

PURSUANT TO THE DECISION OF THE UPPER TRIBUNAL ON 21 MAY 2015 ([HTTP://TAXANDCHANCERY_UT.DECISIONS.TRIBUNALS.GOV.UK/DOCUMENTS/DECISIONS/BAYLISS-CO-FINANCIAL-SERVICES-LTD-CLIVE-ROSIER-V-FCA.PDF](http://taxandchancery.ut.decisions.tribunals.gov.uk/documents/decisions/bayliss-co-financial-services-ltd-clive-rosier-v-fca.pdf)), THIS DECISION NOTICE HAS BEEN SUPERSEDED BY A FINAL NOTICE (<https://www.fca.org.uk/publication/final-notices/bayliss-company-limited-2017.pdf>) DATED 5 OCTOBER 2017

DECISION NOTICE

To: Bayliss & Co (Financial Services) Limited

FRN: 140191

Bayliss Orchard
Horley
Banbury
Oxfordshire
OX15 6BL

Date: 23 May 2013

1. ACTION

- 1.1. For the reasons set out below, and pursuant to section 45 of the Financial Services and Markets Act 2000 ("the Act"), the Authority has decided to cancel the Part 4A permission granted to Bayliss & Co (Financial Services) Limited ("Bayliss") pursuant to Part 4A of the Act ("Bayliss's Part 4A Permission").

2. SUMMARY OF REASONS

- 2.1. The FSA has concluded that, on the basis of the facts and matters described below, Bayliss is failing to satisfy the appropriate resources threshold condition set out in paragraph 2D of Schedule 6 to the Act and the suitability threshold condition set out in paragraph 2E of Schedule 6.

- 2.2. By a Decision Notice dated 23 May 2013, on the basis that Clive Rosier ("Mr Rosier") is not a fit and proper person, the Authority has decided to withdraw Mr Rosier's approval to perform the controlled functions of director (CF1), compliance oversight (CF10) and money laundering reporting (CF11) and prohibit him from carrying out any controlled function involving the exercise of significant influence over any person in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm pursuant to sections 63 and 56 of the Act.
- 2.3. Mr Rosier is, and has been since 7 August 2004, the sole approved person and director at Bayliss. For the reasons given in the Authority's Decision Notice dated 23 May 2013, it appears to the Authority that Mr Rosier does not have the necessary competence and capability to perform significant influence functions at Bayliss.
- 2.4. The Authority further notes that, if Mr Rosier's approval to perform these controlled functions is withdrawn and he is prohibited as set out in its Decision Notice dated 23 May 2013, Bayliss will not have in place anyone performing significant influence functions.
- 2.5. Further, Bayliss has failed to pay levies that fell due to the Authority on 23 February 2011, notwithstanding repeated requests by the Authority that it do so.
- 2.6. In light of the above, Bayliss is failing to satisfy the threshold conditions set out in Schedule 6 to the Act ("the Threshold Conditions") in that, in the opinion of the Authority, Bayliss:
 - (1) does not have appropriate resources in relation to the regulated activities it carries on and seeks to carry on (the appropriate resources threshold condition set out in paragraph 2D of Schedule 6 to the Act). In particular, Bayliss does not have appropriate human resources; and
 - (2) is not a fit and proper person having regard to all the circumstances, including its connections with other persons (namely Mr Rosier), the range and nature of its current regulated activities and whether its business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted soundly and prudently (the suitability threshold condition set out in paragraph 2E of Schedule 6 to the Act).

3. DEFINITIONS

The definitions below are used in this Decision Notice.

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

"Bayliss" means Bayliss & Co (Financial Services) Limited;

"FSCS" means the Financial Services Compensation Scheme;

"Handbook" means the Authority's Handbook;

"Mr Rosier" means Clive John Rosier;

"Threshold Conditions" means the threshold conditions set out in Schedule 6 of the Act.

4. FACTS AND MATTERS

- 4.1. On 1 December 2001, the Authority gave permission for Bayliss to conduct designated investment business and, from 31 October 2004, regulated home finance activity.
- 4.2. Since 1 December 2001, Mr Rosier has held the controlled functions at Bayliss of director (CF1), compliance oversight (CF10) and money laundering reporting (CF11) (in addition to customer controlled functions). No other individual has held a significant influence controlled function at Bayliss.
- 4.3. Bayliss has failed to pay levies totalling £2,503.75 owed to the Authority and which fell due on 23 February 2011. Bayliss has also failed to respond adequately to the Authority's repeated requests that it pay these levies.
- 4.4. By way of a Decision Notice dated 23 May 2013, on the basis that Mr Rosier is not a fit and proper person to perform significant influence functions, the Authority has decided to withdraw Mr Rosier's approval to perform significant influence controlled functions at Bayliss and prohibit him from carrying out any significant influence function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm pursuant to sections 63 and 56 of the Act. As a result, Bayliss will not have any individuals performing the significant influence functions of director, compliance oversight and money laundering reporting.

5. FAILINGS

- 5.1. The relevant statutory and regulatory provisions relevant to this Decision Notice are referred to in the Annex.
- 5.2. On the basis of the facts and matters described above, the Authority, having regard to its operational objectives (which include protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers), has concluded the following:
 - (1) Bayliss has failed to comply with rules that require it to pay levies owed to the Authority;
 - (2) Bayliss does not have appropriate human resources in relation to the regulated activities it carries on; and
 - (3) Bayliss has failed to satisfy the Authority that it is managing its business in such a way as to ensure that its affairs will be conducted soundly and prudently and that, as a result, it is a fit and proper person having regard to all the circumstances.
- 5.3. Bayliss is therefore failing to satisfy the appropriate resources and suitability threshold conditions set out in paragraphs 2D and 2E of Schedule 6 to the Act in relation to the regulated activities for which it currently holds Part 4A permission.

6. SANCTION

- 6.1. The Authority has decided to cancel Bayliss's Part 4A Permission.

7. REPRESENTATIONS AND FINDINGS

- 7.1. Below is a brief summary of the key written representations made by Mr Rosier on behalf of Bayliss, and how they have been dealt with. In making the decision

which gave rise to the obligation to give this Notice, the Authority has taken into account all of Mr Rosier's representations on behalf of Bayliss, whether or not set out below.

- 7.2. Mr Rosier represented that he had queried whether Bayliss was required to pay the levies referred to at paragraph 4.3 above, due to the variation in its permission which had taken place. However, on 28 June 2011 he wrote to the Authority stating that Bayliss now understood the sum to be payable and was using best endeavours to do so as soon as possible. Accordingly, the Authority has found that, at least from that date, Bayliss was fully aware that the sum was payable. In any event, it is the responsibility of Bayliss to ensure that invoices are paid when due.

8. PROCEDURAL MATTERS

Decision maker

- 8.1. The decision which gave rise to the obligation to give this Decision Notice was made by the Regulatory Decisions Committee.

Important

- 8.2. This Warning Notice is given under section 55Z and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

- 8.3. Bayliss has the right to refer the matter to which this Decision Notice relates to the Upper Tribunal (the "Tribunal"). Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Bayliss has 28 days from the date on which this Decision Notice is given to it to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) and filed with a copy of this Notice. The Tribunal's address is: The Upper Tribunal, Tax and Chancery Chamber, 45 Bedford Square, London WC1B 3DN (tel: 020 7612 9700; email financeandtaxappeals@tribunals.gsi.gov.uk). Further details are contained in "Making a Reference to the UPPER TRIBUNAL (Tax and Chancery Chamber)" which is available from the Upper Tribunal website:

<http://www.tribunals.gov.uk/financeandtax/FormsGuidance.htm>

Bayliss should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Kate Tuckley at the Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Access to evidence

- 8.4. Section 394 the Act applies to this Decision Notice. Bayliss has the right to access:
- (1) the material upon which the Authority has relied on in deciding to give this Notice; and
 - (2) any secondary material which, in the opinion of the Authority, might undermine that decision. There is no such secondary material.

Confidentiality and publicity

- 8.5. This Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Section 391 the Act provides that Bayliss may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.
- 8.6. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. Bayliss should be aware, therefore, that the facts and matters contained in this Notice may be made public.

Contacts

- 8.7. For more information concerning this matter generally, contact Kate Tuckley at the Authority (direct line: 020 7066 7086/ fax: 020 7066 7087).

Andrew Long
Acting Chairman, Regulatory Decisions Committee

ANNEX

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. The Authority's operational objectives, as set out in sections 1B to 1E of the Act, include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
2. Section 55B and Schedule 6 to the Act set out the threshold conditions, which are conditions that the Authority must ensure a firm will satisfy, and continue to satisfy, in relation to regulated activities for which it has permission.
3. The Authority is authorised by section 55J of the Act to cancel an authorised person's Part IV permission, where it appears to the Authority that it is failing to satisfy the Threshold Conditions.
4. Section 213 of the Act states that the Authority must establish rules to allow the Financial Services Compensation Scheme to impose levies on authorised persons.
5. Paragraph 2D of Schedule 6 to the Act (Appropriate resources) states that the resources of the person concerned must, in the opinion of the Authority, be appropriate in relation to the regulated activities that he carries on or seeks to carry on.
6. Paragraph 2E of Schedule 6 to the Act (Suitability) states that the person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances including whether his business is being, or is to be, managed in such a way as to ensure that his affairs will be conducted in a sound and prudent manner.
7. The Authority's Handbook includes guidance as to the threshold conditions ("COND"). COND 2.4.2G(2) states that the Authority will interpret the term "appropriate" in relation to the appropriate resources threshold condition as meaning sufficient in terms of quantity, quality and availability, and "resources" as including all financial resources, non-financial resources and means of managing 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 2.4.4G(2)(c) states that the Authority may have regard in this context to whether there are any implications for the adequacy of the firm's resources arising from the history of the firm; for example, whether the firm has been adjudged bankrupt.
9. COND 2.5.4G and COND 2.5.6G give guidance as to whether a firm satisfies the suitability threshold condition. They state that the Authority may have regard to whether, among other things, the firm has contravened, or is connected with any person who has contravened, any provision of the Act or the regulatory system (COND 2.5.6G(4)).
10. The Fees Manual ("FEES") of the Authority Handbook provides rules and guidance relating to the payment of fees and levies.
11. FEES 2.2.3G provides that the FSCS may take action to recover unpaid levies through the civil courts.
12. FEES 6.7.1R and 6.7.3R set out the terms for the authorised firm to pay the levies.