
FINAL NOTICE

**Servicesport Finance Limited
1-2 Drumhead Road
Chorley
PR6 7BX**

14 October 2021

ACTION

1. By an application dated 11 November 2020 ("the Application"), Servicesport Finance Limited ("SFL") applied under section 60 of the Act for Part V approval for Mr Jonathan Peter Mounteney ("the candidate") to perform the SMF29 Limited Scope function.
2. The Authority has refused the Application.

SUMMARY OF REASONS

3. By its Warning Notice dated 5 July 2021, the Authority gave notice that it proposed to refuse the Application and that SFL was entitled to make representations to the Authority about that proposed action.
4. As no representations were received by the Authority from SFL 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.
5. By its Decision Notice dated 17 August 2021, the Authority gave SFL notice that it had decided to take the action described above.
6. SFL had 28 days from the date the Decision Notice was given to refer the matter to the Upper Tribunal.

7. 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 Upper Tribunal, must give SFL a final notice of its refusal.
8. On the basis of the reasons set out in this notice, the Authority is not satisfied that the candidate is a fit and proper person to perform the SMF29 function.
9. Specifically, SFL and the candidate have not satisfied the Authority that the candidate is able to meet the requirements of FIT 2.1 (Honesty, integrity and reputation) and FIT 2.2 (Competence and capability). This is based on the following:
 - a. The candidate's failure to disclose relevant disciplinary matters;
 - b. The candidate's approach to communicating with the Authority;
 - c. The candidate's availability to perform the SMF29 function; and
 - d. The candidate's employment status at SFL.
10. In light of the above, the Authority has refused the Application.

DEFINITIONS

11. 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.

"COCON" means the section of the Handbook entitled "Code of Conduct".

"COND" means the section of the Handbook entitled "Threshold Conditions".

"the Decision Notice" means the Decision Notice dated 17 August 2021 given to SFL by the Authority.

"FIT" means the section of the Handbook entitled "Fit and Proper test for Employees and Senior Personnel".

"Handbook" means the Authority's Handbook of Rules and Guidance.

"PRIN" means the section of the Handbook entitled "Principles for Businesses".

"RDC" means the Regulatory Decisions Committee.

"RTC" means the Regulatory Transactions Committee.

"SDT" means the Solicitors Disciplinary Tribunal.

"SFL" means Servicesport Finance Limited.

"SMF29" means the SMF29 Limited Scope function.

"SRA" means the Solicitors Regulation Authority.

"SYSC" means the section of the Handbook entitled "Senior Management Arrangements, Systems and Controls".

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

"the Warning Notice" means the Warning Notice dated 5 July 2021 given to SFL by the Authority.

FACTS AND MATTERS

12. SFL is an authorised firm, headquartered in Lancashire. It has been authorised by the Authority since September 2018, with permission to carry out regulated activities in relation to consumer hire agreements.
13. On 11 November 2020, the Authority received an application from SFL for the candidate to be approved to perform the SMF29 function at SFL.

Non-disclosure

14. The candidate is currently performing the SMF29 function at a number of firms and has been an approved person since 2006. As such, the candidate is subject to the rules in COCON which require him to disclose appropriately any information of which the Authority would reasonably expect notice (COCON 2.2.4R). FIT 1.1.2G states that the Authority will consider the criteria set out in FIT when assessing the continuing fitness and propriety of approved persons. These criteria include whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the appropriate regulator, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (FIT 2.1.3G(3)). The candidate would have been reminded at the point of approval about his regulatory responsibilities.
15. In August 2018, the SRA commenced a misconduct investigation in relation to the candidate. In summary, the allegations against the candidate were that while in practice as a solicitor, he facilitated and/or promoted stamp duty land tax mitigation/avoidance schemes on the purchase of residential properties, in breach of the SRA Principles 2011 and the prohibition on acting if there is, or there is a significant risk of, an own interest conflict. The matter was referred to the SDT which held on 16 April 2020 that the allegations were not proved and ordered that they should be dismissed. However, in rejecting the candidate's application for costs, the SDT noted that there had been no half-time submission of no case to answer and that the SRA had properly brought the case.
16. While the outcome of the proceedings was favourable to the candidate, the Authority would have expected to be notified of the SRA's investigation at the time it was opened. The Authority queried why Mr Mounteney failed to disclose the SRA proceedings. Mr Mounteney responded stating that his legal practice had never been authorised by the Authority, and the promotion of stamp duty land tax mitigation schemes was outside the Authority's remit, "so there was no need for the FCA to be informed of the allegations against me. In any case the allegations were at all times wholly baseless".
17. The Authority considers this is incorrect in view of the SDT's finding that there was a case to answer. Moreover, the effect of FIT 2.1.1G and FIT 2.1.3G is clearly that

any disciplinary proceedings by regulatory authorities like the SRA should be disclosed. The Authority is concerned that the candidate does not fully understand his regulatory obligations as an approved person.

18. In addition, between August 2018 and April 2020, the candidate submitted two further applications to perform the SMF29 function, and was approved in both cases. Neither of those applications referred to the fact that he was subject to disciplinary proceedings by the SRA. In particular, in an application submitted to the Authority in December 2019, the candidate explicitly replied "No" to the following questions:

5.03.1 Has the candidate ever been:

b. The subject of any proceedings of a disciplinary nature (whether or not the proceedings resulted in any finding against the candidate)?

c. The subject of any investigation which has led or might lead to disciplinary proceedings?

d. Notified of any potential proceedings of a disciplinary nature against the candidate?

e. The subject of an investigation into allegations of misconduct or malpractice in connection with any business activity? (This question covers internal investigation by an authorised firm, as well as investigation by a regulatory body, at any time.)

19. The Authority would expect any candidate for an SMF29 role, and in particular an experienced SMF29 like the candidate, to be aware of their regulatory responsibilities and the matters of which the Authority would require notice. The SRA proceedings concerned serious allegations and had not been concluded at the time of these applications. It is likely that the candidate would not have been approved to perform the SMF29 function if he had disclosed the fact that he was subject to ongoing disciplinary proceedings. The above matters raise concerns about whether the candidate would act in a manner compatible with the standards and requirements of the regulatory system in terms of disclosing matters relevant to his fitness and propriety in a timely manner.

Communication with the Authority

20. Throughout the process of determining the Application, the candidate and SFL have not consistently been helpful when communicating with the Authority.¹ In particular, the Authority notes the following points.

- a. The Authority asked for an important regulatory form relating to the candidate (a Long Form A) to be reviewed and completed correctly on 8 February 2021. The candidate and SFL needed to be specifically prompted to disclose the disciplinary matters referred to above, submitting a revised Long Form A on 8 March 2021.

¹ The Authority also notes that the candidate appears to have seen and/or been responsible for the content of all of SFL's communications with the Authority.

- b. Most of the Authority's requests for information were challenged by SFL and the candidate. The responses provided were often defensive and did not consistently address the questions asked.
 - c. This approach is consistent with statements on the website of a legal practice of which the candidate is the principal. The practice offers to help firms dealing with the Authority: in referring to the need for firms to receive this help, the website makes several statements suggesting the writer has a negative view of the Authority.
21. The Authority needs to engage in a continuous and constructive dialogue with both regulated firms and individuals, and those seeking authorisation or approval. The Authority expects regulated firms, approved individuals and applicants/candidates to behave in an open and cooperative manner, bearing in mind the requirements of PRIN 2.1.1R (11), COCON 2.2.4R and COND 2.3 (Effective supervision). In view of the matters described above, the Authority is concerned that if approved, the candidate would not comply, or ensure SFL complies, with these requirements. The candidate does not appear consistently willing to communicate with the Authority in an appropriate manner.

Availability

22. The candidate confirmed that he will dedicate approximately a quarter of an hour per month (or 3 hours per year) to the role applied for. It is unclear whether SFL can avail itself of the candidate's services beyond those contracted hours.
23. In determining whether a person is fit and proper to carry out an approved function, the Authority will have regard to all relevant matters, including but not limited to, whether the person has adequate time to perform the controlled function and meet the responsibilities associated with that function (FIT 2.2.1G(3)). The Authority considers that dedicating 3 hours per year to the performance of the SMF29 function, one aspect of which is overseeing the maintenance of the firm's systems and controls, falls short of what is required to adequately monitor the firm.

Employment status

24. The Application stated that the nature of the arrangement between SFL and the candidate was based on a 'contract for services. SFL then referred to the candidate as their solicitor, and subsequently clarified that the candidate was employed by the firm. SFL provided the Authority with the candidate's "statement of employment terms". The following points are apparent in relation to the statement.
- a. The candidate is not currently employed by SFL and his employment with SFL only begins if/when he is approved to perform the SMF29 function.
 - b. His duties would include: maintaining regulatory records, including keeping track of regulatory authorisation payments as they are due; providing management with regulatory guidance and updates in relation to SFL's credit referrals, and advice on how to implement that regulatory guidance and updates; answering queries concerning the introduction of clients to a primary credit broker; and other related duties that may be required within reason in the future.
 - c. The candidate's contracted hours with the applicant would "normally" be 3 hours per year which is equivalent to 0.016 of FTE.

25. SYSC 4.4.5R provides that firms should “appropriately allocate” the SMF29 function to a CEO, director or a senior manager at the firm. The Handbook defines “senior manager” as an individual other than a director who is employed by a firm and to whom the governing body of a firm, or a member of the governing body of a firm, has given responsibility for management and supervision. It appears that the candidate does not satisfy this definition, given that he is not currently employed by SFL and he has not been given responsibility for management and supervision.
26. The SMF29 function is an important one, given that it concerns the apportionment of responsibilities and the establishment/maintenance of systems and controls. The purpose of SYSC 4.4.5R is to ensure that this role is carried out by a person such as a director of a firm who has full authority and capacity to maintain the firm’s procedures. Firms like SFL may have vulnerable customers who can be harmed by irresponsible lending, and it is the responsibility of the person who performs the SMF29 function to ensure the detailed requirements of the Authority’s Consumer Credit sourcebook are met.
27. The Authority does not accept that the candidate’s role of giving advice/completing regulatory returns as a consultant to SFL would be sufficient to protect consumers in the event e.g. of a change in relevant regulatory requirements, an expansion in SFL’s regulated business or a disagreement about regulatory requirements with SFL’s director. Performing the SMF29 function in these circumstances would take significantly more than the 3 hours the candidate is normally expected to provide per year. This is particularly concerning given the candidate has provided no detailed explanation of how he would adjust his substantial other work commitments to cover this.²

IMPACT ON FITNESS AND PROPRIETY

28. The Authority considers that, having regard to all the circumstances, it cannot be satisfied that the candidate is a fit and proper person to perform the function to which the Application relates (section 61(1) of the Act).
29. In particular, the Authority does not consider that the candidate meets the following assessment criteria: Honesty, integrity and reputation (FIT 2.1) and Competence and capability (FIT 2.2).

FIT 2.1 – Honesty, integrity and reputation

30. It is a key requirement of the Authority’s rules that approved persons are fully candid and cooperative with the regulator, disclosing any matters which might be relevant to their fitness and propriety in a timely manner. At all material times, the candidate was subject to COCON 2.2.4R.
31. The candidate repeatedly failed to disclose serious allegations made against him by another regulatory authority (the SRA), even when those allegations had not yet been refuted. The Authority considers there is a risk the candidate would not provide adequate information in a timely manner about matters relevant to the ongoing assessment of his honesty, integrity and reputation.

² The candidate is a director of 8 companies and the principal of a legal practice, as noted above.

FIT 2.2 – Competence and capability

32. The Authority expects candidates for Part V approval to perform the SMF29 function to demonstrate that they have a full understanding of relevant regulatory requirements, and the necessary authority and availability to provide meaningful oversight of their firm if necessary.
33. The candidate is proposing to act as a regulatory consultant normally working 3 hours a year for SFL. This would not enable the candidate to perform meaningful oversight of SFL if required to do so. In the circumstances, the candidate does not have the capability required under FIT, which would be essential to ensure that SFL complies with the relevant rules and obligations under the regulatory system.
34. The Authority has therefore refused the Application on the basis that the candidate is not a fit and proper person to perform the SMF29 function.

IMPORTANT NOTICES

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

Publication

36. 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.
37. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

Authority contacts

38. For more information concerning this matter generally, contact Laura Moloney, Manager, Approved Persons Lending & Intermediaries, at the Authority (direct line: 020 7066 0488 / email: laura.moloney@fca.org.uk).

Val Smith
Executive Decision Maker

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS FINAL NOTICE

Relevant statutory provisions

1. The Authority may grant an application for approval under section 60 of the Act only if it is satisfied that the person in respect of whom the application is made is a fit and proper person to perform the controlled function to which the application relates (section 61(1) of the Act).
2. Section 62(2) of the Act requires the Authority, if it proposes to refuse the application, to issue a Decision Notice.

Relevant provisions of the Authority’s Handbook

Fit and Proper test for Employees and Senior Personal - FIT

3. In exercising its powers in relation to the granting of a Part V permission, the Authority has regard to guidance published in the Authority’s Handbook, including FIT. Provisions relevant to the consideration of the current application include those set out below.

General guidance

4. FIT sets out the criteria that the Authority will consider when assessing the fitness and propriety of a person to perform a particular controlled function (FIT 1.1.2G).
5. The most important considerations to which the Authority will have regard include the person’s honesty, integrity and reputation, competence and capability, and financial soundness (FIT 1.3.1G).
6. If a matter comes to the Authority’s attention which suggests that the person might not be fit and proper, the Authority will take into account how relevant and important that matter is (FIT 1.3.4G).

FIT 2.1 – Honesty, integrity and reputation

7. In determining a person’s honesty, integrity and reputation, the matters to which the Authority will have regard include:
 - (1) whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the Authority, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (FIT 2.1.3G (3));
 - (2) whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings (FIT 2.1.3G (4));
 - (3) whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body, a court or Tribunal, whether publicly or privately (FIT 2.1.3G (10)); and
 - (4) whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system

and with other legal, regulatory and professional requirements and standards (FIT 2.1.3G (13)).

FIT 2.2 – Competence and capability

8. In determining a person's competence and capability, the matters to which the Authority will have regard include whether the person has adequate time to perform the controlled function and meet the responsibilities associated with that function (FIT 2.2.1G (3)).

Threshold Conditions - COND

9. A [firm] must be capable of being effectively supervised by the FCA having regard to all the circumstances... (COND 2.3.1A UK)

Code of Conduct - COCON

10. You must disclose appropriately any information of which the Authority or PRA would reasonably expect notice (COCON 2.2.4R).

Principles for Businesses - PRIN

11. A firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice (PRIN 2.1.1R (11)).

Senior Management Arrangements, Systems and Controls - SYSC

12. A firm must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems (SYSC 4.1.1R (1)).
13. A firm must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors and senior managers in such a way that: (1) it is clear who has which of those responsibilities; and (2) the business and affairs of the firm can be adequately monitored and controlled by the directors, relevant senior managers and governing body of the firm (SYSC 4.4.3R).
14. A firm must appropriately allocate to one or more individuals, in accordance with the following table, the functions of: (1) dealing with the apportionment of responsibilities under SYSC 4.4.3R; and (2) overseeing the establishment and maintenance of systems and controls under SYSC 4.1.1R (SYSC 4.4.5R).

| 1: Firm type | 2: Allocation of both functions must be to the following individual, if any | 3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional |
|--|--|--|
| (1) A <i>firm</i> which is a <i>body corporate</i> and is a member of a <i>group</i> , other than a <i>firm</i> in row (2) | (1) the <i>firm's chief executive</i> (and all of them jointly, if more than one); or (2) a <i>director</i> or <i>senior manager</i> responsible for the overall management of: (a) the <i>group</i> ; or (b) a <i>group</i> division within which some or all of the <i>firm's regulated activities</i> fall | the <i>firm's</i> and its <i>group's</i> : (1) <i>directors</i> ; and (2) <i>senior managers</i> |
| (2) An <i>EEA SMCR firm</i> (note: only the functions in <i>SYSC 4.4.5R (2)</i> must be allocated) | (not applicable) | the <i>firm's</i> and its <i>group's</i> : (1) <i>directors</i> ; and (2) <i>senior managers</i> |
| (3) Any other <i>firm</i> | the <i>firm's chief executive</i> (and all of them jointly, if more than one) | the <i>firm's</i> and its <i>group's</i> : (1) <i>directors</i> ; and (2) <i>senior managers</i> |

ANNEX B – THE SMF29 FUNCTION

1. The Authority's expectations in relation to this function are briefly set out "The Senior Managers and Certification Regime: Guide for FCA solo-regulated firms".³ At page 21, the guide states in relation to the SMF29 function:

"This was called the Apportionment and Oversight Function (CF8) under the APR. It is the person who deals with the apportionment of responsibilities under SYSC 4.4.3 R and oversees the establishment and maintenance of controls under SYSC 4.1.1 R".

2. In SUP 10C.6.5R, it is stated in relation to the function:

"The limited scope function is the function of acting in the capacity of a person:

(1) responsible for the apportionment function and/or the oversight function set out in SYSC 4.4.5R..."

3. The Authority's expectation is that the SMF29 function typically involves the ongoing development of a regulated firm's systems and controls framework. This might involve:
 - a. The allocation of regulatory responsibilities to staff;
 - b. Ensuring responsibilities are discharged competently;
 - c. Assessing the risks the firm faces; and/or
 - d. Ensuring the firm has a control framework proportionate to its risks.

³ <https://www.fca.org.uk/publication/policy/guide-for-fca-solo-regulated-firms.pdf>