
FINAL NOTICE

To: **Foreman Financial Services Limited**

FRN: **232165**

Address: **50a St Johns Road
Tunbridge Wells
TN4 9NY**

Dated: **23 October 2017**

ACTION

1. For the reasons set out in this Final Notice, the Authority hereby takes the following action against FFSL.
2. The Authority gave FFSL the Decision Notice, which notified FFSL that, for the reasons given below and pursuant to section 55J of the Act, the Authority had decided to cancel the permission granted to FFSL under Part 4A of the Act.
3. FFSL has not referred the matter to the Tribunal within 28 days of the date on which the Decision Notice was given to it.
4. Accordingly, the Authority has today cancelled FFSL's Part 4A permission.

DEFINITIONS

5. The definitions below are used in this Final Notice (and in the Annex):

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

"the Authority" means the Financial Conduct Authority;

"COND" means the part of the Handbook which has the title Threshold Conditions;

"the Decision Notice" means the Decision Notice issued to FFSL on 12 September 2017;

"DISP" means the Dispute Resolution: Complaints Manual, which is part of the Handbook;

"EG" means the Authority's Enforcement Guide;

"FFSL" means Foreman Financial Services Limited;

"FFSL's Part 4A permission" means the permission granted to FFSL under Part 4A of the Act;

"the FOS" means the Financial Ombudsman Service;

"the FOS Award" means the final decision made by the FOS against FFSL in favour of Mr C on 9 September 2016 (decision reference: 1655-7621);

"the Handbook" means the Authority's Handbook of rules and guidance;

"Mr C" means the customer of FFSL who made the complaint to the FOS to which decision reference 1655-7621 relates;

"the Principles" means the Authority's Principles for Businesses;

"SIPP" means self-invested personal pension;

"the suitability Threshold Condition" means the threshold condition set out in paragraph 2E of Schedule 6 to the Act;

"the Threshold Conditions" means the threshold conditions set out in Schedule 6 to the Act;

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

"the Warning Notice" means the Warning Notice issued to FFSL on 10 July 2017.

RELEVANT STATUTORY PROVISIONS

6. The statutory and regulatory provisions relevant to this Final Notice are set out in the Annex.

SUMMARY OF THE REASONS

7. On the basis of the facts and matters and conclusions described in the Warning Notice, and in the Decision Notice, it appears to the Authority that FFSL is failing to satisfy the suitability Threshold Condition, in that the Authority is not satisfied that FFSL is a fit and proper person having regard to all the circumstances.

8. FFSL has failed to satisfy the Authority that it is conducting its affairs in an appropriate manner, having regard in particular to the interests of consumers. Specifically, FFSL has failed to comply with the FOS Award made against it on 9 September 2016, despite repeated requests by the FOS and the Authority that it do so. By not complying with the FOS Award, FFSL has breached DISP 3.7.12R(1) and Principle 6 (Customers' interests) and Principle 11 (Relations with regulators) of the Principles. FFSL did not seek a judicial review of the Award, which therefore remains binding on it under section 228(5) of the Act.

FACTS AND MATTERS

9. FFSL was authorised by the Authority on 2 July 2004. FFSL has been permitted to conduct designated investment business since 2 July 2004, regulated home finance since 31 October 2004 and credit broking since 2 February 2015.
10. Mr C's complaint to the FOS related to the advice Mr C received from FFSL to transfer his existing pension into a SIPP in order to fund the purchase of a property investment. Mr C complained to the FOS that FFSL did not assess the suitability of the investment adequately and that he should not have been advised to transfer his pension into a SIPP.
11. In its decision of 9 September 2016, the FOS upheld Mr C's complaint and instructed FFSL to calculate fair compensation by comparing the value of Mr C's pension (if he had not transferred into a SIPP) with the current value of his SIPP. The FOS directed FFSL to:
 - a) obtain the notional transfer value of Mr C's previous pension plan on the date of the final decision, if it had not been transferred to the SIPP ("redress element one");
 - b) obtain the actual transfer value of Mr C's SIPP (including any outstanding charges) on the date of the final decision;
 - c) pay an amount into Mr C's SIPP so that the transfer value is increased to equal the value calculated in redress element one, plus simple interest at a rate of 8% a year from the date of the final decision until the date of payment;
 - d) pay any ongoing SIPP fees until the SIPP can be cancelled, or if the SIPP cannot be cancelled, pay five years' worth of future fees owed by Mr C to the SIPP; and
 - e) pay Mr C £300 for the distress and inconvenience caused.
12. On 14 September 2016, Mr C accepted the FOS Award, at which stage the FOS decision became binding on him and FFSL. FFSL disputes the FOS Award, but has not sought judicial review of the FOS Award, which therefore remains binding on it under section 228(5) of the Act. FFSL has failed to comply with the FOS Award, despite repeated requests by the FOS and the Authority that it do so.

FAILINGS

13. As set out in the facts and matters described above, the Authority having regard to its operational objectives, which include securing an appropriate degree of protection for consumers, has reached the following conclusions:

- as a result of FFSL's persistent failure to comply with the FOS Award, despite repeated requests by the FOS and the Authority that it comply, FFSL has breached DISP 3.7.12R(1), which requires a firm to comply promptly with any award or direction made against it by the FOS;
- by not complying with the FOS Award, FFSL has also breached Principle 6 (Customers' interests) of the Principles, which requires a firm to pay due regard to the interests of its customers and to treat them fairly;
- by not complying with the FOS Award, despite repeated requests by the FOS and the Authority that it comply, FFSL has breached Principle 11 (Relations with regulators) of the Principles, which requires a firm to deal with its regulators in an open and co-operative way, and to disclose to the Authority anything relating to the firm of which the Authority would reasonably expect notice; and
- having regard to all the circumstances, FFSL is not a fit and proper person because it has failed to satisfy the Authority that it is conducting its affairs in an appropriate manner, having regard in particular to the interests of consumers, and because it is not conducting its affairs in a sound and prudent manner. FFSL is therefore failing to satisfy the suitability Threshold Condition.

14. Accordingly, FFSL's Part 4A permission should be cancelled.

DECISION MAKER

15. The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee.

IMPORTANT

16. This Final Notice is given to FFSL in accordance with section 390(1) of the Act.

Publicity

17. The Authority must publish such information about which this Final 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 information would, in the opinion of the Authority, be unfair to FFSL or prejudicial to the interests of consumers.

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

Authority Contact

19. For more information concerning this matter generally, FFSL should contact Sheena Baldev at the Authority (direct line: 0207 066 6760).

John Kirby
Enforcement and Market Oversight Division

ANNEX

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1(B) of the Act include securing an appropriate degree of protection for consumers.
2. The Authority is authorised by section 55J of the Act to cancel an authorised person's Part 4A permission, where it appears to the Authority that it is failing to satisfy the Threshold Conditions.
3. Section 228(5) of the Act provides that if the complainant notifies the FOS that he/she accepts the determination, it is binding on the respondent and the complainant, and is final.
4. The suitability Threshold Condition provides, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:
 - "A must be a fit and proper person having regard to all the circumstances, including –
 - (c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers [...]
 - (f) whether A'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."

RELEVANT REGULATORY PROVISIONS

5. In exercising its power to cancel a firm's Part 4A permission, the Authority must have regard to guidance published in the Handbook and in regulatory guides, such as EG. The relevant main considerations in relation to the proposed cancellation action specified above are set out below.

Relevant Rule

6. DISP 3.7.12R(1), requires that a respondent (FFSL is a respondent under the definition given in the Handbook), complies promptly with any award or direction made by the FOS.

Relevant Principles

7. Principle 6 (Customers' interests) of the Principles requires a firm to pay due regard to the interests of its customers and treat them fairly.
8. Principle 11 (Relations with regulators) of the Principles states that a firm must deal with its regulators in an open and co-operative way, and must disclose to the appropriate regulator anything relating to the firm of which that regulator would reasonably expect notice.

Guidance concerning the suitability Threshold Condition

9. Guidance on the Threshold Conditions is set out in COND.

COND 2.5 – Suitability: Paragraph 2E of Schedule 6 to the Act

10. COND 2.5.1AUK(1) reproduces the relevant statutory provision that the person concerned must satisfy the Authority that he is a fit and proper person having regard to all the circumstances, including amongst other things, the need to ensure that his affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system, and whether the firm's business is being managed in such a way as to ensure that its affairs are being conducted in a sound and prudent manner (COND 2.5.1AUK(1)(c) and (f)).
11. COND 2.5.4G(2) states that examples of the considerations to which the Authority may have regard when assessing whether a firm will satisfy and continue to satisfy the Threshold Conditions include whether the firm conducts its business in compliance with proper standards (COND 2.5.4G(2)(a)).
12. COND 2.5.6G states that the Authority, when forming its opinion as to whether a firm is conducting its business with integrity and in compliance with proper standards, may have regard to considerations, including whether the firm has been open and co-operative in all its dealings with the Authority and is ready, willing and organised to comply with the requirements and standards under the regulatory system (COND 2.5.6G(1)), and whether the firm has contravened any provisions of the Act or the regulatory system, which include the Principles and other rules (COND 2.5.6G(4)).

Cancelling a firm's Part 4A permission on the Authority's own initiative

13. The Authority's policy in relation to its enforcement powers is set out in EG.
14. EG 8.1.1(1) provides that the Authority may use its own initiative power to vary or cancel the permission of an authorised person under section 55J of the Act, where the person is failing or is likely to fail to satisfy the Threshold Conditions.
15. EG 8.5.1(1) states that the Authority will consider cancelling a firm's Part 4A permission using its own initiative powers contained in section 55J of the Act in circumstances where the Authority has very serious concerns about the firm, or the way its business is or has been conducted.
16. EG 8.5.2 provides examples of the types of circumstances in which the Authority may cancel a firm's Part 4A permission and EG 8.5.2(1) specifies that non-compliance with an award made by the FOS against a firm is one such circumstance.