
FINAL NOTICE

To: Debt Plan UK Ltd

Firm
Reference
Number: 647946

Address: 6 Lockside Offices
Lockside Road
Preston
PR2 2YS

Date 26 June 2014

ACTION

1. For the reasons given in this notice, the Authority has refused the Application made by Debt Plan UK ('DPUK') for authorisation to carry on the regulated activities of debt adjusting, debt counselling, debt administration, credit information services, and credit brokerage.

SUMMARY

1. On 29 November 2011 DPUK applied to the OFT for a consumer credit licence.
2. The OFT gave DPUK notice, dated 19 March 2014, of its determination to refuse the Application on the basis that, for each of the reasons set out below, DPUK was not fit to hold such a licence.
3. On 1 April 2014 statutory responsibility for consumer credit regulation transferred from the OFT to the Authority, subject to the terms of the Transitional Order, as defined below.

4. By virtue of the Transitional Order, DPUK not already having any permission under Part 4A of the Act, the OFT's notice of determination is, since 1 April 2014, to be treated as a notice given by the Authority under section 55X(4) of the Act of its decision to refuse the Application as though it had been an application by DPUK for such permission.
5. DPUK has not appealed the OFT's notice and the period during which it could have done so has now expired.

DEFINITIONS

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

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

"the Application" means DPUK's application to the OFT for a consumer credit licence dated 29 November 2011.

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

"DPUK" means the applicant, Debt Plan UK Limited

The "OFT" means the body that before 1 April 2014 was known as The Office Of Fair Trading

"the Transitional Order" means The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013

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

REASONS AND IMPACT ON FITNESS

7. The regulatory and statutory provisions relevant to this final notice are referred to in Annex A.
8. The Authority cannot be satisfied that DPUK is fit to be authorised under Part 4A of the Act to carry on the regulated activities to which the Application relates for the following reasons:
 - (1) DPUK has insufficient and inadequate skills and experience in the areas in which it has sought a licence. DPUK has no staff other than Nigel Stirk, the director of DPUK. Mr Stirk accepted that he had no experience in the area of debt management and had undertaken only basic training in the subject matter on a course held over the two days immediately prior to the hearing. He acknowledged that he required significant further training in the area of debt management before the company could begin to trade, as would any staff he intended to hire. He indicated that he was unwilling to invest in, or undertake any further training himself, thereby incurring further expenditure, until DPUK had successfully obtained a consumer credit licence.

- (2) Mr Stirk had identified an individual who could act as compliance officer for DPUK who had no debt management experience and an experienced debt management professional who would act as a manager. Mr Stirk indicated that he was unwilling to employ these individuals, thereby incurring further expenditure, until DPUK had successfully obtained a consumer credit licence. In any event, the proposed individuals also lacked the necessary skills and experience relevant to the type of licence sought.
 - (3) DPUK significantly altered its business model following the receipt of a list of OFT concerns surrounding its fitness to hold a licence. Instead of acting as a debt management company, as initially proposed, DPUK proposed that it would act as a referral service for the first 12 months before ultimately moving into the debt management business once the necessary skills and experience had been obtained. Notwithstanding the scaling-back of the business model, DPUK did not scale-back the number of categories for which it sought a consumer credit licence. In fact, DPUK requested licencing in further categories as a "precautionary measure", in case DPUK wanted to expand its areas of business in the future. Whilst Mr Stirk told the OFT Adjudicator that DPUK would not revert to the old business model, he conceded that there would be nothing preventing this from happening once a licence had been granted.
 - (4) DPUK was unable to produce written compliance policies and procedures relating to key areas such as data protection and complaints handling that that were relevant to the firm in its current form. Instead, documents were provided that were incomplete, future-looking and included statements that were not relevant to a non-trading firm. The Data Protection Officer listed in the data protection policy (Mr Stirk) did not know the detail of the policy or the substance of how it would operate.
9. DPUK intended to operate in an industry where consumers affected are often particularly vulnerable. The risk of long term detriment to vulnerable consumers is amplified where a business of this type fails to meet the required regulatory standards. DPUK's failure to demonstrate that it had individuals with the relevant skills and experience, as well as its failure to implement a suitable business model, made clear that authorising DPUK would present an unacceptable risk to consumers.

IMPORTANT NOTICES

10. This final notice is given under section 390(1) of the Act.

Publication

11. 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.
12. 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 Keith Cooper, Manager, Debt, Credit & Regulatory Permissions Department at the Authority (direct line: 020 7066 7466 / email: keith.cooper@fca.org.uk).

Nicholas Mears
Head of Department
Authorisations Division
The Financial Conduct Authority

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS WARNING NOTICE

Relevant Statutory Provisions

1. The OFT was required, by section 25 of the CCA, which section was also repealed by the Transitional Order with effect from 1 April 2014, to be satisfied, before issuing a consumer credit licence of the type applied for by Debt Plan UK, that the applicant was fit to hold it, having regard, among other factors, to whether any of the applicant's agents, associates and/or controllers had committed any offence involving fraud and/or had contravened the CCA itself.
2. The Authority is required, by section 55B(3) of the Act, before giving permission under Part 4A of the Act to any person, to ensure that that person will satisfy and continue to satisfy, in relation to all of the regulated activities for which the person will have permission, the relevant threshold conditions set out in Schedule 6 to the Act.
3. Paragraph 2E of Schedule 6 to the Act requires, specifically, as one of those conditions, that the Authority should ensure that each such applicant is fit and proper.
4. Paragraph 2E further provides that the Authority is to consider in this regard:
 - (1) the applicant's connections with other persons;
 - (2) the need to ensure that the applicant'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;
 - (3) whether the applicant has complied with requirements imposed by the Authority, or requests made by the Authority, relating to the provision of information to the Authority;
 - (4) whether those who manage the applicant's affairs have acted and may be expected to act with probity; and
 - (5) the need to minimise the extent to which it is possible for the business carried on or to be carried on by the applicant to be used for a purpose connected with financial crime.

Relevant provisions of the Transitional Order

5. In respect of any application for a consumer credit licence of the type applied for by DPUK, if determined by the OFT before 1 April 2014, in relation to which the appeal period had not ended by that date and where the applicant does not have an existing permission under Part 4A of the Act:
 - (1) paragraph 32(2)(a) of the Transitional Order provides that the OFT's notice of determination is to be treated as a decision notice given under section 55X(4) of the Act by the Authority of its decision to refuse an application for Part 4A permission; and
 - (2) paragraph 32(4) of the Transitional Order provides that the notice has effect subject to any necessary modifications.

Relevant provisions of the Authority's Handbook

6. 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 considerations in relation to the decision made in respect of DPUK'S application are set out below.

Threshold condition 2D: Appropriate Resources

7. 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.
8. 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.
9. COND 2.4.4G states that, when assessing whether a firm has appropriate resources, the Authority will have regard to matters including:
 - (a) the nature and scale of the business carried on, or to be carried on, by A;
 - (b) the risks to the continuity of the services provided by, or to be provided by, A

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 the threshold conditions set out in paragraphs 2E and 3D of Schedule 6 to the Act. Examples include 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 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.