
FINAL NOTICE

FS Claims Ltd

The Leeming Building
Ludgate Hill
Leeds
West Yorkshire
LS2 7HZ

29 January 2020

ACTION

1. By an application dated 27 April 2019 (“the Application”), FS Claims Ltd (“FS Claims”) applied under section 55A of the Act for Part 4A permission to carry on the following regulated activities:
 - a. seeking out, referrals and identification of claims or potential claims (personal injury claim; financial services or financial product claim; housing disrepair claim; claim for a specified benefit; criminal injury claim; employment related claim); and
 - b. advice, investigation or representation in relation to a financial services or financial product claim.
2. The Application is incomplete.
3. The Authority has refused the Application.

SUMMARY OF REASONS

4. By its Warning Notice dated 29 November 2019, the Authority gave notice that it proposed to refuse the Application and that FS Claims was entitled to make representations to the Authority about that proposed action.

5. As no representations were received by the Authority from FS Claims 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 applied, 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 27 December 2019 ("the Decision Notice"), the Authority gave FS Claims notice that it had decided to take the action described above.
7. FS Claims had 28 days from the date the Decision Notice was given to refer the matter to the Upper 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 FS Claims a final notice of its refusal.
9. FS Claims failed to respond to four separate requests for the provision of information considered by the Authority to be necessary to enable the Authority to determine the Application. These requests were made over a six-week period, and three of the requests included a statement that FS Claims must contact the Authority or the Authority would recommend to the Authority's Regulatory Transactions Committee ("RTC") that FS Claims be given a Warning Notice.
10. The Authority has therefore determined the Application based upon the information received to date, in circumstances where its requests for information have not been met. Having reviewed that information, the Authority cannot ensure that FS Claims satisfies, and will continue to satisfy, the threshold conditions for which the Authority is responsible.
11. Authorised firms (and those seeking authorisation) are expected to engage with the Authority in an open and cooperative way. The failure to provide the requested information raises concerns that FS Claims would fail to do so if the Application were to be granted.
12. The failure to provide the information means that the Authority cannot ensure that FS Claims will satisfy, and continue to satisfy, the threshold conditions for which the Authority is responsible, in relation to all the regulated activities for which FS Claims would have permission. In particular, the Authority cannot ensure that FS Claims:
 - a. can be effectively supervised by the Authority as required by threshold condition 2C;
 - b. has appropriate human resources, given FS Claims' failure to provide the Authority with the requested information as required by threshold condition 2D; and
 - c. will conduct its business with integrity and in compliance with proper standards as required by threshold condition 2E.

DEFINITIONS

13. 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 Financial Conduct Authority

“CASS” means the Client Assets section of the Authority’s handbook

“CMCOB” means the Claims Management: Conduct of Business section of the Authority’s handbook

“the Decision Notice” means the decision notice dated 27 December 2019 given to FS Claims by the Authority

“the FOS” means the Financial Ombudsman Service

“FS Claims” means FS Claims Ltd

“IFA” means an independent financial advisor

“the RDC” means the Authority’s Regulatory Decisions Committee

“the RTC” means the Authority’s Regulatory Transactions Committee

“SUP” means the Supervision section of the Authority’s handbook

“SYSC” means the Senior Management Arrangements, Systems and Controls section of the Authority’s handbook

“the Upper Tribunal” means the Upper Tribunal (Tax & Chancery Chamber)

“the Warning Notice” means the warning notice dated 29 November 2019 given to FS Claims by the Authority

FACTS AND MATTERS

14. The Application was received by the Authority on 27 April 2019.

15. Further information was requested from FS Claims under section 55U(5) of the Act.

16. Details of all relevant communications between the Authority and FS Claims are set out below.

17. Between 23 May 2019 and 6 August 2019, the Authority sent FS Claims one email, four letters and made one telephone call in an attempt to obtain information from FS Claims that would assist the Authority in determining the Application.

18. The Authority informed FS Claims of its concerns in relation to the Application by telephone on 23 May 2019 and email on 24 May 2019. In summary, the Authority’s concerns communicated by way of the telephone call and email were that:

- a. The client money procedures submitted with the Application had not provided adequate assurance of the security of client money.
- b. FS Claims stated it would conduct 100% of its sales via the internet but had not provided any examples of the material it intended to use, or explained how it would ensure that material is fair, clear and not misleading.
- c. FS Claims had not provided:
 - i. details of how FS Claims would ensure compliance with CMC0B 4 and CMC0B 6 with regard to pre-contractual and contractual information;
 - ii. a vulnerable persons policy;
 - iii. monthly cash flow and profit and loss calculations;
 - iv. a financial resources calculation as set out in CMC0B 7; or
 - v. controller information.
- d. FS Claims had not identified any conduct risks, or explained the controls it would put in place to mitigate conduct risks.
- e. The monitoring programme and compliance procedures that had been provided were generic and not tailored to the proposed business.
- f. FS Claims did not explain how it would ensure customers would be informed that they could complain to the Financial Ombudsman Service ("FOS") for free without using a claims management company.
- g. FS Claims' business plan stated that file reviews would be outsourced to an independent financial advisor ("IFA") specialising in final salary pension investments. FS Claims had not explained how it would satisfy itself that the IFA would be competent to perform those reviews either at authorisation or on an ongoing basis.
- h. FS Claims' opening balance sheet included a figure for a sales income asset before trading had even commenced, and made no reference to the paid-up share capital mentioned elsewhere in the Application. Further, the opening balance sheet was identical to the closing balance sheet.
- i. The individual form for FS Claims' sole director did not include a date of birth, provided no indication of any recent experience of running a claims management company, and did not explain how the sole director intended to gain the experience necessary to conduct claims management activities by the date of authorisation.

19. The Authority's email dated 24 May 2019 also requested that FS Claims:

- a. either provide a timescale for when it would address the Authority's concerns or consider withdrawing the Application; and
- b. confirm how it wished to proceed by 7 June 2019.

20. On 7 June 2019, FS Claims emailed the Authority to request another two weeks to provide a timescale for a response. Accordingly, the Authority expected to receive a timescale for a response by 21 June 2019.
21. FS Claims failed to provide a timescale for a response by 21 June 2019.
22. On 27 June 2019, the Authority sent a letter to FS Claims under cover of an email requesting that FS Claims provide the following information in support of the Application by 4 July 2019:
- a. details of how FS Claims will ensure the security of client money and compliance with the rules in CASS 13, including but not limited to how FS Claims will carry out the daily internal and external client money reconciliations;
 - b. examples of the material FS Claims intended to use to market its services, and how it will ensure that material is fair, clear and not misleading (CMCOB 3);
 - c. pre-contractual and contractual information as set out in CMCOB 4 and CMCOB 6 respectively;
 - d. a vulnerable persons policy;
 - e. FS Claims' assessment of the conduct risks, and how it proposes to mitigate those risks;
 - f. monthly cash flow and profit and loss calculations;
 - g. a prudential resources calculation as set out in CMCOB 7;
 - h. controller information;
 - i. a compliance monitoring programme and compliance procedures tailored to FS Claims;
 - j. an explanation of how FS Claims will ensure customers know they can complain to the FOS for free without using a claims management company;
 - k. how FS Claims will satisfy itself that the individuals performing file reviews are competent to perform those reviews, at authorisation and on an ongoing basis;
 - l. opening and closing balance sheets which properly reflect the expected activity of FS Claims in its first year, and the financial position of FS Claims at the start and end of the first year of authorisation;
 - m. details showing how FS Claims' sole director has the experience necessary to conduct claims management activities; and
 - n. the sole director's date of birth.
23. FS Claims failed to provide the information by 4 July 2019.

24. On 5 July 2019, the Authority sent a letter to FS Claims under cover of an email, noting the lack of a response to its request for the information on 27 June 2019 and informing FS Claims that a failure to provide the information would result in the Application being determined based upon the information received to date, and that this might result in a recommendation to the RTC that it issue FS Claims with a Warning Notice proposing to refuse the Application. No response was received to this correspondence by the stated deadline of 19 July 2019.
25. On 13 July 2019, FS Claims responded to the Authority by way of an email stating: *"we have sought further assistance from a specialist compliance firm for our application to ensure that we can ensure a complete application at the earliest opportunity. We have a further meeting this week, by which time I hope to provide a definite timescale to when you can expect the outstanding information requested and therefore complete the application."*
26. FS Claims did not contact the Authority the following week with a *"definite timescale"* as to when the information would be provided.
27. On 22 July 2019, the Authority sent a letter to FS Claims by way of email and recorded delivery, noting the lack of a response to its requests for information on 27 June 2019 and 5 July 2019, informing it that a failure to provide the information would result in the Application being determined based upon the information received to date, and that this might result in a recommendation to the RTC that it issue FS Claims with a Warning Notice proposing to refuse the Application. No response was received to this correspondence by the stated deadline of 5 August 2019.
28. On 31 July 2019, FS Claims responded stating: *"The compliance firm I've instructed has a bit of a back log, which is slowing things down somewhat. I'll email you next week to give you an update with an estimated timescale on getting all the information to you."*
29. On 6 August 2019, the Authority sent a letter to FS Claims by way of email and recorded delivery, noting the lack of a response to its requests for the information and informing it that a failure to provide the information would result in the Application being determined based upon the information received to date, and that this might result in a recommendation to the RTC that it issue FS Claims with a Warning Notice proposing to refuse the Application. No response was received to this correspondence by the stated deadline of 20 August 2019.
30. On 13 August 2019, FS Claims responded to the Authority by way of email stating: *"The relevant person at the compliance firm is on annual leave at the moment, which is causing further delays. They should be back next week. I'll email you once they're back and I have a better idea of time."*
31. On 29 August 2019, FS Claims sent a further email to the Authority stating: *"I've actually moved to a different Compliancy firm, as the one I had initially instructed have too large a back log which is causing delays. I should know by next week from the new firm with a timescale."*
32. On 4 September 2019, the Authority telephoned FS Claims and informed it that it was the Authority's view that FS Claims had been given ample opportunity to provide the information but had failed to do so and that the Authority would therefore proceed to determine the Application.

33. On 23 October 2019, the Authority made a final attempt to contact FS Claims by telephone. However, the call was not answered by FS Claims. Consequently, the Authority left a voicemail and sent an email to FS Claims asking it to contact the Authority. FS Claims failed to respond to the Authority's voicemail or email.

IMPACT ON THRESHOLD CONDITIONS

34. The regulatory provisions relevant to this Final Notice are referred to in Annex A.
35. FS Claims failed to respond to four separate requests for the provision of information considered by the Authority to be necessary to enable the Authority to determine the Application. These requests were made over a six-week period and three of these requests included a statement that FS Claims must contact the Authority or the Authority would recommend to the RTC that FS Claims be given a Warning Notice.
36. The Authority has therefore determined the Application based upon the information received to date, in circumstances where its requests for information have not been met. Having reviewed that information, the Authority cannot ensure that FS Claims satisfies, and will continue to satisfy, the threshold conditions for which the Authority is responsible.
37. Authorised firms (and those seeking authorisation) are expected to engage with the Authority in an open and cooperative way. The failure to provide the requested information raises concerns that FS Claims would fail to do so if the Application were to be granted.
38. The failure to provide the information means that the Authority cannot ensure that FS Claims:
- a. can be effectively supervised by the Authority as required by threshold condition 2C;
 - b. has appropriate human resources, given FS Claims' failure to provide the Authority with the requested information as required by threshold condition 2D; and
 - c. will conduct its business with integrity and in compliance with proper standards as required by threshold condition 2E.

IMPORTANT NOTICES

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

Publication

40. 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.

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

Authority contacts

42. For more information concerning this matter generally, contact Mike Baker, Manager, Claims Management Companies Department at the Authority (direct line: 020 7066 1026 /email: mike.baker@fca.org.uk).

Hilary Bourne
on behalf 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

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 titled Threshold Conditions (“COND”). The main considerations in relation to the action specified are set out below.
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. COND 1.3.3AG provides that, 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 Authority threshold conditions, the Authority will have regard to all relevant matters, whether arising in the United Kingdom or elsewhere.

Threshold Condition 2C: Effective Supervision

8. COND 2.3.3G states that, in assessing the threshold condition set out in paragraph 2C of Schedule 6 to the Act, factors which the Authority will take into consideration include, among other things, whether it is likely that the Authority will receive adequate information from the firm to determine whether it 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 2D: Appropriate Resources

9. COND 2.4.2G(2) states that the Authority 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.
10. COND 2.4.2G(2A) provides that 'non-financial resources' of the firm include human resources it has available.
11. COND 2.4.2G (3) states that high level systems and control requirements are in SYSC. The Authority will consider whether the firm is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purpose of the threshold conditions set out in threshold condition 2D.

Threshold condition 2E: Suitability

12. COND 2.5.2G(2) states that the Authority 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 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.
13. COND 2.5.4G(2)(a) states that examples of the kind of general considerations to which the Authority 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 can demonstrate that it conducts, or will conduct, its business with integrity and in compliance with proper standards.
14. 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 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.