority cannot ensure that, if the Application were granted, Mr Clarke would satisfy, and continue to satisfy, threshold conditions 2C (Effective Supervision) and 2E (Suitability).

44. Mr Clarke has engaged in a pattern of behaviour that gives rise to concerns as to his honesty and integrity. In particular, Mr Clarke:

- i. was convicted in 2003 of offences involving dishonesty, namely the 2003 Convictions;
- ii. failed to disclose two unspent convictions under the Road Traffic Act 1988 when applying to the OFT in 2012 for a consumer credit licence, notwithstanding that they fell for disclosure;
- iii. failed to disclose the 2003 Convictions in the Application, notwithstanding that they fell for disclosure, and that the conviction certificate, the address of the business involved and where the case was heard link him to the 2003 Convictions;
- iv. failed to disclose the 2003 Convictions in response to specific requests made by the Authority in subsequent correspondence that required their disclosure; and
- v. continues to deny that the 2003 Convictions relate to him. Further, Mr Clarke has not provided any evidence in support of his claim that the 2003 Convictions were related to another person of the same name.

45. As a result of the above matters, Mr Clarke has not demonstrated that he is ready, willing and organised to comply with Principle 11 of the Principles for Businesses. These matters also call into question his fitness and propriety to carry on the regulated activities to which the Application relates; in this regard, the Authority also notes that the 2003 Convictions arose out of the same type of activities that Mr Clarke would be performing were the Application to be granted.

46. Further, in light of the matters set out above the Authority cannot be confident that, were the Application to be granted, it would receive adequate information from Mr Clarke to enable it to determine whether he is complying with the applicable requirements and standards under the regulatory system.

IMPORTANT NOTICES

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

Publication

48. 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.
49. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

50. For more information concerning this matter generally, contact Marina Lancaster, Manager, Credit Authorisations Department at the Authority (direct line: 020 7066 5250 / email: Marina.Lancaster@fca.org.uk).

Hilary Bourne
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

Threshold Conditions - COND

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’s Handbook, including the part entitled ‘Threshold Conditions’ (“COND”). Provisions relevant to the consideration of the current application include those set out below.

Principles for Businesses

5. PRIN 2.1.1R, Principle 11 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.

General guidance

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 1.3.3BG provides that, in determining whether the firm will satisfy, and continue to satisfy, the threshold conditions, the Authority will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.
8. COND 1.3.3CG provides that, when assessing the threshold conditions, the Authority 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 threshold conditions, would be in a relevant relationship with the firm.

Threshold condition 2C: Effective Supervision

9. COND 2.3.3G states that, when the Authority is assessing threshold condition 2C, factors which the Authority will take into consideration include, among other things, whether:

(1) it is likely that the Authority 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 Authority 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 Authority).

Threshold condition 2E: Suitability

10. COND 2.5.3G(1) states that the emphasis of threshold condition 2E is on the suitability of the firm itself. The suitability of each person who performs a controlled function will be assessed by the Authority and/or the PRA, as appropriate, under the approved persons regime (see SUP 10 (Approved persons) and FIT). In certain circumstances, however, the Authority may consider that the firm is not suitable because of doubts over the individual or collective suitability of persons connected with the firm.

11. COND 2.5.4G(2) 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:

(c) 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 Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, this threshold condition include, but are not limited to, whether:

(1) The firm has been open and co-operative in all its dealings with the Authority and any other regulatory body (see principle 11 (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the regulatory system (such as the detailed requirements of SYSC and, in relation to a firm not carrying on, or seeking to carry on, a PRA regulated activity only, the Prudential Standards part of the Authority's Handbook) in addition to other legal, regulatory and professional obligations; the relevant requirements and standards will depend on the circumstances of each case, including the regulated activities which the firm has permission, or is seeking permission to carry on;

- (2) The firm has been convicted, or is connected with a person who has been convicted, of any criminal offence; this must include, where provided for the Rehabilitation Exceptions Order to the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 (as applicable), any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, other financial services, insolvency, consumer credit companies, insurance, consumer protection, money laundering, market manipulation and insider dealing, whether or not in the United Kingdom; and
- (15) The firm has developed human resources policies and procedures that are reasonably designed to ensure that it employs only individuals who are honest and committed to high standards of integrity in the conduct of their activities.