
FINAL NOTICE

**Mr Christopher Carey
T/A Emerald Motor Company
4 Eyebright Close
Horton Heath
Eastleigh
Hampshire
SO50 7PQ**

7 April 2021

ACTION

1. By an Application dated 11 October 2019, Mr Carey, a sole trader trading as Emerald Motor Company, applied under section 55A of the Act for Part 4A permission to carry on the regulated activities of:
 - a. limited permission credit broking (RAO 36A);
 - b. debt adjusting limited to relevant credit activity (RAO 39D);
 - c. debt counselling limited to relevant credit activity (RAO 39E); and
 - d. providing credit information services limited to relevant credit activity (RAO 89A).
2. The Application was completed by the provision of further information on 6 March 2020.
3. For the reasons listed below, the Authority has refused the Application.

SUMMARY OF REASONS

4. By its Warning Notice dated 23 December 2020 ("the Warning Notice") the Authority gave notice that it proposed to refuse the Application and that Mr Carey was entitled to make representations to the Authority about that proposed action.
5. As no representations have been received by the Authority from Mr Carey 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 16 February 2021 ("the Decision Notice"), the Authority gave Mr Carey notice that it had decided to take the action described above.
7. Mr Carey 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 Carey a Final Notice of its refusal.
9. For the reasons set out herein, the Authority cannot ensure that Mr Carey will satisfy, and continue to satisfy, the Threshold Conditions set out in Schedule 6 of the Act.
10. The Authority expects applicants for Part 4A permission to be full, frank and unambiguous in their disclosure of matters relevant to the fitness and propriety of the firm and its relevant individuals. This is made clear to applicants from the start of the process.
11. Mr Carey has been convicted of criminal offences 7 times between 1992 and 2015, including a conviction for insurance fraud, offences against the person and criminal damage.
12. In his application form, Mr Carey disclosed one conviction for insurance fraud but his description of the circumstances was misleading. He falsely stated in the application form that he had no other convictions.
13. When the Authority asked Mr Carey whether he had any other disclosures to make, he disclosed one further conviction but failed to disclose 5 other convictions.
14. Mr Carey was convicted of insurance fraud during which time his company ("the Company") held a consumer credit licence from the OFT. Following enforcement action by the OFT, the First Tier Tribunal found Mr Carey was not a fit person to hold a consumer credit licence. The licence held by the Company was revoked.
15. Mr Carey's making of a false statement in the application form and his failure to give a full, frank and unambiguous account of his previous convictions suggests to the Authority that he is not a fit and proper person to perform the regulated activities for which he seeks permission. The Authority cannot ensure he will satisfy, and continue to satisfy, the Suitability Threshold Condition.

16. Mr Carey's failure to provide a full, frank and unambiguous account of the matters relating to his fitness and propriety, in his application and in response to subsequent specific requests for information about his convictions, also leads the Authority to consider that he will not be capable of being effectively supervised if his application were approved. The Authority cannot ensure he will satisfy, and continue to satisfy, the Effective Supervision Threshold Condition.

17. For these reasons, the Authority has refused the Application.

DEFINITIONS

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

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

"the Application" means the application referred to in paragraph 1 above;

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

"Mr Carey" means Christopher Carey, a sole trader trading as Emerald Motor Company;

"the Company" means Emerald Motor Company Ltd, which was dissolved on 20 October 2020;

"the Decision Notice" means the decision notice dated 16 February 2021 given to Mr Carey by the Authority;

"the Effective Supervision Threshold Condition" means the Threshold Condition set out at paragraph 2C of Schedule 6 to the Act

"the OFT" means the body that before 1 April 2014 was known as The Office of Fair Trading "RDC" means the Authority's Regulatory Decisions Committee;

"the Suitability Threshold Condition" means the Threshold Condition set out at paragraph 2E of Schedule 6 to the Act;

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

"the Threshold Conditions" means any of the conditions set out in or under Schedule 6 to the Act;

"the Tribunal" means the Upper Tribunal (Tax & Chancery Chamber); and

"the Warning Notice" means the warning notice dated 23 December 2020 given to Mr Carey by the Authority.

FACTS AND MATTERS

19. Mr Carey has been convicted of criminal offences 7 times between 1992 and 2015, including a conviction for insurance fraud, offences against the person and criminal damage.

20. Mr Carey was the sole director and shareholder of Emerald Motor Company Ltd ("the Company"), which was issued with a consumer credit licence by the OFT on 18 November 2008.
21. During the Company's application to the OFT, Mr Carey falsely stated he had never been convicted of a criminal offence.
22. In October 2010, Mr Carey was convicted of insurance fraud. He failed to inform the OFT of this conviction.
23. On 26 May 2011, the OFT notified the Company that it had decided to revoke its consumer credit licence. On behalf of the Company, Mr Carey referred that decision to the First Tier Tribunal which, by a decision dated 26 May 2011, upheld the OFT's decision. The First Tier Tribunal's decision is here: http://consumercreditappeals.decisions.tribunals.gov.uk/Documents/decisions/0017_13Dec11_Emerald_Motor_Company_Ltd.pdf. It concluded that Mr Carey was not a fit person to hold a consumer credit licence.
24. On 24 October 2017, an application was made for Mr Carey to be an Appointed Representative of another authorised firm. That application was withdrawn on 8 December 2017.
25. Mr Carey made this Application on 11 October 2019.
26. As part of this Application, Mr Carey was asked about criminal convictions. The application form informed him that, by virtue of the Rehabilitation of Offences Act 1974 (Exemptions) Order 1975, he must disclose all convictions, including spent convictions (except in certain specified circumstances, which do not apply to Mr Carey's convictions). The application form completed by Mr Carey also explains, immediately before the section on criminal proceedings, that all information must be disclosed. It states:

"We require firms to disclose all relevant information relating to a candidate's fitness and propriety. If there is any doubt about the relevance of the information, the information should be disclosed. The FCA takes non-disclosure very seriously and may consider it to be evidence of dishonesty and/or lack of integrity. In all circumstances, disclosures should be full, frank and unambiguous; if in doubt, disclose. In the event that a candidate discloses adverse information to the Applicant (or the Applicant knows of adverse information by some other means) the Applicant has a duty to disclose that information candidly to the FCA and explain why the Applicant considers this does not affect the candidate's fitness and propriety"
27. Mr Carey disclosed one conviction for insurance fraud in the application form, stating:

"Fraudulence insurance claim. Was fully insured but selected wrong driver on form and then corrected it later but insurance company kicked out claim. I was then sent to court and convicted. Even judge said i was fully insured and gave me community service." [sic]
28. In its judgment dated 26 May 2011, the First Tier Tribunal found that Mr Carey's conviction for fraud arose from a friend crashing Mr Carey's car and Mr Carey falsely stating in the insurance claim that he himself was driving. The Tribunal stated:

"Mr Carey made a claim (initially by telephone) on his insurance policy for the damage in which he falsely stated that he was driving. He made the same false assertion to the insurance company in a report dated 21 July 2009 and repeated it in a further statement with a declaration as to its truth on 10 August 2009."

29. The Authority considers that, by the limited information Mr Carey provided in the application form, he did not disclose this conviction in a way which is full, frank and unambiguous. In saying he *"selected wrong driver on form and then corrected it later"*, the Authority considers that Mr Carey suggests there was only one fraudulent misrepresentation. However, the Tribunal (having considered the facts of the criminal proceedings) found he had falsely stated that he was driving three times:

- a. by telephone to the insurance company;
- b. in a report to the insurance company; and
- c. in a statement with a declaration of truth.

30. The First Tier Tribunal took account of various points in favour of Mr Carey's fitness and propriety but found on the basis of this conviction that he was not a fit person to hold a consumer credit licence, stating:

"Mr Carey's conduct is so reprehensible that the [favourable] considerations are outweighed. The making of a false insurance claim is a matter of grave concern. It is an act of gross and deliberate dishonesty and even when made in a state of panic and in haste reflects very badly on the character of the person making it [...] He was prepared to behave dishonestly for a relatively trivial motive, and this too reflects badly on him."

31. Although Mr Carey disclosed his conviction for insurance fraud, when asked in the application form whether he had any other convictions, Mr Carey answered 'no'. He therefore failed to disclose 6 other convictions.

32. When asked in the application form whether he was currently the subject of any criminal proceedings, Mr Carey also answered 'no'.

33. The Authority spoke to Mr Carey on 17 December 2019 and he disclosed that he was the subject of ongoing criminal proceedings. Mr Carey also disclosed 1 conviction for an offence against the person but he failed to disclose any of his 5 other convictions.

34. The Authority sent an email to Mr Carey on 31 January in which his previous convictions were put to him. It was explained that the Authority considered he had failed to disclose these convictions.

35. Mr Carey responded by email on 31 January to say he was of the view that his convictions had been disclosed to the Authority in previous applications and that, as he did not have access to his criminal record, he was not able to provide details.

36. Mr Carey was given two subsequent opportunities to explain his non-disclosure, but he reiterated that all details had previously been disclosed to the Authority. Mr Carey has not previously disclosed to the Authority full details of his criminal

convictions but even if he had, he was required to provide full, frank and unambiguous disclosure of his convictions again as part of this application.

IMPACT ON THE THRESHOLD CONDITIONS

37. The Authority has had regard to all the circumstances and considers the following matters to be relevant to Mr Carey's fitness and propriety to carry on the regulated activities for which he seeks permission:

- a. Mr Carey has been found guilty of numerous criminal offences;
- b. When applying to the OFT for a consumer credit licence, Mr Carey falsely stated he had never been convicted of a criminal offence;
- c. Mr Carey was convicted in October 2010 of insurance fraud, the circumstances of which are directly relevant to his fitness and propriety to carry on the regulated activities for which he seeks permission;
- d. Mr Carey failed to disclose that conviction to the OFT when he was required to do so;
- e. Because of that conviction, Mr Carey was found by the First-Tier Tribunal in 2011 not to be a fit person to hold a consumer credit licence;
- f. Mr Carey has not given a full, frank and unambiguous account of this fraud conviction in the current application but has instead downplayed its seriousness. He told the Authority he had "*selected [the] wrong driver on [the insurance claim] form*" but in fact he made false statements by telephone, in a report to the insurance company, and in a statement which included a declaration of truth; and
- g. In his application form, Mr Carey made a false statement that he had no other convictions. Mr Carey only provided details of one other conviction when asked by the Authority in subsequent correspondence and has failed to correct his non-disclosures.

38. Having regard to this consistent pattern of behaviour over a significant period, the Authority does not consider Mr Carey to be a fit and proper person to perform the regulated activities for which he seeks permission, and cannot ensure he will satisfy, and continue to satisfy, the Suitability Threshold Condition.

39. Mr Carey's failure to provide a full, frank and unambiguous account of the matters relating to his fitness and propriety, in his application and in response to subsequent specific requests for information about his convictions, in circumstances in which Mr Carey failed to be truthful in his disclosures to a previous regulator, leads the Authority to consider that he will not be capable of being effectively supervised if his application is approved. The Authority therefore cannot ensure that he will satisfy, and continue to satisfy, the Effective Supervision Threshold Condition.

On the basis of the above reasons and having regard to all the circumstances, the Authority has therefore refused the Application on the basis that Mr Carey does not satisfy the Threshold Conditions in relation to all of the regulated activities for which he would have permission if the Application was granted.

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

IMPORTANT NOTICES

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

Publication

42. 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.

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

Authority contacts

44. For more information concerning this matter generally, contact Marina Lancaster, Manager, Credit and Lending at the Authority (direct line: 020 7066 5250 / email: marina.lancaster@fca.org.uk).



Val Smith
Chair of the Regulatory Transactions Committee

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS DECISION 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 that relate to the current application are set out in Part 2 of schedule 6 of the Act. In brief, the threshold conditions relate to:
 - a. Threshold condition 2B: Location of offices
 - b. Threshold condition 2C: Effective supervision
 - c. Threshold condition 2D: Appropriate resources
 - d. Threshold condition 2E: Suitability
 - e. 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 has 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.

General guidance

5. 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.
6. Under COND 1.3.3AG, in determining the weight to be given to any relevant matter, the Authority will consider its significance in relation to the regulated activities for which the firm has, or will have, permission, in the context of its ability to supervise the firm adequately, having regard to the Authority’s statutory objectives. In this context, a series of matters may be significant when taken together, even though each of them in isolation might not give serious cause for concern.
7. 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.

8. 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.

Threshold Condition 2C: Effective supervision

9. COND 2.3.3G states that, when the FCA is assessing threshold condition 2C, factors which the FCA will take into consideration include, among other things, whether:
 - a. 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;
 - b. the structure and geographical spread of the firm, the group to which it belongs and other persons with whom the firm has close links, might hinder the provision of adequate and reliable flows of information to the FCA; factors which may hinder these flows include the fact there may be branches or connected companies in territories which supervise companies to a different standard or territories with laws which restrict the free flow of information, although the FCA will consider the totality of information available from all sources; and
 - c. in respect of a firm not carrying on, or seeking to carry on, a PRA-regulated activity, it is possible to assess with confidence the overall financial position of the group at any particular time; factors which may make this difficult include lack of audited consolidated accounts for a group, if companies in the same group as the firm have different financial years and accounting dates and if they do not share common auditors.

Threshold condition 2E: Suitability

10. 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 threshold condition 2E. 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.
11. 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 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.

12. 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:
- a. conducts, or will conduct, its business with integrity and in compliance with proper standards;
 - b. has, or will have, a competent and prudent management; and
 - c. can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.
13. 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:
- a. the firm has been open and co-operative in all its dealings with the FCA 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 FCA 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;
 - b. 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 by the Rehabilitation Exceptions Orders 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;
 - c. the firm, or a person connected with the firm, has been refused registration, authorisation, membership or licence to carry out a trade, business or profession or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body; whether the FCA considers such a refusal relevant will depend on the circumstances.